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9 *Attorneys for Plaintiff*

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE WESTER DISTRICT OF WASHINGTON**

12 Lisa Tran,

13 Plaintiff,

14 v.

15 Waterfront Construction Incorporated, and
Justin Wilcox, individually.

16 Defendants.

CASE NO. 19-cv-1591
COMPLAINT FOR VIOLATIONS OF
USERRA, WLAD AND DEMAND
FOR TRIAL BY JURY

EXEMPT FROM FILINGFEES
UNDER 38 U.S.C. § 4323(h)(1)

17 **I. INTRODUCTION**

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

21 2. Plaintiff, Lisa Tran (hereinafter “Ms. Tran” or “Plaintiff”), by the undersigned
22 attorneys, avers as stated herein.
23
24

II. PARTIES AND JURISDICTION

1
2 3. Ms. Tran resided in the State of Washington and was an employee of
3 Defendants, Waterfront Construction Incorporated, and Justin Wilcox, at all times
4 pertinent hereto.

5 4. At all times relevant to this lawsuit Ms. Tran was a member of the United
6 States Army Reserve.

7 5. Defendant, Waterfront Construction Incorporated, is a Washington
8 corporation that is licensed to conduct business in the State of Washington, pursuant to
9 UBI No. 6000259192.

10 6. Waterfront Construction Incorporated maintains a place of business within
11 this District, located at 205 NE Northlake Way, Suite 230, Seattle, WA 98105-6855.

12 7. For the purposes of 38 U.S.C. §§ 4303(4) and 4323(c)(2) Defendant,
13 Waterfront Construction Incorporated is a private employer operating within the State of
14 Washington.

15 8. Defendant, Justin Wilcox is a co-owner and vice president of Waterfront
16 Construction Incorporated and Ms. Tran's supervisor.

17 9. Defendant, Justin Wilcox exercised control over the employment benefits
18 and opportunities of Ms. Tran, was a primary decision maker regarding Defendants'
19 violation of Ms. Tran's rights, and for the purposes of 38 U.S.C. § 4303(4), is a private
20 employer.

21 10. All acts complained of occurred within the Western District of Washington.

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

1 12. Venue is proper in the Western District of Washington under 38 U.S.C. §
2 4323(c) and 28 U.S.C. § 1391(b), because the acts and omissions complained herein
3 occurred in the District, and Defendants' conduct business there.

4 **III. FACTS**

5 13. In approximately the second half of July 2019, Ms. Tran applied for
6 employment with Waterfront Construction Incorporated.

7 14. Ms. Tran listed her Army Reserve obligation on her employment
8 application.

9 15. Ms. Tran attended a job interview on July 30, 2019, and was hired on
10 August 2, 2019.

11 16. Ms. Tran began working, on site, at Waterfront Construction Incorporated,
12 on August 12, 2019, as a Permit Coordinator.

13 17. On August 29, 2019, Ms. Tran informed Human Resource Manager,
14 Matthew Fleming, that Ms. Tran was required to attend military training starting October
15 21, 2019.

16 18. Mr. Fleming responded in an exacerbated manner, "OK, thanks for letting
17 me know" and asked for documentary proof of her military service.

18 19. Ms. Tran provided Mr. Fleming a copy of her military ID and US Army
19 enlistment contract.

20 20. On information and belief Mr. Fleming told Justin Wilcox about Ms. Tran's
21 military obligation.

22 21. On August 30, 2019, about 11:00 AM, Justin Wilcox summoned Ms. Tran
23 to his office.

1 22. Ms. Tran went directly to Mr. Wilcox's office, knocked on the door, and was
2 told to come in, close the door, and sit down.

3 23. Mr. Wilcox appeared angry and irritated and said "I hear you are leaving
4 soon."

5 24. Ms. Tran explained that she had military training in October.

6 25. Mr. Wilcox responded that he would no longer assign projects to Ms. Tran
7 and that if he had known of the military obligation she would not have been hired.

8 26. Ms. Tran informed Wilcox that USERRA and EEO protected her
9 employment and explained her understanding of those protections.

10 27. Justin Wilcox appeared to be angered by Ms. Tran's assertion. Ms. Tran
11 observed his fists and teeth were clenched, face was red, and he had a glazed
12 expression in his eyes.

13 28. In an angry tone Justin Wilcox raised his voice and said, "if you threaten
14 me with legal action, I will give you two options."

