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

14 Travis J. Hillman,

NO.

15 Plaintiff,

COMPLAINT AND DEMAND
FOR TRIAL BY JURY

16 v.

17 Hayden Homes, LLC; New
18 Home Star Washington, LLC;
19 Steve Klingman, individually,
20 and John Kirsch, individually.

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

21 Defendants.

22 **I. INTRODUCTION**

23 1. This civil action is brought pursuant to the Uniformed Services
24 Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 -
25

1 4335 (USERRA) and is exempt from filing fees under 38 U.S.C. §
2 4323(h)(1).

3 2. Plaintiff, Travis J. Hillman (hereinafter “Mr. Hillman” or
4 Plaintiff”), by the undersigned attorneys, avers as stated herein.
5

6 **II. PARTIES AND JURISDICTION**

7 3. Mr. Hillman resided in the State of Washington and was an
8 employee of Defendant, Hayden Homes at all times pertinent hereto.
9

10 4. Mr. Hillman is a nine year military veteran who has served
11 honorably in the Armed Services of the United States.

12 5. At all times relevant to this lawsuit Mr. Hillman was a member
13 of the Washington Army National Guard.
14

15 6. Defendant, Hayden Homes, LLC, is an Oregon corporation that
16 is licensed to conduct business in the State of Washington under the UBI
17 No. 602 668 850.

18 7. Hayden Homes maintains places of business in Spokane,
19 Airway Heights, Washington.
20

21 8. For the purposes of 38 U.S.C. §§ 4303(4) and 4323(c)(2)
22 Defendant, Hayden Homes, LLC, is a private employer operating within
23 the State of Washington.
24
25

1 9. Defendant, Steve Klingman is the president of Hayden Homes,
2 LLC, had control of the employment opportunities of Mr. Hillman, and,
3 upon information and belief, was a primary decision maker regarding
4 Defendants' violation of Mr. Hillman's rights.
5

6 10. For the purposes of 38 U.S.C. §§ 4303(4) and 4323(c)(2)
7 Defendant, Steve Klingman, is a private employer operating within the
8 State of Washington.
9

10 11. New Home Star Washington, LLC is a Washington limited
11 liability company that is licensed to conduct business in the State of
12 Washington under the UBI No. 603 372 996.
13

14 12. John Kirsch is a New Home Star Washington, LLC, real estate
15 agent. New Home Star Washington and Mr. Kirsch represent Hayden
16 Homes in real estate transactions.
17

18 13. All acts complained of occurred within the Eastern District of
19 Washington.
20

21 14. The Federal Court for the Eastern District of Washington has
22 personal jurisdiction over the parties and subject matter jurisdiction for the
23 claims in this complaint pursuant to 38 U.S.C. § 4323(b), 28 U.S.C. §
24 1331, 28 U.S.C. § 1367(a).
25

1 15. Venue is proper in the Eastern District of Washington under 38
2 U.S.C. § 4323(c) and 28 U.S.C. § 1391(b) because the acts and omissions
3 complained herein occurred in this District and Defendants conduct
4 business here.

6 **III. INTRADISTRICT ASSIGNMENT**

7 16. This action arose in Spokane County, Washington; therefore,
8 pursuant to local rules it should be assigned to the Spokane Division of the
9 Eastern District of Washington.

11 **IV. FACTS**

12 17. On November 1, 2016, Mr. Hillman began working for Hayden
13 Homes and Mr. Klingman as the Assistant Project Manager for the Inland
14 Northwest Region.

16 **The 1st Time That Mr. Hillman Is Ordered to Active Duty.**

17 18. On about December 1, 2016, Mr. Hillman received notice that
18 he was being called to active duty for three weeks of annual military
19 training.

21 19. On about December 4, 2016, Mr. Hillman gave Hayden Homes
22 notice of his pending military obligation for August 2017.

23 20. Shortly before Mr. Hillman departed for his military service,
24 Hayden Homes Employee Experience Generalist, Tracy Suckow, told Mr.
25

1 Hillman that because of the length of his duty, he was required to use
2 vacation time for his military leave of absence.

3 21. Mr. Hillman politely informed Ms. Suckow that the
4 requirements of USERRA (38 U.S.C. § 4316(d)) specifically forbid
5 employers from forcing service members to use accrued leave during a
6 military leave of absence. Mr. Hillman also informed Ms. Suckow that
7 although Hayden could not force him to use his leave or vacation time,
8 Hayden did not have to pay his salary while he was gone.
9

10
11 22. Defendants rescinded their demand for Mr. Hillman to use his
12 vacation time while he was on a military leave of absence and withheld Mr.
13 Hillman's pay for the period of his military leave.

