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10 Attorneys for Plaintiff

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

13 Megan Leigh Frye,

14 Plaintiff,

15 v.

16 OLDCASTLE APG WEST, INC.
d/b/a Central Pre-Mix Concrete
Products Co.; Dulcy Helt and April
Higbee, individually,

17 Defendants.
18

NO. 19-cv-00088 - SAB

SECOND AMENDED
COMPLAINT AND DEMAND
FOR TRIAL BY JURY

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

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1 **I. INTRODUCTION**

2 1. This civil action is brought pursuant to the Uniformed Services
3 Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 -
4 4335 (USERRA) and is exempt from filing fees under 38 U.S.C. §
5 4323(h)(1).

6 2. Plaintiff, Megan Leigh Frye (hereinafter “Ms. Frye” or Plaintiff”),
7 by the undersigned attorneys, avers as stated herein.

8 **II. PARTIES AND JURISDICTION**

9 3. Ms. Frye resided in the State of Washington and was an
10 employee of Defendant, OLDCASTLE APG WEST, INC., d/b/a Central Pre-
11 Mix Concrete Products Co., at all times pertinent hereto.

12 4. Ms. Frye is a 1.5-year Army National Guard veteran with
13 honorable service to the United States.

14 5. At all times relevant to this lawsuit Ms. Frye was a member of the
15 Washington Army National Guard.

16 6. Defendant, OLDCASTLE APG WEST, INC., is an Arizona
17 corporation that is licensed to conduct business in the State of Washington
18 under UBI Number 601 965 177.

1 7. OLDCASTLE APG WEST, INC., maintains a place of business
2 in Spokane Valley, Washington, located at E. 5111 Broadway, Spokane
3 Valley, WA 99212.

4 8. Defendant, Dulcy Helt, had control of the employment
5 opportunities of Ms. Frye, and, upon information and belief, was a primary
6 decision maker regarding Defendants' violation of Ms. Frye's civil rights, and
7 for the purposes of 38 U.S.C. § 4303(4) is an employer.

8 9. Defendant, April Higbee, had control of the employment
9 opportunities of Ms. Frye, and, upon information and belief, was a primary
10 decision maker regarding Defendants' violation of Ms. Frye's civil rights, and
11 for the purposes of 38 U.S.C. § 4303(4) is an employer.

12 10. For the purposes of 38 U.S.C. §§ 4303(4) and 4323(c)(2)
13 Defendant, OLDCASTLE APG WEST, INC., is a private employer operating
14 within the State of Washington.

15 11. Each of the above individual Defendants exercised control over
16 the employment benefits and opportunities of Ms. Frye, was a primary
17 decision maker regarding Defendants' violation of Ms. Frye's rights, and for
18 the purposes of 38 U.S.C. § 4303(4) is a private employer.

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

1 19. On February 4, 2019, Ms. Frye signed start of employment
2 documentation.

3 20. Ms. Frye began working as a dispatcher for Defendants on
4 February 8, 2019.

5 21. On her second day, Defendants gave Ms. Frye a \$1.00 an hour
6 raise, making Ms. Frye's salary \$33,280.00 a year, and other valuable
7 benefits of employment.

8 22. On February 22 through February 23, 2019, Ms. Frye attended
9 drill weekend. On February 23, 2019, Ms. Frye was informed by her military
10 command that she was required to attend Annual Training for June 7,
11 through June 27, 2019.

12 23. On her first day back to work, February 25, 2019, at about 9:00
13 AM, Ms. Frye told Ms. Helt about her military obligations for June, and that
14 she would report back to work on June 28, 2019. Ms. Helt sighed, and
15 shrugged her shoulders in an obvious expression of frustration with the
16 news.

17 24. On February 25, 2019, Ms. Frye also told both Ms. Helt and
18 Higbee of her military obligations (drill dates) in March through October, with
19 July and September off from drill or training, and provided Defendants with
20 a copy of a monthly drill schedule from her command for those dates.

