

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO**

ERIC SCHWARTZ,

Plaintiff,

v.

RAMPART AVIATION, LLC; MINDY A. FULTON, JUSTIN WATLINGTON, and MICHAEL OPPEDAL, Individually,

Defendants.

Case No. 21-cv-3291

COMPLAINT FOR VIOLATIONS OF THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT, DEMAND FOR DAMAGES, REQUEST FOR INJUNCTIVE RELIEF AND JURY DEMAND

EXEMPT FROM FILING FEES PURSUANT TO 38 U.S.C. § 4323(h)(1)

Plaintiff, Eric Schwartz, by and through his undersigned attorneys, brings this Complaint against Rampart Aviation, LLC (“Rampart”), Mindy A. Fulton, Justin Watlington, and Michael Oppedal, and alleges:

**I. NATURE OF THE CASE**

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

Mr. Schwartz further seeks all relief available under USERRA, including his lost wages and benefits as well as liquidated damages for Defendant’s willful violation of USERRA.

**II. PARTIES AND JURISDICTION**

1. Mr. Schwartz resided in the State of California and was an employee of Defendants at all times relevant to this lawsuit.

1           2.     At all times relevant to this lawsuit Mr. Schwartz served as a Lieutenant  
2 Commander in the U.S. Navy Reserve.

3           3.     Mr. Schwartz began working for Defendant, Rampart Aviation, LLC on or  
4 about June 24, 2019.

5           4.     Defendant, Rampart Aviation, LLC, maintains a place of business within  
6 this District, located at 1777 Aviation Way, Colorado Springs, Colorado, and is licensed  
7 by the Colorado Secretary of State under ID Number 2012169057.

8           5.     Rampart is also a federal government contractor.

9           6.     For the purposes of 38 U.S.C. §§ 4303(4) and 4323(c)(2), Rampart  
10 Aviation, LLC is a private employer operating within the State of Colorado.

11          7.     Defendant, Mindy A. Fulton, is the General Manager for Rampart Aviation,  
12 LLC and Mr. Schwartz's former supervisor.

13          8.     Ms. Fulton exercised control over the employment benefits and  
14 opportunities of Mr. Schwartz, was a primary decision maker regarding Defendants'  
15 violation of Mr. Schwartz's rights, and for the purposes of 38 U.S.C. § 4303(4), is a private  
16 employer.

17          9.     Defendant, Justin Watlington, is the Director of Operations for Rampart  
18 Aviation, LLC and Mr. Schwartz's former supervisor.

19          10.    Mr. Watlington exercised control over the employment benefits and  
20 opportunities of Mr. Schwartz, was a primary decision maker regarding Defendants'  
21 violation of Mr. Schwartz's rights, and for the purposes of 38 U.S.C. § 4303(4), is a private  
22 employer.



1           18. By May 2020, Mr. Schwartz neared completion of the requisite flight hours  
2 for an upgrade to Captain but was told by Michael Oppedal (Assistant Chief Pilot) and  
3 Justin Watlington (Director of Operations) that there were no available Captain positions.

4           19. Not to be deterred, Mr. Schwartz continued to work toward the FAA ATP  
5 rating necessary to earn that promotion.

6           20. In July 2020, Mr. Schwartz completed the requisite flight hours and, with  
7 knowledge and approval of Rampart, utilized paid time off and personal funds to travel  
8 to Las Vegas, NV to complete an ATP/CTP ground course at Panam Academy.

9           21. On July 23, 2020, while still in Las Vegas attending the ATP/CTP course  
10 Mr. Schwartz received a phone call from Mr. Oppedal informing him that he, Mr.  
11 Watlington, and Tony Porterfield (the company's owner) agreed to promote Mr. Schwartz  
12 with the upgrade to Captain (promotion) upon completion of an ATP rating and IOE.

13           22. During the telephone discussion, Mr. Oppedal also confirmed to Mr.  
14 Schwartz this promotion would include a salary increase from \$60,000/year to  
15 \$80,000/year, reimbursement for the ATP/CTP course, and an 18-month training  
16 contract.

17           23. Mr. Oppedal further informed Mr. Schwartz during this same telephone  
18 discussion that Rampart sought to train and certify Mr. Schwartz as Check Airman once  
19 Mr. Schwartz had acquired enough hours as a Captain to become eligible per the FAA -  
20 - - an upgrade that would incur an additional 18-month contract (to run concurrently) and  
21 a raise to \$85,000/year.