14
15 23. Upon his return from military training, Mr. Hillman noticed a
16 significant shift in the treatment he received from his manager and others
17 in the supervisory positions.

18
19 24. Mr. Hillman was treated like an untrusted outsider and he felt
20 as though he was being punished for performing his military duties. For
21 example, upon Mr. Hillman's return to work, his manager, Mr. McGerty told
22 Mr. Hillman that, "because you have been gone so much lately, you need
23 to remain at work, on site from 7:00 AM to 5 PM each day." Mr. Hillman is
24 a salaried employee, and prior to his military leave he was allowed (and
25

1 management approved) him to leave early on occasion for appointments if
2 he was caught up on his projects. Now, under the new rule he was not
3 allowed to leave early for any reason and he was required to work longer
4 hours than his peers. Mr. Hillman was often the only person left on site at
5 the end of the day because his peers had left work. Mr. Hillman had to
6 cancel medical appointments and make other periodic arrangements to
7 abide by this new rule. However, other Project Managers and Assistant
8 Project Managers, who did not have military obligations, were not given
9 the same instructions. In other words, the rule only applied to Mr. Hillman.
10
11

12 25. In addition to the change in rules, Mr. Hillman was the target
13 of other supervisors who cajoled and ridiculed him by, among other ways,
14 making negative comments about his military obligations. For example,
15 these managers repeatedly asked him after his return from military
16 obligations if his “vacation” was fun. These were not a simple comments
17 made in passing, rather, the comments were made repeatedly by multiple
18 managers and for no apparent reason other than to be sarcastic. In
19 another instance, after Mr. Hillman’s return from duty he was told by
20 supervisor, “well you just had a vacation.”
21
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**Hayden Homes and its President Offer Mr. Hillman a
Non-seniority Benefit of Employment.**

1
2
3 26. Hayden Homes maintains an employee benefit program called
4 “Team Member Home Purchase” in which Hayden employees may
5 purchase a Hayden-built home at a discount of up to \$35,000.00.

6
7 27. On November 10, 2017, the Hillmans reviewed a purchase and
8 sale for a Hayden built home at 8808 W. 11th Court, Spokane, WA 99224,
9 and tendered a cashier’s check for the holding deposit.

10
11 28. On November 7, 2017, the Hillmans selected all the options for
12 their new home, including, tile, paint color, carpet, counter tops, back
13 splash, trim, electrical outlet locations, utility hook up locations and
14 appliances.

15
16 29. After work on November 10, 2017, the Hillmans signed the
17 purchase and sale agreement.

18
19 30. Earlier in the day, Ms. Hillman’s parents agreed to pick up the
20 Hillman’s child from preschool, so that Mr. and Mrs. Hillman could attend
21 the document signing without their three year old.

22
23 31. On November 13, 2017, Mr. Hillman’s work manager, Ben
24 McGerty, signed the approval form for Mr. Hillman’s “Team Member Home
25 Purchase” benefit.

1 32. On November 17, 2017, Mr. Hillman signed a new purchase
2 and sale agreement for the 8808 W. 11th Court home. The new agreement
3 reflected a price increase of \$5,000.00.

4 33. After signing the documents the Hillmans went out to dinner to
5 celebrate the new chapter in their lives, and to enjoy the rare opportunity
6 to have dinner together in a restaurant without their young child.

7 34. On November 21, 2017, Mr. Klingman, President of Hayden
8 Homes, LLC, signed the approval form for Mr. Hillman's \$35,000.00 "Team
9 Member Home Purchase" benefit.

10 35. On November 21, 2017, Mr. Hillman received an email from
11 John Kirsch, a New Home Star Washington, LLC, real estate agent,
12 subject line "Mutual Acceptance." Mr. Kirsch represents Hayden Homes in
13 real estate transactions. The email states:
14
15
16

17 Steve [Klingman, President of Hayden Homes, LLC]
18 approved everything and I received your signed
19 purchase agreement back today. Congratulations
20 on your new home! I have attached a copy for your
21 records and copied both Washington Trust and
22 Inland Pro so that all will have copies. I will drop of
23 your check tomorrow.