15 29. Justin Wilcox explained the two options as:

16 A. Work for another two weeks and be forced to
17 resign; or

18 B. Reduce her wage from \$23 an hour to Seattle's
19 Minimum Wage of \$15 an hour and "work as a janitor or
20 whatever."

21 30. Ms. Tran was shocked and confused by what she was hearing, and several
22 emotions poured over her. She felt threatened and humiliated, embarrassed, belittled
23 and degraded. Ms. Tran's stomach turned, and she felt sweaty and nauseous and
24 thought she would throw up.

1 31. Mr. Wilcox continued with his angry tone, and was smirking when he said,
2 “do you need the weekend to think about it.” Mr. Wilcox then said, “I will present this to
3 my attorneys and have it resolved by the end of next week.”

4 32. Mr. Wilcox then asked Ms. Tran which option she wanted to choose (resign
5 or become a janitor at minimum wage)?

6 33. Ms. Tran was speechless.

7 34. Then, Mr. Wilcox instructed Ms. Tran not to come in to work on Monday,
8 and to email him her decision on Monday.

9 35. Ms. Tran asked, “do you have anything else for me, Sir?”

10 36. In a smug and condescending tone Wilcox said, “No” and Ms. Tran heard
11 him laugh as she left the office.

12 37. Ms. Tran left the office and took a break to compose herself. During the
13 break, Ms. Tran called her military commander and informed him of the incident at work.
14 The commander advised that he would send Ms. Tran some legal resources and to call
15 a number for the Employer Support of the Guard and Reserve.

16 38. Ms. Tran finished her break and resumed her work.

17 39. After about an hour, Ms. Tran felt too emotional to continue at her work,
18 and proceeded to the Human Resources Office to speak with Matthew Fleming.

19 40. Ms. Tran informed Mr. Fleming of the incident with Justin Wilcox.

20 41. Mr. Fleming explained that there was nothing he could do about it, because
21 he works for Justin Wilcox.

22 42. Ms. Tran returned to her work station and emailed Mr. Wilcox:

23 Justin,

24 To reference our conversation from this afternoon, I informed
 Matthew of my military status not only in my application, but

1 also my official enlistment contract for the Department of Army
2 reserves and my government identification yesterday
3 afternoon 8/29. My enlistment contract does not state a ship
4 out date because I am a part of the DEP (Delayed Entry
5 Program). Meaning, I don't know when I'll ship out. My
6 reservation is not always accurate.

7
8 Matthew stated yesterday 8/29 upon giving my notice that this
9 was something we could work together on. I informed that I
10 will do everything in my ability to ensure that it is a smooth
11 transition for the department as I value my career and my
12 employer here at Waterfront Construction Inc.

13 With that said, you gave me two options.

- 14 1. Work for another two weeks and be forced to resign.
- 15 2. Reduce my wage of \$23/Hr. to Seattle's Minimum
16 Wage of \$15/Hr and "work as a janitor or whatever."

17 And you needed me to make a decision, not be allowed to
18 come in on Monday but rather email you my decision, and
19 stated that "You would not have been hired we knew of your
20 military status during the interview process." You also advised
21 that I should've gotten a physical labor job due to my military
22 status so that it's not important and doesn't affect clients if I
23 leave. And because of my military status, "I don't belong in the
24 permit department." I understand the hardship that this may
place on an employer along with my colleagues in the Permit
Department. However, I want to ensure that I have the correct
information of what we have discussed earlier this afternoon.

Since you advised me not to come in again, I will call you
Tuesday morning to follow up. I will leave today at 1:15pm.

You can refer to my service liaison and commander, SFC.
Christopher Rifenbury at 585- [REDACTED] if you have any
questions.

Thanks,

Lisa Tran

43. Still overcome by internal emotions, Ms. Tran then informed Human
Resources and the front desk she was leaving for the day.

44. Monday, September 2, 2019, the office was closed for Labor Day.

1 45. Ms. Tran reported to work on Tuesday, September 3, 2019.

2 46. On September 3, 2019, at 7:35 AM, Ms. Tran emailed Mr. Wilcox, informing
3 him of her USERRA rights and references to the law, to wit:

4 From: Lisa Tran
5 Sent: Tuesday, September 3, 2019 7:35 AM
6 To: Matthew Fleming; Justin Wilcox
7 Subject: USERRA

8 Good Morning Team,

9 It appears perhaps you both had some miscommunication or
10 lack of knowledge with federal laws. Please allow me to
11 clarify.

