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20 Attorneys for Plaintiff

21 **IN THE UNITED STATES DISTRICT COURT**
22 **FOR THE EASTERN DISTRICT OF WASHINGTON**

23 DEXTER COMBS,
24
25 Plaintiff,
26 v.
27 DARRELL HARRON, an
28 individual, and LES SCHWAB
29 TIRE CENTERS OF
30 WASHINGTON, INC.,
31 Defendants.

32 **NO.**
33 **COMPLAINT AND**
34 **DEMAND FOR TRIAL BY**
35 **JURY**
36 **EXEMPT FROM FILING**
37 **FEES UNDER 38 U.S.C. §**
38 **4323(h)(1)**

1 Plaintiff, Dexter Combs (“Mr. Combs”), by and through his undersigned
2 attorneys, brings this complaint against Darrell Harron (“Mr. Harron”) and Les
3 Schwab Tire Centers of Washington, Inc., (“Les Schwab”) and alleges as follows:

4 **NATURE OF THIS ACTION**

5 This is a civil action brought pursuant to the Uniformed Services
6 Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 - 4335
7 (“USERRA”), the Washington Law Against Discrimination RCW §§ 49.60.010 –
8 49.60.505 (WLAD), and Washington’s anti-blacklisting statute (RCW 49.44.010).
9 Defendants willfully violated Mr. Comb’s rights under USERRA, the WLAD and
10 RCW 49.44.010 by failing to properly reemploy Mr. Combs following a period of
11 military service and otherwise terminating his employment based on Mr. Comb’s
12 military obligations. Defendants’ alleged defenses to these claims are a pretext
13 designed to avoid the truth and liability.
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16

17 Mr. Combs is a husband, father, Iraq war veteran, and (to this day) he
18 continues to serve as a member of the Washington Army National Guard. From
19 October 2009 to March 2014, Mr. Combs worked as a laborer at Les Schwab.
20 During his employment Mr. Combs, other employees, and Mr. Combs’ military
21 command were made well aware that Mr. Harron did not approve of military leave
22 that had to be accommodated under the law. Mr. Combs was also accustomed to
23 periodic ridicule and criticism from Mr. Harron because of his military leave
24
25

1 obligations and duties. Mr. Combs enjoyed the work at Les Schwab and needed
2 an income to provide for his family, so he decided persevere through the
3 disparagement.

4 In January 2014, during the annual drop-off in the tire business, Mr. Combs
5 was placed on layoff status and was not expected to be recalled to work before
6 April 1, 2014. From February 27, 2014 to March 21, 2014, Mr. Combs was
7 ordered to active duty to attend out of state military training. While Mr. Combs
8 was on military duty Mr. Harron telephoned Mr. Combs and instructed him to
9 report for work the next day. Mr. Combs immediately informed Mr. Harron that
10 he could not return to work because he was on military duty, but that he would
11 report back after March 21, 2014. Mr. Harron was, as usual, extremely displeased
12 and told Mr. Combs that he would deal with the situation when Mr. Combs got
13 back. Mr. Combs completed his military duty and reported for work on March
14 24, 2014, and worked a full shift. Mr. Harron was not at work on March 24th, but
15 when Mr. Combs reported for work the next day, March 25th, Mr. Harron
16 immediately called him into his office and fired Mr. Combs. Unsurprisingly, Mr.
17 Harron told Mr. Combs "if you want to do the military then do the military, but if
18 you want to be here you need to commit to the company."
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23

24 Mr. Combs demands a jury trial and to be awarded full compensation for all
25 injury and damages he has suffered along with reasonable attorney fees, costs,

1 interest, and negative tax consequences of any award.

2 **I. PARTIES AND JURISDICTION**

3 1. Mr. Harron is a Supervisor for Les Schwab at one of its Spokane
4 stores, resides and works in Washington State and was a primary decision maker
5 regarding both Mr. Harron and Les Schwab's violation of Mr. Combs' rights.
6

7 2. Les Schwab is a Washington Corporation that is licensed to conduct
8 business in the State of Washington. Les Schwab maintains numerous places of
9 business in Spokane, Washington.
10

11 3. Mr. Combs was an employee of Les Schwab who worked as a laborer
12 at Les Schwab's facility located at 3105 S. Regal Street, Spokane, Washington
13 99223 during all times relevant hereto. Mr. Combs resides in this District. At all
14 times relevant Mr. Combs was a member of the Washington Army National
15 Guard.
16

17 4. For the purposes of 38 U.S.C. § 4303(4) Les Schwab and Mr. Harron
18 are private employers operating in the State of Washington.
19

20 5. All acts complained of occurred within the Eastern District of
21 Washington.