22

1           24. From late July 2020 through September 2020, Mr. Schwartz periodically  
2 reached out to Mr. Oppedal to ascertain his intent regarding company funded training for  
3 an ATP rating. Mr. Schwartz provided Mr. Oppedal some suggestions and ideas on how  
4 the training could be expedited. Mr. Oppedal responded by informing Mr. Schwartz it  
5 was now his intent to coordinate an exam with the FAA that would combine a practical  
6 exam for Mr. Schwartz's colleague, John Kaduk (a captain), to earn his check airman  
7 rating while Mr. Schwartz simultaneously completed his ATP practical exam.

8           25. From August 16, 2020 to September 25, 2020, Mr. Schwartz went on  
9 military orders with the Navy Reserve.

10           26. During that timeframe Mr. Schwartz occasionally checked in with Mr.  
11 Oppedal regarding the promotion related testing.

12           27. During the August 16, 2020 to September 25, 2020, timeframe Mr.  
13 Schwartz also received another set of military orders. Those orders had a start date of  
14 December 4, 2020, and end date of April 2021.

15           28. On September 18, 2020, Rampart's General Manger, Mindy Fulton, sent  
16 Mr. Schwartz an email entitled "Congratulations" and further stating, "Based on your  
17 2019-2020 performance and potential for future advancement in 2020-2021, you  
18 have been recommended for a bonus. This email is official notice that a bonus has  
19 been approved by the CEO."

20           29. Mr. Schwartz transmitted a copy of the subject orders to Mike Oppedal  
21 and Elizabeth Blanco on September 22, 2020, via email.

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1           30. Mr. Schwartz returned to duty at Rampart on September 28, 2020, and  
2 asked Mr. Oppedal about his promotion related status and testing that same day. Mr.  
3 Oppedal instructed Mr. Schwartz to check in with Elizabeth Blanco (his supervisor)  
4 regarding the training plan. Ms. Blanco informed Mr. Schwartz that Rampart changed  
5 position and was no longer planning to schedule the training for Mr. Schwartz to promote  
6 to Captain. When Mr. Schwartz asked for explanation, he was told by Ms. Blanco about  
7 an email sent by Mr. Oppedal on or about September 23, 2020, that Mr. Schwartz's  
8 training would wait until next Spring after his return.

9           **a. Mr. Schwartz exercises his USERRA rights**

10           31. Based on Ms. Blanco's description of the email message's content, Mr.  
11 Schwartz had a good faith belief that Rampart's instant action constituted a violation of  
12 federal law - specifically the Uniformed Services Employment and Reemployment Rights  
13 Act (USERRA) insofar as one shall not be penalized as a consequence of military  
14 obligation and service. In this instance the penalty is the undue delay of Mr. Schwartz's  
15 promotional opportunities and raise in salary.

16           32. On September 29, 2020, Mr. Schwartz contacted Mr. Oppedal via  
17 telephone to discuss the promotion/training issue and controversy associated with its  
18 delay. During this telephone discussion Mr. Oppedal told Mr. Schwartz that Mr.  
19 Schwartz's upcoming military mobilization was the reason why the training/promotion  
20 offer was being rescinded.

21           33. When Mr. Schwartz pressed the USERRA issue with Mr. Oppedal, he  
22 (Oppedal) waffled and started making a bunch of excuses first saying that the IOE check

1 airman was suddenly no longer available and then saying there was insufficient time for  
2 Mr. Schwartz to complete his training.

3 34. Mr. Schwartz rebutted each point stating that Rampart regularly used a  
4 contract check airman in the past and that Mr. Schwartz would be able to complete the  
5 training in an expeditious manner. The conversation was ended by Mr. Schwartz  
6 informing Mr. Oppedal that his actions as assistant chief pilot, as well as the actions by  
7 Rampart constituted violations of USERRA.

8 35. On October 1, 2020, Mr. Schwartz sent a text message to Mr. Oppedal  
9 advising him of (Mr. Schwartz's) plan to continue to pursue an ATP rating independently.

10 To which Mr. Oppedal responded to the text message via email, as follows:

11 Eric, Rampart Aviation currently doesn't have the required resources  
12 to Upgrade you in the DHC-6. Please contact Elizabeth with any  
13 questions or concerns you have and she will address it with the  
14 appropriate person as necessary.