1 25. On March 7, 2019, Ms. Frye reported for drill weekend that was
2 scheduled for March 7 through March 10, 2019.

3 26. On March 10, 2019, Ms. Frye's military command requested that
4 Ms. Frye extend her drill to March 13, 2019.

5 27. Mr. Frye immediately (by text message) contacted Ms. Higbee
6 and informed Ms. Higbee that Ms. Frye's drill was extended and that she
7 would report back to work on March 14, 2019. To wit:

8 Hey April, my 1Sgt just told me I have to stay at drill
9 until possibly Wednesday :/ I have the paperwork for
10 you and need to know your email so I can get it to
11 you! - Megan

12 28. Ms. Higbee responded, in a curt fashion:

13 April.higbee@oldcastle.com Please let them know it
14 is not acceptable to be changing the dates on this this
15 is a hardship to our business we will of course
16 observe it and allow, Why are we not knowing this
17 before hand? Drill is suppose to be 1 weekend a
18 month ? -April

19 29. Ms. Frye responded:

20 I'm not sure - Megan

21 30. Ms. Higbee responded:

22 You should be asking. Okay please have them email
23 to my attention before your scheduled shift tomorrow
24 - April

25 Received document, see you Thursday 11/14 - April

1 31. On or about March 13, 2019, Ms. Frye's military command
2 informed her that she needed to attend training in July.

3 32. On her first day back to work, March 15, 2019, Ms. Frye
4 informed Ms. Higbee of the change for additional training in July.

5 33. On March 19, 2019, Mr. Frye was summoned into Ms. Higbee's
6 Office, to meet Ms. Higbee and Ms. Helt. Ms. Helt began the meeting by
7 telling Ms. Frye that she had completed a 30-day review, and "the numbers
8 just don't add up" clearly referencing Ms. Frye's absences and conflicts due
9 to military obligations. Ms. Helt did not provide Ms. Frye with a copy of the
10 alleged review or "numbers."

11 34. Likewise, Ms. Higbee told Ms. Frye that she had "too many
12 conflicting personal issues", again clearly referring to Ms. Frye's military
13 service obligations.

14 35. Ms. Higbee then told Ms. Frye that she was being "separated."

15 36. Ms. Frye asked if she had any time to look for a new job, to which
16 Ms. Higbee said, "well no, today is your last day."

17 37. Ms. Frye was shocked and confused, not only because she was
18 being fired, but also because she had no idea what the heck Ms. Higbee
19 was talking about when she said, "the numbers just don't add up."

20 38. Ms. Frye collected her personal property and left the building.

1 39. Upon information and belief, Defendants used their personal, or
2 work, electronic devices to communicate with Ms. Frye.

3 40. Defendant's statements, "the numbers just don't add up" and
4 "too many conflicting personal issues" are a pretext for discrimination and
5 retaliation under WLAD and USERRA.

6 41. Ms. Frye suffered economic injury, as well as other harms and
7 losses as a result of Defendants' failure to follow USERRA and Washington
8 law.

9 42. Defendants' actions are the direct and proximate cause of Ms.
10 Frye's damages.

11 43. As a result of Defendants' unlawful conduct in violation of
12 USERRA and Washington law, Ms. Frye has suffered a loss of earnings and
13 other benefits of employment in an amount to be proved at trial. Further, as
14 a result of Defendants' unlawful conduct and the necessity of this action to
15 seek a remedy, Ms. Frye fears further retaliation against her employment
16 prospects, and rights by Defendants or its managers, directors or
17 employees. As such, any employment relationship that Ms. Frye may have
18 enjoyed with Defendants prior to the filing of this action is irreparably
19 damaged through no fault of Ms. Frye.

20

1 44. Upon information and belief, Defendants are a party to contracts
2 with the State of Washington which prohibit Defendants from discrimination
3 against veterans and military service members and further evidence of its
4 knowing and reckless disregard for the protections afforded a service
5 member under WLAD and USERRA.