12 I wanted to inform you both of USERRA; which stands for:
13 "The Uniformed Services Employment and Reemployment
14 Rights Act of 1994 (USERRA) is a Federal Law [highlighting
15 and underline in original] that establishes rights and
16 responsibilities for uniformed Service members and their
17 civilian employers. "

18 Below is a link you can refer to:
19 <https://www.esgr.mil/USERRA/What-is-USERRA>

20 The link is a Department of Defense website.

21 Please let me know if you have questions.

22 Thanks,

23 Lisa Tran

24 47. On September 3, 2019, at 8:28 AM, Mr. Wilcox responded:

From: Justin Wilcox
Sent: Tuesday, September 3, 2019 8:28 AM
To: Lisa Tran Matthew Fleming
Subject: RE: USERRA

Lisa,

If there is any chance you will be leaving within the next year
you will cause ill-reversible damage to this company. I am
trying to protect our companies [sic] reputation and
employees in the event you leave for 9 months. If you were

1 working as a laborer here at Waterfront, I would let you know
2 I am disappointed that you lied on your application and to all
3 of us here at Waterfront but will work with you. I need to look
4 out for the best interest of our permitting department
5 employees, clients and our company in general. I do
6 appreciate your service to our county and do feel you deserve
7 to be rewarded for making that sacrifice. Unfortunately, being
8 dishonest to make your resume look more attractive should
9 not be rewarded. We are currently working with our lawyers
10 to resolve this and would like you to not come into work until
11 we have this figured out. Our law firm said we should have
12 this taken care of by the end of the week. You are not fired,
13 you are not laid off, you are currently still employed and being
14 paid 40 hrs a week.

15 I personally don't want to fight you one [sic] this, this is not a
16 desirable situation. I would like to ask you if you would please
17 resign and find another job. I am preparing letters from your
18 coworkers in the permitting department that will be asking you
19 to do the same thing, they will be explain [sic] why it is not fair
20 to them that you maintain working here is you can't commit to
21 finishing at least one full permitting cycle. They will have to
22 take the load of your projects and sped [sic] hours back
23 tracking. Our customers will complain as well. Thanks Lisa

24 Justin Wilcox.

48. On September 3, 2019, at 9:15 AM, Ms. Tran emailed back:

From: Lisa Tran
Sent: Tuesday, September 3, 2019 9:15 AM
To: Matthew Fleming; Justin Wilcox
Subject: USERRA

Justin,

What are you referring to when you say "I lied" or "been dishonest?"

I gave Matthew my military enlistment contract on 8/29/19. To reference our conversation last week, I informed you of my possible upcoming military leave, you threatened my employment and or demote me to minimum wage and "be a janitor".

I informed you of the federal law; and you're now calling me a liar and referring to your lawyers and would like for me not to come to work until it has been resolved by the end of the

1 week. I would presume this is paid leave? Once you confirm
2 that it is paid leave, I will not come into work until you follow-
up with me.

3 Thanks,

4 Lisa Tran

5 49. Mr. Wilcox then summoned Ms. Tran to his office, and said that he was
6 sorry for his earlier behavior.

7 50. Shortly thereafter, on September 3, 2019, at 10:23 AM, Mr. Wilcox sent
8 Ms. Tran an email:

9 Lisa,

10 After a company meeting I would like to let you know we will
11 work with your situation 100%. I look forward to making the
best out of this situation.

12 Thanks

13 51. Yet on September 5, 2019, while walking down the hall Ms. Tran overheard
14 Mr. Fleming, from behind a close door, either on the phone or in person, loudly telling
15 someone words to the effect of "Lisa lied to us about her ship date." Ms. Tran continued
16 to walk down the hall. Ms. Tran felt humiliated (she never lied to Defendants about her
17 military service) and fearful for her future employment (on one hand Mr. Wilcox was
18 saying WCI would work with her situation "100%" but HR (Fleming) was wrongly calling
19 her a liar).

20 52. On September 5, 2019, Ms. Tran's attorney sent an email and letter
21 attachment to the registered agent for Waterfront Construction Incorporated, notifying
22 them of Ms. Tran's representation.