24 36. Mr. Hillman and his wife were thrilled by the positive news and
25 immediately began to make arrangements for the purchase of their new

1 home including, shopping for furnishings, and setting up a Pinterest page
2 for ideas on how to stage their new home.

3 37. The Hillman's contacted Washington Trust Bank to seek a pre-
4 approval letter. The Hillmans were required to provide the lender with
5 numerous records and documents; taking time off work for the next week
6 to do so. The Hillmans received their conditional approval for the home
7 loan on November 28, 2017, and they were thrilled by the good news.
8

9 **Mr. Hillman Is Ordered To Active Duty a 2nd Time.**

10
11 38. On December 26, 2017, Mr. Hillman was informed by the
12 Washington Army National Guard that he was being ordered to active duty
13 for three years beginning in January 2018.

14
15 39. On January 3, 2018, Mr. Hillman notified his manager, Ben
16 McGerty, in person, that he had received military orders and would be
17 leaving Hayden Homes in January 2018, and that he planned to return to
18 Hayden Homes after his military duty.

19
20 40. Mr. McGerty called Mr. Hillman later in the day and told Mr.
21 Hillman that he must submit a letter of resignation. Mr. Hillman followed
22 Mr. McGerty's instructions.
23
24
25

1 **Hayden Homes Breaks Its Promise**
2 **Because Of Mr. Hillman’s Military Obligation.**

3 41. **The next morning**, Thursday, January 4, 2018, Mr. Hillman’s
4 wife received an unexpected phone call, at work, from real estate agent,
5 John Kirsch. Mr. Kirsch said, words the effect of, “I just heard from HR,
6 and because Travis does not work there anymore the discount no longer
7 applies,” and Mr. Kirsch referred to the approval form for Mr. Hillman’s
8 \$35,000.00 “Team Member Home Purchase” benefit. Mr. Kirsch told Ms.
9 Hillman that Hayden Homes would not honor the \$35,000.00, Team
10 Member Home Purchase discount, but wanted to know if they wanted to
11 purchase the home without the discount. Ms. Hillman was distraught and
12 immediately called her husband to share the terrible news.
13

14 42. The Hillmans’ plans for a new home were shattered and they
15 were devastated.
16

17 43. For the next week, the Hillmans researched their legal rights.
18

19 44. The next day, Mr. Hillman was required to attend his monthly
20 military drill weekend and departed home for his duties.
21

22 45. On January 5, 2018, Mr. Hillman spoke to his military unit’s
23 USERRA representative, and was informed of his USERRA rights.
24
25

1 46. On January 8, 2018, Mr. Hillman informed Hayden Homes (by
2 phone and email) through Tracy Suckow, that (a) he intended to exercise
3 his rights under USERRA, (b) that his resignation was ineffective under
4 USERRA, and (c) he intended to return to employment upon the
5 completion of his military orders.
6

7 47. On January 9, 2018, Mr. Hillman again spoke with Tracy
8 Suckow about his USERRA reemployment rights and requested
9 information about his employee benefits during his military leave of
10 absence.
11

12 48. In the phone conversation, Ms. Suckow informed Mr. Hillman
13 that he would no longer be receiving the house at the employee discount.
14

15 49. Mr. Hillman asked her why, to which Ms. Suckow referred Mr.
16 Hillman to the Team Member Home Purchase Program, and said "If you
17 look at the first page, first paragraph, it states that the company may
18 change, suspend or terminate at any time."
19

20 50. Mr. Hillman informed Ms. Suckow that that the "Team Member
21 Home Purchase Approval Form" was signed by his manager, President
22 Klingman, and that the contract could only be voided if the employee was
23 voluntary or in-voluntarily terminated. Ms. Suckow then referred Mr.
24
25

1 Hillman to Ms. Patti Murphy, Hayden Homes Employee Experience
2 Director.

3 51. Ms. Murphy told Mr. Hillman that, "Well, we are putting you in
4 the system as 'terminated' so you are no longer entitled to this benefit."
5

6 52. Mr. Hillman told Ms. Murphy that, according to USERRA he
7 could not be terminated for being placed on military orders.