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

1 1367(a).

2 7. Venue is proper in the Eastern District of Washington under 38 U.S.C.
3 § 4323(c) and 28 U.S.C. § 1391(b) because the acts and omissions complained
4 herein occurred in the District and Mr. Harron and Les Schwab conduct business
5 there.
6

7 **II. INTRADISTRICT ASSIGNMENT**

8 8. This action arose in Spokane County, Washington. Therefore,
9 pursuant to local rules it should be assigned to the Spokane Division of the
10 Eastern District of Washington.
11

12 **III. FACTS**

13 9. Mr. Combs re-alleges the above paragraphs.

14 10. Mr. Combs began working at Les Schwab as a laborer in October
15 2009. For the majority of that time Mr. Combs' supervisor was Darrell Harron.
16

17 11. Throughout Mr. Combs' employment at Les Schwab, Mr. Harron
18 repeatedly and negatively questioned Mr. Combs about Mr. Combs' monthly and
19 annual military obligations and duties.
20

21 12. Mr. Harron's complaints were so numerous that Mr. Combs' military
22 commander, Captain Nick Stuart, had to call Mr. Harron at Les Schwab and
23 inform Mr. Harron that Les Schwab was obligated by federal law to allow Mr.
24 Combs to leave work for military duty. Because of these circumstances Mr.
25

1 Combs made it a habit to deliver notices of military service directly to Mr. Harron.

2 13. In late-Spring 2013 Mr. Combs, per his practice, gave Les Schwab
3 written notice of this annual two-week military training requirement. With that
4 notification Mr. Combs also gave Les Schwab written notice of Mr. Combs' rights
5 and employer obligations under USERRA.
6

7 14. The tire business in this region has recognized periods of high and
8 low demands, and employers like Les Schwab place workers on furlough when
9 business drops off, for example after the winter tire season rush passes.
10

11 15. In mid-January 2014, as was the custom, Les Schwab furloughed Mr.
12 Combs. Mr. Combs was not expected to be recalled to work until after the
13 beginning of April 2014.

14 16. Although on furlough, Mr. Combs continued to accrue seniority and
15 benefits that Les Schwab provided.
16

17 17. While on furlough from Les Schwab Mr. Combs received military
18 orders. Those orders mobilized Mr. Combs from February 27, 2014, to March 21,
19 2014.
20

21 18. Mr. Combs knew his orders did not conflict with his work schedule
22 because he knew he was not expected to be recalled to work at Les Schwab until
23 after April 1, 2014.
24

25 19. From February 27, 2014, to March 21, 2014, Mr. Combs attended his

1 military training in Utah.

2 20. On or about March 10, 2014, Mr. Harron telephoned Mr. Combs and
3 informed Mr. Combs that he (Combs) needed to be at work on March 11, 2014.

4 21. Mr. Combs gave Mr. Harron oral notice of his military obligation as
5 contemplated in 38 U.S.C. § 4312 (a) and (d) and 20 C.F.R. § 1002.85(c) and (d).
6

7 22. Mr. Combs informed Mr. Harron that it was not feasible for him to
8 attempt to return to work until after March 21, 2014, when he returned from
9 military duty.
10

11 23. On March 17, 2014, Mr. Harron left Mr. Combs the following
12 voicemail:

13 Hello Dexter, it's Darrell.

14 It is Monday, March 17th at 2:30. Uh, I called last week and also text
15 you and you responded a week ago that you would call me as soon as
16 you could, that you are in class.

17 I returned you to work last Tuesday and haven't heard anything from
18 you. I need you to be at work tomorrow at 8:00. If, um, I don't hear
19 back from you, I will take it that you are not coming back and uh
20 we'll continue on uh with that format, that you are not gonna be
working for Les Schwab anymore. Um, again, I have not heard from
you in a week and we'll also text you that information as well.

21 Thank you. Bye.
22

23 24. Mr. Combs again informed Mr. Harron that he (Combs) was not able
24 to return to work until after March 21, 2014.
25

1 25. On Friday, March 21, 2014, Mr. Combs completed his military duty
2 and commenced his travel back to Washington State.