23 53. On September 5, 2019, Ms. Tran began experiencing the co-worker
24 ostracism Mr. Wilcox promised in his September 3, 2019, email. When asking her

1 counterpart, Mark Kushino, questions like “do you know who I can talk to in order to
2 troubleshoot this issue” Mr. Kushino would angrily explain “it’s not my responsibility to
3 answer your questions” or “you shouldn’t ask me questions!”

4 54. On September 6, 2019, Mr. Wilcox walked into the Permit Department
5 office space and inquired about opinions on work cell phones and cubicle walls. When
6 he asked Mark Kushino his opinion, Mr. Kushino did not agree with the ideas and
7 explained that it would be a conflict with achieving a work life balance. When Mr. Wilcox
8 asked Ms. Tran for her opinion, Ms. Tran stated that she agreed with the new proposal
9 for work cell phones and cubicle walls to increase office productivity and client
10 communication. Mr. Kushino then rhetorically and sarcastically stated “She’s only
11 agreeing because she’s trying to kiss your ass.” Ms. Tran felt humiliated and
12 uncomfortable by that hostile statement. Mr. Wilcox did not address the comment made
13 by Mr. Kushino and made his way out of the department office.

14 55. On September 10, 2019, Defendants essentially stopped assigning Ms.
15 Tran projects or clients even though Defendants knew that Ms. Tran’s military ship date
16 was not until October 21, 2019.

17 56. On September 16, 2019, one of Ms. Tran’s co-workers confided in Ms. Tran
18 words to the effect of “the whole office knows you’ve lawyered up.”

19 57. On September 19, 2019, Defendants’ counsel was provided a draft of this
20 complaint.

21 58. On September 19, 2019, Waterfront Construction Incorporated’s owner,
22 Paul Wilcox, summoned Ms. Tran to his office, apologized for Justin Wilcox’s behavior
23 and complimented Ms. Tran for her work and professionalism.

1 59. From September 19, 2019 through October 3, 2019, Defendants removed
2 Ms. Tran from nearly all her projects, assigning those to others, and prompting more co-
3 worker ostracism including an employee to email Ms. Tran's supervisor complaining that
4 Ms. Tran was not working on anything.

5 60. Ms. Tran suffered harms and losses as a result of Defendants'
6 discrimination.

7 61. Defendants' actions are the direct and proximate cause of Ms. Tran's
8 damages.

9 62. Defendants created a hostile work environment *inter alia* by publishing
10 false statements regarding Ms. Tran's character and her veracity, stating the imprimatur
11 of their actions by their lawyers, manufacturing a pretext by setting her up for failure, and
12 driving a wedge between Ms. Tran and her colleagues by soliciting affidavits from Ms.
13 Tran's co-workers regarding alleged harms that Ms. Tran's military service would cause.

14 63. As a result of Defendants' unlawful conduct in violation of USERRA and
15 the necessity of this action to seek a remedy, Ms. Tran fears further retaliation against
16 her employment rights by Defendants or its managers, directors or employees, for
17 example continued attempts to cause her failure at work, to serve as a pretext for the
18 true retaliatory reason of punishing Mr. Tran for exercising his USERRA rights. As such,
19 any employment relationship that Ms. Tran may have enjoyed with Defendants prior to
20 the filing of this action is irreparably damaged through no fault of Ms. Tran.

21 64. Upon information and belief, Defendants are a party to contracts with the
22 State of Washington, which prohibit Defendants from discriminating against veterans and
23 military service members and further evidence of its knowing and reckless disregard for
24 the protections afforded a service member under USERRA.

1 65. Upon information and belief, Defendants are a party to contracts with the
2 United States, which prohibit Defendants from discriminating against veterans and
3 military service members and further evidence of its knowing and reckless disregard for
4 the protections afforded a service member under USERRA.

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

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

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

13 69. Defendants do not post workplace posters that set out employer
14 responsibilities under USERRA, as required by 38 U.S.C. § 4334.

15 **V. CAUSES OF ACTION**
16 **(NO. 1 – VIOLATION OF 38 U.S.C. § 4311(a) – DISCRIMINATION)**

17 68. Under 38 U.S.C. § 4311(a) an employee shall not be denied a benefit of
18 employment on the basis of a duty to perform a military obligation. Benefits of
19 employment include, "terms, conditions or privileges of employment [as well as] the
20 opportunity to select work hours or location of employment." 38 U.S.C. § 4303(2).

21 69. Ms. Tran's requirements that she attend military training is a military
22 obligation.