15 36. Pursuant to Mr. Oppedal's recommendations, Mr. Schwartz emailed Ms.  
16 Blanco:

17 Hi Elizabeth,

18 I was offered an upgrade in July and was not informed that  
19 the offer was going to be delayed/rescinded until after I  
20 submitted orders for mobilization.

21 In a phone call with Mike he confirmed that my absence due  
22 to military orders was the issue. I believe that rescinding the  
upgrade does not adhere to USERRA protections. I  
mentioned this in the phone call with Mike as well.

I would be happy to discuss this further and hope to find a  
resolution that aligns with management and my concerns.  
Thank you.

1 Kind Regards,

2 Eric

3 37. Ms. Blanco replied to that email:

4 Good evening Eric,

5 I have read your email and understand your concerns. Yes,  
6 let's discuss this further if you'd like. As your Site Lead I am  
7 happy to pass along your questions to management and  
would like to be helpful in finding a resolution that is  
productive to you and the company.

8 Respectfully,

9 Elizabeth

10 SD Site Lead/Captain

11 38. Mr. Schwartz retained counsel.

12 39. On October 5, 2020, Mr. Schwartz's counsel sent Rampart a notice  
13 informing the company of Mr. Schwartz's USERRA rights and document preservation  
14 notice.

15 **b. Rampart retaliates against Mr. Schwartz**

16 40. Rampart immediately contacted Mr. Schwartz and summoned him to a  
17 meeting to discuss the issue. That meeting took place on October 9, 2020, at North  
18 Island Naval Air Station in California.

19 41. The attendees of that meeting included Mr. Watlington, Mr. Oppedal, Ms.  
20 Blanco, and Mr. Schwartz. Mr. Watlington, who did the majority of the talking, asked Mr.  
21 Schwartz his side of the story to which Mr. Schwartz said "it's in my lawyer's letter" to  
22 which Mr. Watlington responded with the comments set forth below:

1 Well we have never had a situation where a current  
2 employee was engaged in litigation with Rampart Aviation. I  
3 have an obligation to the FAA, passengers, and their safety  
4 to ensure the safest environment possible is in place. I  
5 believe that this litigation issue will affect your ability to safely  
6 operate therefore I am putting you on paid administrative  
7 leave. It is my responsibility as stipulated in the CFRs to  
8 make sure our customer gets the safest travel possible.

9 42. Rampart grounded Mr. Schwartz from flying and placed him on  
10 administrative leave.

11 43. On October 12, 2020, Rampart's General Manager, Mindy Fulton, emailed  
12 Mr. Schwartz a letter stating the same.

13 44. Rampart's stated rationale for grounding Mr. Schwartz and placing him on  
14 administrative leave due to the supposed "safety" issues flowing from an employee who  
15 is suing his employer for discrimination a bogus and pretextual cover up for retaliation.  
16 First, civilian pilots (as well as pilots who work for tax payer funded government  
17 contractors like Rampart) sue their respective airlines/companies for workplace  
18 discrimination (including USERRA violations) routinely and they are not grounded.  
19 Second, Rampart's supposed justification is inconsistent with its "Work Environment  
20 Tolerance Waiver" which provides, in relevant part:  
21  
22

1 While Rampart Aviation, LLC will not tolerate unlawful harassment of or unlawful discrimination  
2 against any employee, certain speech and conduct that might be offensive or unacceptable in a  
3 traditional corporate environment, or on the floor of Congress, may be tolerated in Rampart's work  
4 environment. In the real world of the military, profanity and brash conduct, although not  
5 welcomed, are not perceived as hostile or abusive and indelicate forms of expression are accepted  
6 or endured as normal behavior. Rampart is comprised primarily of retired Special Forces and  
7 military personnel. Indeed, everyone at Rampart interacts with retired and active military  
8 personnel a significant amount of time. In this work environment, although not welcomed nor  
9 exhibited by all, humor and language by both male and female employees may be rough, hewn  
10 and brash.

11 45. To the extent Rampart maintains an overt policy whereby its employees  
12 contractually agree to be subject to a "rough, hewn, and brash" environment it cannot  
13 now credibly deem one of its workers (Schwartz) a "snowflake" incapable of safely  
14 operating an aircraft simply because that worker has exercised his right to use the  
15 American legal system to enforce his civil rights.

16 46. Further, Mr. Schwartz has served as a Naval Flight Officer since 2007. He  
17 has served in combat zones. At the time Rampart hired Mr. Schwartz, his wife was  
18 undergoing cancer treatment. Rampart knew all this, yet Rampart allowed Mr. Schwartz  
19 to continue to fly.