8 53. Ms. Murphy responded by saying, "Well you still can use your
9 dental benefits under USERRA, but we just code you as terminated and
10 put a note in the system that are on military orders."
11

12 54. Ms. Murphy also stated that since it was "voluntary" for Mr.
13 Hillman to accept orders he could not purchase the home with the
14 discount, but if the orders were in-voluntary activated then "that would be a
15 different story".
16

17 55. Again, Mr. Hillman asserted his USERRA rights, stating that
18 his military leave should be reflected as military leave, "because that is
19 what USERRA says." Ms. Murphy then said that they would "change it"
20 when Mr. Hillman returned to work and a note would be placed in the
21 system stating the same.
22
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1 56. Mr. Hillman was beside himself, and at a complete loss as to
2 understand how he can be "terminated" but also receive dental benefits as
3 a "terminated" employee.

4 57. Mr. Hillman shared the information with his wife, they were
5 both shocked and dismayed by this terrible news.
6

7 **Hayden Homes Recklessly Disregards Mr. Hillman's USERRA rights.**
8 **Hayden Homes Ignores Mr. Hillman's USERRA rights.**

9 58. On or about, January 10, 2018, Mr. Hillman requested the
10 assistance of Sid Wurzburg, a retired attorney with many years of
11 experience in USERRA and advocacy on behalf of veterans and
12 servicemembers. Mr. Wurzburg agreed to contact Hayden Homes to
13 resolve the issues of termination and denial of benefits.
14

15 59. On January 13, 2018, Mr. Hillman emailed a copy of his
16 military orders to Ms. Patti Murphy, Hayden Homes Employee Experience
17 Director.
18

19 60. On or about, January 17, 2018, Sid Wurzburg called Hayden
20 Homes and spoke with Patti Murphy regarding Mr. Hillman's USERRA
21 rights.
22

23 61. During the call Mr. Wurzburg provided Ms. Murphy with legal
24 citations regarding Mr. Hillman's USERRA rights and the incumbent
25

1 employer obligations. Ms. Murphy ended the call and said that she would
2 review the matter further.

3 62. Shortly after the phone call Mr. Wurtzburg sent Ms. Murphy an
4 email and attached a copy of, 75246 Federal Register / Vol. 70, No. 242 /
5 Monday, December 19, 2005 / Rules and Regulations inclusive of 20
6 C.F.R. §§ 1002.149, 150 and 151 and informed Ms. Murphy that USERRA
7 had been violated.
8

9 63. On January 17, 2018, after the above phone conversation with
10 Mr. Wurzburg, Ms. Murphy emailed Mr. Hillman, thanked him for the copy
11 of his military orders and stated:
12

13 Travis - Thank you for sending a copy of your
14 Orders. I am revisiting this further with our
15 president as it relates to the home purchase
16 program and your ability to receive the discount. I
17 should be able to get back to you by the end of the
18 week. If you have any questions before then,
19 please feel free to give me a call.

20 64. A day or so later, Ms. Murphy called Mr. Wurzburg back and
21 told him that they had reviewed the matter and that they did not think
22 USERRA applied to the circumstances.

23 65. On January 23, 2018, Ms. Murphy emailed Mr. Hillman to
24 arrange a phone conference between Mr. Hillman and President
25 Klingman.

1 66. On January 25, 2018, Mr. Klingman spoke with Mr. Hillman by
2 phone regarding Mr. Hillman's Team Member Home Purchase discount.

3 67. In the call, Mr. Klingman stated that he wanted to meet in
4 person with Mr. Hillman so that he could "assess your [Mr. Hillman's]
5 integrity."
6

7 68. On February 7, 2018, Mr. Hillman met in person with Mr.
8 Klingman at the Post Street Ale House, in downtown Spokane,
9 Washington. During the meeting, Mr. Klingman attempted to negotiate an
10 offer with Mr. Hillman to, "meet in the middle." Mr. Hillman told Mr.
11 Klingman that it would be best if the company would tell him what they are
12 offering. Mr. Klingman then informed Mr. Hillman that he had spoken with
13 a lawyer about USERRA, and according to his counsel, they felt that they
14 have a defensible case. No agreement was made in the meeting and Mr.
15 Klingman told Mr. Hillman that he would get back to him later.
16
17

18 69. On February 15, 2018, Mr. Hillman texted Mr. Klingman
19 requesting a decision regarding the home purchase discount.
20

21 70. On February 17, 2018, Mr. Klingman responded by text
22 message stating that he would send something on Monday.
23
24
25

1 71. On February 19, 2018, Mr. Klingman sent Mr. Hillman an email
2 with an offer to compromise, and attached a letter dated February 18,
3 2018.