23 70. Ms. Tran's military service obligation was a motivating factor in Defendants'
24 denial of various benefits of employment given, *inter alia*, the closeness in time (hours)
between Ms. Tran informing the Defendants of her military obligation, the Defendants'

1 statements and actions, and Ms. Tran being informed that the terms and conditions of
2 her employment were being curtailed given Defendants' demand that she reduce her
3 hours, Defendants' demand that she resign or demote to a janitor, Defendants' rallying
4 of Ms. Tran's co-workers against her, among other adverse actions.

5 71. Defendants' denial of said benefits of employment and subsequent acts,
6 constitute adverse employment actions that has caused Ms. Tran damages in an amount
7 to be proven at trial.

8 **(NO. 2 – VIOLATION OF 38 U.S.C. § 4311(b) – RETALIATION)**

9 72. Under 38 U.S.C. § 4311(b) an employee shall not be denied retention in,
10 or any benefit of employment on the basis of exercising a right protected under USERRA.

11 73. Ms. Tran's multiple notices of the law of USERRA and Defendants'
12 violations is a right protected under USERRA.

13 74. Defendants' denial of various benefits of employment, including altering
14 the terms and conditions of her work by taking away her job responsibilities and refusing
15 to answer questions Ms. Tran needs answered germane to her job, and subsequent
16 acts, constitute adverse employment actions that caused Ms. Tran damages in an
17 amount to be proven at trial.

18 75. Defendants reasons for assigning Ms. Tran impossible work is a pretext in
19 a retaliatory scheme designed to avoid the truth and legal liability for violating Ms. Tran's
20 rights under USERRA.

21 **(NO. 3 - VETERANS DISCRIMINATION - VIOLATION OF**
22 **RCW §§ 49.60.030 & 49.60.180)**

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

1 77. Defendants violated Ms. Tran's WLAD-guaranteed protection from military
2 related employment discrimination for the reasons stated above.

3 78. Defendants' violations of the WLAD have caused Ms. Tran damage in an
4 amount to be proven at trial.

5 **(NO. 4 - DEFAMATION PER SE)**

6 79. Ms. Tran was defamed under both theories of *libel* and *slander*. Ms. Tran
7 will be able to establish a *prima facie* case for Defamation *per se* because the
8 Defendants' conduct: (a) exposed her to hatred, contempt, or ridicule to deprive her of
9 the benefit of public confidence or social intercourse; or (b) injured Ms. Tran in her
10 business, trade, profession, or office. See *Caruso v. Local Union No. 690 of Int'l Bros.*
11 *of Teamsters, Chauffeurs, Warehousemen & Helpers of Am.*, 100 Wn.2d 343, 353
12 (1983).

13 80. The Defendants negligently and/or willfully and maliciously made
14 defamatory statements about Ms. Tran. Such statements were false, without privilege,
15 and were published both orally and in writing by Defendants.

16 81. As a direct and proximate result of Defendants' libelous and slanderous
17 statements made about Ms. Tran, she has suffered personal injury, including injury and
18 damage to her reputation for which she is seeking compensation in an amount to be
19 proven at trial.

20 **(LIQUIDATED DAMAGES – 38 U.S.C. § 4323)**

21 82. Plaintiff is entitled to liquidated damages under USERRA because the
22 Defendants knew, or showed reckless disregard for whether its conduct was prohibited
23 under USERRA.

1 **V. PRAYER FOR RELIEF**

2 Plaintiff respectfully prays for:

3 A. Equitable relief as mandated by Congress pursuant to 38 U.S.C. § 4323(e),
4 including temporary or permanent injunctions, temporary restraining orders, and
5 contempt orders, to vindicate fully the rights or benefits of persons under this chapter,
6 and as necessary to prevent future harm to Ms. Tran and other servicemembers.

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

15 C. Plaintiff's reasonable attorneys, expert fees, and costs, pursuant to 38
16 U.S.C. § 4323, and as otherwise provided by law under RCW 49.48.030 and
17 49.60.030(2), as well as the *private attorney general* theory of recovery of reasonable
18 attorney fees and costs in employment related cases.

19 D. For such other and further relief as this Court deems just and equitable.

20 **JURY TRIAL DEMAND**

21 Pursuant to Rule 38 of the Federal Rules of Civil Procedure or any similar rule or
22 law, Plaintiff demands a trial by jury for all causes of action and issues for which trial by
23 jury is available.

1 Respectfully submitted this October 5, 2019.

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