6 45. Upon information and belief, Defendants are a party to contracts
7 with the United States which prohibit Defendants from discrimination against
8 veterans and military service members and further evidence of its knowing
9 and reckless disregard for the protections afforded a service member under
10 USERRA.

11 46. At all times relevant hereto, Defendants had a duty to conduct
12 themselves in compliance with the law, including USERRA and ensure its
13 managers and agents followed the Act.

14 47. The above-referenced actions by Defendants, and their agents,
15 breached those duties.

16 48. Defendants' actions are the direct and proximate cause of Ms.
17 Frye's damages.

18 49. To the extent that Defendants allege application of any
19 agreement that constitutes any limitation on Plaintiff's rights under
20

1 USERRA, it is illegal, null and void, inapplicable and of no force or effect
2 pursuant to 38 U.S.C. § 4302.

3 50. Upon information and belief, Defendants maintained workplace
4 posters that set out employer responsibilities under USERRA as required
5 by 38 U.S.C. § 4334.

6 **V. CAUSES OF ACTION**

7 **(CAUSE OF ACTION NO. 1 – VIOLATION OF 38 U.S.C. §**
8 **4311(a) - DISCRIMINATION)**

9 1. Under 38 U.S.C. § 4311(a) an employee shall not be denied
10 retention in employment on the basis of a duty to perform a military
11 obligation.

12 2. Ms. Frye's requirement that she attend military training is a
13 military obligation.

14 3. Ms. Frye's military service was a motivating factor in
15 Defendants' decision to terminate her employment given, *inter alia*, the
16 closeness in time (hours) between Ms. Frye informing the Defendants of her
17 military obligations, the Defendants' statements, and Ms. Frye being
18 informed that her employment was terminated.

19 4. Defendants' termination of Ms. Frye and subsequent acts,
20 constitute adverse employment actions that has caused Ms. Frye damages
in an amount to be proven at trial.

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

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

6 6. Defendants violated Ms. Frye's WLAD-guaranteed protection
7 from military related employment discrimination for the reasons stated
8 above.

9 7. Defendants' violations of the WLAD have caused Ms. Frye
10 damage in an amount to be proven at trial.

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

12 8. Plaintiff is entitled to liquidated damages under USERRA
13 because the Defendants knew, or showed reckless disregard for whether
14 its conduct was prohibited under USERRA.

15 **V. PRAYER FOR RELIEF**

16 Plaintiff respectfully prays for:

17 A. Compensation for all injury and damages suffered by Ms. Frye
18 including, but not limited to, both economic and non-economic damages, in
19 the amount to be proven at trial including back pay, front pay, pre and post
20 judgment interest, lost benefits of employment, adverse tax consequences
of any award for economic damages pursuant to Chapter RCW 49.60 et

1 seq., liquidated damages under both federal and Washington law for willful
2 violations as it relates to the improper withholding of wages and benefits
3 and general damages relating to emotional distress and mental anguish
4 damages as provided by law.

5 B. Plaintiff's reasonable attorneys, expert fees, and costs, pursuant
6 to 38 U.S.C. § 4323, and as otherwise provided by law under RCW
7 49.48.030 and 49.60.030(2), as well as the *private attorney general* theory
8 of recovery of reasonable attorney fees and costs in employment related
9 cases.

10 C. For such other and further relief as this Court deems just and
11 equitable.

12 Respectfully submitted this April 4, 2019.

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3 Attorneys for Plaintiff

4 **CERTIFICATE OF SERVICE**

5 I hereby certify that on April, 4, 2019, I electronically filed the foregoing
6 with the Clerk of the Court using the CM/ECF system which sent notification
7 of such filing to all counsel of record.

8 And I hereby do certify that I have mailed by United States Postal
9 Service the document to the following non-CM/ECF participants:

10 None

11 /s/ Thomas G. Jarrard

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