4 72. The February 18, 2018, letter offers to Mr. Hillman the
5 \$35,000.00 discount in consideration for Mr. Hillman's (a) return to work at
6 Hayden Homes after his military orders ended, (b) a two year commitment
7 to continue his employment after his return to work, (c) a revocation of the
8 discount and repayment to Hayden Homes of the full \$35,000.00 amount if
9 Mr. Hillman did not return to work within three years of February 18, 2018,
10 and (d) a revocation of the discount and repayment to Hayden Homes of
11 the full \$35,000.00 amount if Mr. Hillman voluntarily left employment within
12 two years. In other words, a back door attempt to cause Mr. Hillman to
13 prospectively waive his rights under USERRA which, in turn, is a violation
14 of 38 U.S.C. § 4302(b).
15
16
17

18 73. Any assertions regarding Mr. Hillman's "integrity" or work
19 performance are a pretext for discrimination and retaliation under the
20 WLAD and USERRA.
21

22 74. Given no alternative, Mr. Hillman was forced to engage private
23 legal counsel to resolve this matter.
24
25

1 75. As a result of Defendants' unlawful conduct in violation of
2 USERRA and Washington law, Mr. Hillman has suffered a loss of earnings
3 and other benefits of employment in an amount to be proved at trial.

4 76. Mr. Hillman suffered economic injury, as well as other harms
5 and losses as a result of Defendants' failure to follow USERRA and
6 Washington law. Including, but not limited to, the loss of future
7 employment prospects and advancement and increased equity in 8808 W.
8 11th Court.

9
10
11 77. Defendants' actions are the direct and proximate cause of Mr.
12 Hillman's damages.

13 78. Further, as a result of Defendants' unlawful conduct and the
14 necessity of this action to seek a remedy, Mr. Hillman fears further
15 retaliation by Defendants against his employment prospects, and rights by
16 Defendants or its managers, directors or employees. As such, any
17 employment relationship that Mr. Hillman may have enjoyed with
18 Defendants prior to the filing of this action is irreparably damaged through
19 no fault of Mr. Hillman.

20
21
22 79. Upon information and belief, Defendants are a party to
23 contracts with the United States which prohibit Defendants from
24 discrimination against veterans and military service members and further
25

1 evidence of its knowing and reckless disregard for the protections afforded
2 a service member under USERRA.

3 80. At all times relevant hereto, Defendants had a duty to conduct
4 themselves in compliance with the law, including USERRA and ensure its
5 managers and agents followed the Act.
6

7 81. The above-referenced actions by Defendants, and their
8 agents, breached those duties.

9 82. To the extent that Defendants allege application of any
10 agreement that constitutes any limitation on Plaintiff's rights under
11 USERRA, it is illegal, null and void, inapplicable and of no force or effect
12 pursuant to 38 U.S.C. §§ 4302 and 4316(b).
13

14 83. Upon information and belief, Defendants maintained workplace
15 posters that set out employer obligations under USERRA as required by
16 38 U.S.C. § 4334.
17

18 **V. CAUSES OF ACTION**

19 **(CAUSE OF ACTION NO. 1 AS TO DEFENDANTS HAYDEN**
20 **HOMES AND KLINGMAN – VIOLATION OF 38 U.S.C. §**
21 **4311(a) - DISCRIMINATION)**

22 84. Under 38 U.S.C. § 4311(a) an employee shall not be denied
23 retention in employment or benefits of employment based upon a duty to
24 perform a military obligation.
25

1 85. Mr. Hillman's requirement that he enter active duty is a military
2 obligation.

3 86. Mr. Hillman's military service was a motivating factor in
4 Defendants' decision to deny him benefits of employment given, *inter alia*,
5 imposing a work schedule and requirements on Mr. Hillman that were not
6 imposed on his peers who did not have military service obligations.
7

8 87. Mr. Hillman's military service was also a motivating factor in
9 Defendants' decision to deny him benefits of employment given, *inter alia*,
10 the closeness in time (less than 24 hours) between Mr. Hillman informing
11 the Defendants of his military obligation, the Defendants' demand for a
12 letter of resignation and Defendants' denial of the home purchase
13 discount.
14
15

16 88. Defendants further violated Mr. Hillman's rights by terminating
17 his employment on the basis of his military obligations --- "we are putting
18 you in the system as "terminated" so you are no longer entitled to this
19 benefit."
20