20 47. On October, 15, 2020, Rampart responded to Mr. Schwartz's USERRA  
21 rights and document preservation notices (*supra* at ¶ 38). In a deliberate attempt to  
22 bully, intimidate, gaslight, and threaten Ms. Schwartz's future employment prospects,  
Rampart makes up entirely new pretexts for its retaliation, including:

Mr. Schwartz has exhibited insubordinate and delusional behavior, as a result of which Justin Watlington, the Director of Operations of Rampart, has placed Mr. Schwartz on paid administrative leave while Rampart investigates whether Mr.

1 Schwartz presents a safety-concern to himself, his  
2 passengers, our military customers and determines Mr.  
Schwartz' fitness for duty.

3 48. On November 3, 2020, Rampart made up even further bogus allegations,  
4 including: "Mr. Schwartz improperly received \$1,153.85 during [...] leave and never  
5 approached Rampart to correct this overpayment." The allegation is baseless, as Mr.  
6 Schwartz' time sheet was approved by both his supervisor, Scott Tripp, and Rampart's  
7 General manager, Mindy Fulton.

8 49. Rampart also doubles down on its gaslighting allegations, stating:

9 [B]y way of his erratic, delusional, and insubordinate  
10 behavior, which we do not need to readdress, but which is  
11 evidenced by Mr. Schwartz' own correspondence, Mr.  
Schwartz has presented and continues to present himself is  
[sic] a safety risk in his pilot position.

12 50. In the same correspondence, Rampart notified Mr. Schwartz that his  
13 employment was being terminated.

14 **c. Rampart refuses to arbitrate**

15 51. On November 4, 2020, Mr. Schwartz filed a demand for arbitration with the  
16 American Arbitration Association (AAA).

17 52. For over a year, Rampart has refused to engage in arbitration.

18 53. On November 9, 2020, Rampart's attorney, Alex Polishuk of Posinelli,  
19 PC/LLP, declined to accept service on behalf of his client.

20 54. On December 7, 2020, AAA served a copy of the arbitration demand on  
21 Rampart's attorney.

22 55. On December 14, 2021, AAA notified Rampart's attorney that:

1           **Per the agreement submitted with this filing, the**  
2           **employer is responsible for payment of the full filing fee,**  
3           **\$2,200.00. Accordingly, we request that the employer**  
4           **submit payment in the amount of \$2,200.00 on or before**  
5           **December 28, 2020. Upon receipt of the balance of the**  
6           **filing fee, the AAA will proceed with administration.**

7           [and]

8           This notice confirms that employee's filing requirements have  
9           been met. (Emphasis in original).

10          56. Rampart refused to pay the required fee and refused to engage in  
11          arbitration.

12          57. On December 29, 2020, AAA again requested that Rampart Aviation pay  
13          its filing fee:

14               Dear Counsel for Respondent:

15               We have not yet received payment from the employer to cover  
16               their portion of the filing fee, as described in our letter dated  
17               December 14, 2020. **The employer is requested to pay**  
18               **\$2,200.00 to the AAA by January 12, 2021.** The employer's  
19               share of the fee is due regardless of whether the case settles.

20               If payment was already sent, please accept our apologies and  
21               disregard this letter. If this non-payment is simply an oversight  
22               on the employer's behalf, we trust payment will be made  
              promptly.

              We hope that this situation does not escalate to this level, but  
              we want you to be aware that it is the policy of the AAA that if  
              an employer does not comply with our request to pay the  
              administrative fees stated in the Employment/Workplace Fee  
              Schedule, the AAA may decline to administer future cases  
              involving that employer. In addition, the employer may be  
              requested to remove the AAA as the provider organization  
              from their employment arbitration clauses. (Emphasis in  
              original).

1           58. Rampart still refused to engage in arbitration and refused to pay the  
2 required fee.

3           59. On February 1, 2021, AAA notified the parties that:

4                   The Respondent [Rampart] has failed to submit the previously  
5 requested filing fee; accordingly, we have administratively  
6 closed our file in this matter.

7           60. Following that February 1, 2021, notice, Rampart failed to take any action  
8 to correct the matter, refused to pay the required fee, and refused to engage in  
9 arbitration.