3 26. On Monday, March 24, 2014, Mr. Combs reported to work. Mr.
4 Harron was not at work that day. Mr. Combs was not placed in a position of
5 employment with the same seniority, status, pay and benefits as he would have
6 enjoyed had he not been absent for military service because Mr. Harron had no
7 intent of reemploying Mr. Combs following military service. Instead, the one day
8 of work that occurred on March 24, 2014, was only a happenstance by virtue of
9 Mr. Harron not being at work that day.
10
11

12 27. On Tuesday, March 25, 2014, Mr. Combs again reported to work and
13 was not reemployed to a position of employment with the same seniority, status,
14 pay and benefits as he would have enjoyed had he not been absent for military
15 service because, reemployment, if it occurred at all, was for only a contrived
16 purpose. Mr. Harron immediately terminated Mr. Combs' employment, and a
17 reason, if not the sole reason, for that termination was Mr. Combs' military
18 obligations and duties.
19
20

21 28. Mr. Harron called Mr. Combs into his office and fired Mr. Combs.

22 29. True to form, during the firing, Mr. Harron informed Mr. Combs that,
23 "if you want to do the military then do the military, but if you want to be here you
24 need to commit to the company."
25

1 30. Mr. Combs expected, as usual, that Mr. Harron would be upset about
2 his military obligations, but Mr. Combs did not expect to be fired. So, he asked
3 Mr. Harron, "Why are you firing me?", which made Mr. Harron visibly
4 uncomfortable.

5
6 31. Apparently realizing the error of firing a service member for being on
7 military duty, Mr. Harron immediately attempted to distance himself from his
8 preceding statement and told Mr. Combs that he was not being fired for military
9 obligations. Instead, he was being fired because of a "customer complaint."
10

11 32. Under the circumstances, this new explanation did not make any
12 sense to Mr. Combs, so he inquired further. When asked by Mr. Combs when the
13 "customer complaint" occurred and who was involved Mr. Harron responded,
14 "March 21st" and "Brett Johnson".
15

16 33. Mr. Combs then informed Mr. Harron that he (Combs) was not at
17 work on March 21, 2014, that he left in January and did not return to work until
18 March 24, 2014.
19

20 34. Mr. Harron then alleged that a customer came into the store on March
21 21, 2014, and complained about an event that occurred in January and it involved
22 Mr. Combs and Mr. Johnson.

23 35. Mr. Harron concluded the meeting by making a concession that Mr.
24 Combs could "apply" to work at other Les Schwab stores in the Spokane area.
25

1 36. Mr. Combs immediately called several other stores for work, but was
2 told that no work was available.

3 37. The store that Mr. Harron “fired” Mr. Combs from had an open
4 position in which Mr. Combs was qualified to perform the work.

5 38. The position that Mr. Harron was “fired” from was filled by another
6 employee.
7

8 39. Upon information and belief, Les Schwab stores in the Spokane area
9 hired other new employees both before and after Mr. Combs attempt to return to
10 work.
11

12 40. Les Schwab did not fire Brett Johnson because of the above-
13 referenced customer complaint.
14

15 41. Upon information and belief, employees similarly situated to Mr.
16 Combs have not been fired because of a customer complaint.

17 42. At all times relevant hereto, Les Schwab maintained a posted notice
18 at its Spokane locations where Les Schwab customarily posted notices for
19 employees as required by 38 U.S.C. § 4334.
20

21 43. At all times relevant hereto, Les Schwab maintained policies that
22 prohibit unlawful discrimination.

23 44. At all times relevant hereto, Les Schwab had a duty to act in
24 compliance with USERRA and ensure its agents, including Mr. Harron, follow the
25

1 Act.

2 45. As a result of Mr. Harron and Les Schwab's unlawful conduct in
3 violation of USERRA, Mr. Combs has suffered a loss of earnings and other
4 benefits of employment in an amount to be proved at trial.

5
6 46. As a result of Mr. Harron and Les Schwab's unlawful conduct in
7 violation of USERRA and the necessity of this action to seek a remedy, Mr.
8 Combs fears further retaliation against his employment rights by Les Schwab its
9 managers, directors and employees, including Mr. Harron. As such, the
10 employment relationship that Mr. Combs enjoyed with Les Schwab prior to the
11 filing of this action is irreparably damaged through no fault of Mr. Combs.
12

13 47. To the extent that Mr. Harron and Les Schwab allege that the
14 application of any State law, local law or ordinance, contract, agreement, policy,
15 plan practice, or other matter constitutes any limitation on Mr. Combs' rights
16 under USERRA, it is illegal, inapplicable, null, void and has no force or effect
17 pursuant to 38 U.S.C. § 4302.
18

19
20 **IV. CAUSES OF ACTION**

21 **(CAUSE OF ACTION NO. 1 – VIOLATION OF 38 U.S.C. §**
22 **4311(c) (1) - DISCRIMINATION)**

23 48. Mr. Combs re-alleges the above paragraphs.