21 89. Defendants' termination of Mr. Hillman's employment and
22 subsequent acts, constitute adverse employment actions that have caused
23 Mr. Hillman damages in an amount to be proven at trial.
24
25

1 **(CAUSE OF ACTION NO. 2 – AS TO DEFENDANTS HAYDEN HOMES**
2 **AND KLINGMAN - VIOLATION OF 38 U.S.C. § 4311(b) - RETALIATION)**

3 90. Under 38 U.S.C. § 4311(b) an employer may not discriminate
4 in employment or take any adverse employment action against any such
5 person because such person has taken an action to enforce a right or
6 protection or exercise a right afforded under USERRA.

7
8 91. Mr. Hillman's actions to enforce a protection afforded him
9 under USERRA, or to exercise a right provided by USERRA, were a
10 motivating factor in Defendant's decision to deny Mr. Hillman employment
11 and benefits of employment, *inter alia*, imposing a work schedule and
12 requirements on Mr. Hillman that were not imposed on his peers who did
13 not have military service obligations or exercise USERRA rights.

14
15 92. Defendants unlawfully retaliated against Mr. Hillman, among
16 other ways, by denying Mr. Hillman employment and benefits of
17 employment because he took action to enforce a protection afforded him
18 under USERRA or to exercise a right provided by USERRA.

19
20 93. Defendants continue to retaliate against Mr. Hillman by their
21 continued denial of rights and limitations on his future employment
22 prospects and rights based on unlawful requirements.
23
24
25

1 **(CAUSE OF ACTION NO. 3 AS TO DEFENDANTS HAYDEN HOMES**
2 **AND KLINGMAN - DENIAL OF NON-SENIORITY RIGHTS AND**
3 **BENEFITS - 38 U.S.C. § 4316)**

4 Under 38 U.S.C. § 4316(b)(1)(B), and 20 C.F.R. § 1002.49, during a
5 period of military service, the employee is deemed to be on furlough or
6 leave of absence from their civilian employment. In this status, the
7 employee is entitled to the non-seniority rights and benefits generally
8 provided by the employer to other employees with similar seniority, status,
9 and pay that are on furlough or leave of absence. Entitlement to these
10 non-seniority rights and benefits is not dependent on how the employer
11 characterizes the employee's status during a period of service. For
12 example, if the employer characterizes the employee as "terminated"
13 during the period of uniformed service, this characterization cannot be
14 used to avoid USERRA's requirement that the employee be deemed on
15 furlough or leave of absence, and therefore entitled to the non-seniority
16 rights and benefit its generally provided to employees on furlough or leave
17 of absence.
18
19
20

21 95. Under 38 U.S.C. § 4316(b)(1)(B) and 20 C.F.R. 1002.50(a) the
22 non-seniority rights and benefits to which an employee is entitled during a
23 period of service are those that the employer provides to similarly situated
24 employees by an employment contract, agreement, policy, practice, or
25

1 plan in effect at the employee's workplace. These rights and benefits
2 include those in effect at the beginning of the employee's employment and
3 those established after employment began. They also include those rights
4 and benefits that become effective during the employee's period of service
5 and that are provided to similarly situated employees on furlough or leave
6 of absence.
7

8 96. Defendants violated Mr. Hillman's rights under 38 U.S.C. §
9 4316, *inter alia*, by charactering his military leave as "terminated," and
10 denying Mr. Hillman non-seniority rights and benefits based on that
11 unlawful characterization.
12

13 97. Defendants violated Mr. Hillman's rights under 38 U.S.C. §
14 4316, *inter alia*, by denying Mr. Hillmans non-seniority rights and benefits
15 to which an employee is entitled during a period of military service.
16

17 **(CAUSE OF ACTION NO. 4 - AS TO DEFENDANTS HAYDEN HOMES**
18 **AND KLINGMAN - CLAIM FOR LIQUIDATED**
19 **DAMAGES – 38 U.S.C. § 4323)**

20 98. Mr. Hillman is entitled to liquidated damages under USERRA
21 because the Defendants knew, or showed reckless disregard for whether
22 its conduct was prohibited under USERRA, including but not limited to,
23 ignoring their own work place posted USERRA requirements, ignoring the
24 USERRA complaints and exercise of rights by Mr. Hillman, ignoring the
25

1 sage advice of Sid Wurzburg Esq., and conducting their own legal
2 research into the extent of Mr. Hillman's USERRA rights, and denying the
3 same.