10           61. Mr. Schwartz suffered economic injury, as well as other harms and losses  
11 as a result of Defendants' failure to follow USERRA.

12           62. Defendants' actions are the direct and proximate cause of Mr. Schwartz's  
13 damages.

14           63. As a result of Defendants' unlawful conduct in violation of USERRA, Mr.  
15 Schwartz has suffered a loss of earnings and other benefits of employment in an amount  
16 to be proved at trial. Further, as a result of Defendants' unlawful conduct and the  
17 necessity of this action to seek a remedy, Mr. Schwartz fears further retaliation (*i.e.*, the  
18 continued disparagement of him within the aviation community) against his employment  
19 prospects, and rights by Defendants or its managers, directors or employees. As such,  
20 any employment relationship that Mr. Schwartz may have enjoyed with Defendants prior  
21 to the filing of this action is irreparably damaged through no fault of Mr. Schwartz.

22           64. Defendants are a party to contracts with the United States which prohibit  
Defendants from discrimination against veterans and military service members and

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

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

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

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

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

13 69. Defendants are highly trained professionals, with experience and  
14 immediate access to the provisions of USERRA, with the support of a sophisticated  
15 Human Resources Department, including immediate access to professional human  
16 resources personnel, and specially trained employment counsel.

17 **IV. CAUSES OF ACTION**

18 **COUNT I**  
19 **(Violation of USERRA, 38 U.S.C. § 4311(b))**

20 70. Plaintiff repeats and realleges the above allegations as if fully set forth  
21 herein.

22 71. USERRA, 38 U.S.C. § 4311(b) provides that an employer may not  
discriminate in employment against or take any adverse employment action against any

1 person because such person (1) has taken an action to enforce a protection afforded  
2 any person under this chapter, (2) has testified or otherwise made a statement in or in  
3 connection with any proceeding under this chapter, (3) has assisted or otherwise  
4 participated in an investigation under this chapter, or (4) has exercised a right provided  
5 for in this chapter.

6 72. Mr. Schwartz opposed Rampart's USERRA violations on numerous  
7 occasions as set forth above.

8 73. Defendants retaliated against Mr. Schwartz by grounding Mr. Schwartz  
9 from flying and placing him on administrative leave.

10 74. Defendants retaliated against Mr. Schwartz by terminating his employment  
11 because he exercised his rights under USERRA.

12 75. Defendant's actions have caused Mr. Schwartz damages in an amount to  
13 be proven at trial.

14 **COUNT II**  
15 **(Violation of USERRA, 38 U.S.C. § 4316 (c))**

16 76. Plaintiff repeats and realleges the above allegations as if fully set forth  
17 herein.

18 77. The USERRA requires that an employer cannot, without cause, terminate  
19 (or demote) a reservist-employee (a) within 180 days of that employee's return to work  
20 from military duty provided that (b) the reservist-employee's military service exceeded  
21 30 days.

22 78. Mr. Schwartz's August 16 – September 25, 2020 military leave period  
exceeded 30 days.

1 79. Defendants wrongfully and illegally demoted Mr. Schwartz from Pilot to  
2 administrative leave on October 9, 2020.

3 80. Defendants further violated Mr. Schwartz rights by terminating his  
4 employment protection rights, without cause, within 180 days of his reemployment.

5 81. Defendants' actions violated USERRA and caused Mr. Schwartz damages  
6 in an amount to be proven at trial.

7 **COUNT III**  
8 **(Violation of USERRA – 38 U.S.C. § 4323)**

9 82. Plaintiff repeats and realleges the above allegations as if fully set forth  
10 herein.

11 83. Plaintiff is entitled to liquidated damages under USERRA because  
12 Defendant knew, or showed reckless disregard for whether its conduct was prohibited  
13 under USERRA as Defendant is a government contractor and also was mandated, by  
14 Congress, to maintain a poster in its workplace that informed its employees (and the  
15 decision makers in this case) of reservist-employee rights under USERRA.

16 84. Further, Mr. Schwartz (first by himself and then through counsel) told  
17 Defendants that their actions violated USERRA. Nevertheless, Defendants persisted  
18 and, in doing so, has damaged Mr. Schwartz in an amount to be proven at trial.

19 **PRAYER FOR RELIEF**

20 WHEREFORE Plaintiff prays that judgement be entered against Defendant on all  
21 claims and requests that this Court award the following relief:  
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Respectfully submitted this December 8, 2021.

/s/ Thomas G. Jarrard  
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