24 49. Under 38 U.S.C. § 4311(c) (1) an employee's military obligation
25

1 cannot serve as a motivating factor for an employer's decision that is adverse to
2 that employee.

3 50. Mr. Combs' requirement that he attend Army National Guard training
4 is a military obligation.
5

6 51. Mr. Combs' military service was a motivating factor in Les Schwab's
7 decision not to "reemploy" Mr. Combs as shown by (a) Mr. Harron's March 25,
8 2014, statement to Mr. Combs that "if you want to do the military then do the
9 military, but if you want to be here you need to commit to the company", (b) Mr.
10 Harron's March 17, 2014, voice mail to Mr. Combs, (c) the close proximity in
11 time between Mr. Combs' return to work and the firing, (d) Mr. Harron's shifting
12 explanations for the termination, and (e) Mr. Harron's history of disparagement
13 and complaints about Mr. Combs' military obligations and his treatment of
14 similarly situated Veterans.
15
16

17 52. Mr. Combs' military service was a motivating factor in Les Schwab's
18 decision to "terminate" Mr. Combs' employment as shown by (a) Mr. Harron's
19 March 25, 2014, statement to Mr. Combs that "if you want to do the military then
20 do the military, but if you want to be here you need to commit to the company",
21 (b) Mr. Harron's March 17, 2014, voice mail to Mr. Combs, (c) the close
22 proximity in time between Mr. Combs' return to work and the firing, (d) Mr.
23
24
25

1 Harron's shifting explanations for the termination, and (e) Mr. Harron's history of
2 disparagement and complaints about Mr. Combs' military obligations.

3 53. Mr. Harron and Les Schwab's alleged non-discriminatory reasons for
4 not reemploying and/or terminating Mr. Combs' employment are a pretext created
5 to avoid the truth and legal liability of their discrimination.
6

7 **(CAUSE OF ACTION NO. 2 – VIOLATION OF 38 U.S.C. §**
8 **4311(c) (2) - RETALIATION)**

9 54. Mr. Combs re-alleges the above paragraphs.

10 55. Under 38 U.S.C. § 4311(c)(2) an employer cannot retaliate and deny
11 an employee any benefit of employment because the employee, *inter alia*, took
12 action to enforce his or her rights under USERRA, or participated in a USERRA
13 investigation, or exercised a right under USERRA.
14

15 56. Mr. Harron and Les Schwab violated 38 U.S.C. § 4311(c)(2) by, *inter*
16 *alia*, continuing to harass Mr. Combs about his military obligations even after Mr.
17 Combs' military commander informed Mr. Harron and Les Schwab of Mr. Combs'
18 rights and their obligations under the law. Mr. Harron and Les Schwab further
19 violated 38 U.S.C. § 4311(c) (2) by firing Mr. Combs on March 25, 2014 and
20 denying Mr. Combs future employment, after Mr. Combs exercised his rights by
21 questioning Mr. Harron's military-related reasons for taking an adverse
22 employment action against Mr. Combs.
23
24
25

1 57. Mr. Harron and Les Schwab's alleged non-discriminatory reasons for
2 terminating Mr. Combs' employment are a pretext created to avoid the truth and
3 legal liability of their retaliation.

4 **(CAUSE OF ACTION NO. 3 - VIOLATION OF**
5 **38 U.S.C. §§ 4312 & 4313)**

6 58. Mr. Combs re-alleges the above paragraphs.

7
8 59. Mr. Harron and Les Schwab's actions violated 38 U.S.C. §§ 4312 &
9 4313, among other ways, by failing to promptly reemploy and retrain Mr. Combs
10 to a position of seniority and status with other rights and benefits determined by
11 seniority plus the additional seniority, rights, benefits, and/or other position that
12 Mr. Combs would have attained had he remained continuously employed.
13

14 **(CAUSE OF ACTION NO. 4 –**
15 **– VIOLATION OF 38 U.S.C. § 4316(b) (1) & 38 U.S.C. § 4318)**

16 60. Mr. Combs re-alleges the above paragraphs.

17 61. The USERRA, § 4316(b), provides, in part:

18
19 (b)(1) Subject to paragraphs (2) through (6), a person
20 who is absent from a position of employment by reason
of service in the uniformed services shall be--

21 (A) deemed to be on furlough or leave of absence while
performing such service; and

22 (B) entitled to such other rights and benefits not
23 determined by seniority as are generally provided by the
24 employer of the person to employees having similar
seniority, status, and pay who are on furlough or leave of
25 absence under a contract, agreement, policy, practice, or

1 plan in effect at the commencement of such service or
2 established while such person performs such service.