4 **(CAUSE OF ACTION NO. 5 - VETERANS DISCRIMINATION – AS TO**
5 **DEFENDANTS HAYDEN HOMES AND KLINGMAN – VIOLATION OF**
6 **RCW 49.60.030 & RCW 49.60.180)**

7 99. Under the Washington Law Against Discrimination an
8 employer cannot take an adverse action against an employee on, *inter*
9 *alia*, account of that employee's military/veteran status.

10 100. Defendants violated Mr. Hillman's WLAD-guaranteed
11 protection from military related employment discrimination for the reasons
12 stated above.

13 101. Defendants' violations of the WLAD have caused Mr. Hillman
14 damage in an amount to be proven at trial.

15 **(CAUSE OF ACTION NO. 6 – AS TO ALL DEFENDANTS –**
16 **DISCRIMINATION IN REAL ESTATE TRANSACTION- VIOLATION OF**
17 **RCW 49.60.222)**

18 102. The WLAD bars an employer from discriminating against a
19 person in the terms, conditions, or privileges of a real estate transaction on
20 account of that person's "military status."

21 103. In this instance Defendants violated the WLAD by, *inter alia*,
22 (a) agreeing to afford Mr. Hillman the \$35,000.00 Team Member Home
23

1 Purchase benefit, but then reneging on its promise only after Mr. Hillman
2 informed it of his military service obligation, and (b) requiring Mr. Hillman
3 to repay the \$35,000.00 benefit in the event Mr. Hillman did not end his
4 military orders and return work within three years of February 2018.

5
6 104. Defendants' violations of the WLAD caused Mr. Hillman
7 damages in an amount to be proven at trial.

8 **(CAUSE OF ACTION NO. 7 – AS TO DEFENDANTS NEW HOME STAR**
9 **WASHINGTON, LLC, AND JOHN KIRSCH - AIDING IN A VIOLATION**
10 **OF THE WASHINGTON LAW AGAINST DISCRIMINATION –**
11 **VIOLATION OF RCW 49.60.220)**

12 105. Under the WLAD it is an unfair practice for any person to aid,
13 abet, encourage, or incite the commission of any unfair practice, or to
14 attempt to obstruct or prevent any other person from complying with the
15 provisions of this chapter or any order issued thereunder.

16 106. Defendants New Home Star Washington, LLC, and John
17 Kirsch aided Defendants Hayden Homes and Klingman in the violations of
18 Mr. Hillman's WLAD-guaranteed protection from military related
19 employment discrimination by carrying out the interests of Hayden and
20 Klingman.
21

22
23 107. Defendants New Home Star Washington, LLC, and John
24 Kirsch aided Defendants Hayden Homes and Klingman in the violations of
25

1 Mr. Hillman's WLAD-guaranteed protection from discriminating against a
2 person in the terms, conditions, or privileges of a real estate transaction on
3 account of that person's "military status" by carrying out the interests of
4 Hayden and Klingman.

5
6 108. Defendants' violations of the WLAD have caused Mr. Hillman
7 damage in an amount to be proven at trial.

8 **V. PRAYER FOR RELIEF**

9 Plaintiff respectfully prays for:

10
11 A. Compensation for all injury and damages suffered by Mr.
12 Hillman including, but not limited to, both economic and non-economic
13 damages, in the amount to be proven at trial including back pay, front pay,
14 pre and post judgment interest, lost benefits of employment, adverse tax
15 consequences of any award for economic damages pursuant to Chapter
16 RCW 49.60 et seq., liquidated damages under both federal and
17 Washington law for willful violations as it relates to the improper
18 withholding of wages and benefits and general damages relating to
19 emotional distress and mental anguish damages as provided by law.
20
21

22 B. Plaintiff's reasonable attorneys, expert fees, and costs,
23 pursuant to 38 U.S.C. § 4323, and as otherwise provided by law under
24 RCW 49.48.030 and 49.60.030(2), as well as the *private attorney general*
25

1 theory of recovery of reasonable attorney fees and costs in employment
2 related cases.

3 C. For such other and further relief as this Court deems just and
4 equitable.
5

6 **VI. JURY DEMAND**

7 Plaintiffs hereby request a trial by jury.

8 Respectfully submitted this March 2, 2018.

9
10 /s Thomas G. Jarrard
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