3 62. The USERRA, § 4318 requires an employer to provide its employees
4 certain pension benefits upon the completion of military service.

5 63. Upon information and belief, Mr. Harron and Les Schwab failed to
6 afford Mr. Combs the rights and benefits to which Mr. Combs was entitled under
7 §§4316 and 4318 by, *inter alia*, failing to properly restore Mr. Combs full
8 employment status with full benefits, and failing to contribute to Mr. Combs'
9 pension/benefit accounts following Mr. Combs' return from military orders.
10

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

12 64. Mr. Combs re-alleges the above paragraphs.

13 65. Mr. Combs is entitled to liquidated damages under USERRA because
14 Mr. Harron and Les Schwab knew, or showed reckless disregard for whether their
15 conduct was prohibited under USERRA.
16

17 66. Mr. Harron and Les Schwab's conduct was willful as defined by §
18 4323(d), 20 C.F.R. § 1002.312(c), because they were given specific notice on
19 multiple occasions that their actions violated USERRA, but they recklessly and/or
20 willfully disregarded those notices.
21
22

23 **(CAUSE OF ACTION NO. 4 VETERANS DISCRIMINATION -**
24 **VIOLATION OF RCW §§ 49.60.030, 49.60.180 AND 49.60.210)**

25 67. Mr. Combs re-alleges the above paragraphs.

1 68. Under the Washington Law Against Discrimination (“WLAD”) an
2 employer cannot take an adverse action against an employee on account of that
3 employee's military/veteran status. Furthermore, an employer is obligated to
4 prevent illegal workplace harassment which was motivated in this case by Mr.
5 Combs' veteran's status all in violation of Washington law.
6

7 69. Les Schwab violated Mr. Combs' WLAD-guaranteed protection from
8 military related employment discrimination by (a) Mr. Harron's repeated
9 harassment of Mr. Combs and (b) denying and terminating Mr. Combs'
10 employment within days of his return from military duty.
11

12 **(CAUSE OF ACTION NO. 5 VIOLATION OF WASHINGTON'S**
13 **BLACKLISTING STATUTE - RCW 49.44.010)**

14 70. Mr. Combs re-alleges the above paragraphs.

15 71. RCW 49.44.010 makes it a criminal offense to "willfully and
16 maliciously make or issue any statement or paper that will tend to influence or
17 prejudice the mind of any employer against the person of such person seeking
18 employment."
19

20 72. RCW 49.44.010 allows for a civil cause of action.

21 73. Upon information and belief, Mr. Harron told fellow Les Schwab
22 managers to not hire Mr. Combs should Mr. Combs seek employment at other Les
23 Schwab facilities in Spokane.
24
25

1 74. Upon information and belief, managers from other Les Schwab stores
2 refused to hire Mr. Combs based, in part, on what Mr. Harron told them about Mr.
3 Combs.

4 **V. PRAYER FOR RELIEF**

5 Mr. Combs respectfully prays for:

6
7 A. Compensation for all injury and damages suffered by Mr. Combs
8 including, but not limited to, both economic and non-economic damages, in an
9 amount to be proven at trial including back pay, front pay, pre and post judgment
10 interest, lost benefits of employment, adverse tax consequences of any award for
11 economic damages pursuant to 38 U.S.C. § 4323 and Chapter RCW 49.60 et seq.,
12 liquidated damages under both federal and Washington law for willful violations
13 as it relates to the improper withholding of wages and benefits, exemplary
14 damages, and general damages relating to emotional distress and mental anguish
15 damages as provided by law.
16
17

18 B. Plaintiff's reasonable attorneys' fees, expert fees, and costs, pursuant
19 to 38 U.S.C. § 4323, and as otherwise provided by law under RCW 49.48.030 and
20 49.60.030(2), as well as the *private attorney general* theory of recovery of
21 reasonable attorneys' fees and costs in employment related cases.
22

23 C. Declare that Mr. Harron and Les Schwab's termination of Mr.
24 Combs' employment because of his obligation to perform military service was
25

1 unlawful and violated 38 U.S.C. § 4311.

2 D. Declare that Mr. Harron and Les Schwab's denial of Mr. Combs' full
3 and proper reemployment was unlawful and violated 38 U.S.C. §§ 4313 and 4313.

4 E. Declare that Mr. Harron and Les Schwab's violations of USERRA
5 were willful pursuant to 38 U.S.C. § 4323(d) (1) (C).

6 F. For such other and further relief as this Court deems just and
7 equitable.
8

9 Respectfully submitted this 31st day of December, 2014.
10

11
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