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10 *Counsel for Plaintiff*

11
 12 **UNITED STATES DISTRICT COURT**
 13 **FOR THE DISTRICT OF ARIZONA**

14 _____)
 15 Brett T. Guinan,)

16 Plaintiff,)

17 v.)

18 Bullhead City Fire District,)

19 Defendant.)
 20 _____)

Civil Action No.

COMPLAINT

JURY TRIAL DEMANDED

21 Plaintiff Brett T. Guinan (“Guinan”), by the undersigned attorneys, alleges:

22 1. This civil action is brought under the Uniformed Services Employment and
 23 Reemployment Rights Act of 1994, 38 U.S.C. § 4301, *et seq.* (“USERRA”).
 24

25 **JURISDICTION AND VENUE**

26 2. This Court has jurisdiction over the subject matter of this civil action under
 27 28 U.S.C. § 1331 and 38 U.S.C. § 4323(b).
 28

1 10. BCFD first hired Guinan in July 2006 as a Public Education Specialist.
2 Guinan successfully performed this position for eight months after completing the
3 necessary training and certification requirements.
4

5 11. In or around March 2007, Guinan was promoted to Fire Inspector. Guinan
6 completed additional training and certification requirements to become a Fire Inspector,
7 and has maintained this certification up through the present.
8

9 12. As a Fire Inspector, Guinan worked with two other Fire Inspectors in
10 BCFD's Fire Prevention Division under the supervision of Fire Marshall Jim Dykens
11 ("Dykens"). The Fire Inspectors were responsible for inspecting buildings and
12 equipment to assess their compliance with state and local fire code regulations. Guinan
13 performed around 80-100 new inspections a month and usually also had to "reinspect"
14 each building at least twice.
15

16 13. Upon information and belief, Guinan's workload as a Fire Inspector was
17 continuously heavy and, despite having three Fire Inspectors, BCFD consistently had fire
18 inspections to complete, many of which were mandated by state law.
19

20 14. Between 2008 and 2013, Guinan was ordered to full-time active duty in the
21 Army Reserves on three occasions. As a result, he took three leaves of absence from
22 BCFD in order to perform military service: (1) from approximately May 13, 2008 to May
23 1, 2009; (2) from approximately June 16, 2010 to July 13, 2012; and (3) from
24 approximately October 26, 2012 to October 28, 2013.
25
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27
28

1 15. After Guinan was ordered to perform military service the second time,
2 Dykens made several statements to Guinan indicating that he should quit BCFD and
3 pursue a full-time career with the military.
4

5 16. In October 2012, Guinan was ordered to active duty for the third time.
6 Prior to the commencement of his military service, Guinan gave Dykens a copy of his
7 military orders, informing BCFD that he would be deployed to Ft. Belvoir, Virginia, for
8 one year, from October 29, 2012 through October 28, 2013. Guinan departed for Ft.
9 Belvoir later that month.
10

11 17. In or around June 2013, while Guinan was still on active duty and deployed
12 to Ft. Belvoir, Guinan received a letter from BCFD, informing him that his Fire Inspector
13 position was being eliminated, effective June 30, 2013.
14

15 18. Guinan's termination letter stated that his Fire Inspector position was being
16 eliminated as part of a "reduction in workforce" due to a decline in property tax revenue.
17 Guinan's Fire Inspector position was the only position eliminated by BCFD in 2013.
18

19 19. Upon information and belief, after Guinan's position was eliminated,
20 BCFD continued to cover Guinan's Fire Inspector duties by paying an injured firefighter
21 and a part-time Reserve firefighter to perform his Fire Inspector job duties.
22

23 20. During the relevant time period, BCFD also continued to hire new
24 employees and posted several job openings on its website.
25

26 21. On October 2, 2013, while he was still on active duty, Guinan filed a
27 complaint with the United States Department of Labor, Veterans Employment and
28 Training Service ("VETS"), alleging that BCFD had violated USERRA by eliminating

1 his Fire Inspector position and terminating his employment on the basis of his military
2 service. Guinan also alleged facts to support a claim that BCFD had failed to properly
3 reemploy him following his military duty in violation of USERRA.
4

5 22. Guinan was honorably discharged from active duty on October 28, 2013.
6 When he was released from active duty, Guinan had performed less than five years of
7 military service during his employment with BCFD.
8

9 23. On December 4, 2013 and January 2, 2014, within 90 days of being
10 released from active duty, Guinan notified BCFD that he was seeking reemployment.
11

12 24. BCFD has failed or refused to reemploy Guinan as required by USERRA,
13 and has made no efforts to qualify Guinan for one of its open positions.
14

CLAIMS FOR RELIEF

15 25. Guinan repeats the factual allegations set forth in paragraphs 7-24.
16

Claim 1: Termination in Violation of USERRA

17
18 26. Pursuant to 38 U.S.C. § 4311, USERRA prohibits discrimination in
19 employment against an individual on the basis of his or her military service. Specifically,
20 38 U.S.C. § 4311 provides that “[a] person who is a member of . . . a uniformed service
21 shall not be denied initial employment, reemployment, retention in employment,
22 promotion, or any benefit of employment by an employer on the basis of that
23 membership, application for membership, performance of service, application for service,
24 or obligation.”
25
26
27
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1 27. BCFD violated Section 4311 of USERRA by eliminating Guinan's Fire
2 Inspector position and terminating him on the basis of his membership in the Army
3 Reserves, his absence to perform military service, and/or his military service obligations.
4

5 28. Dykens' statements about Guinan's military service and the timing of the
6 elimination of Guinan's Fire Inspector position during his military leave demonstrate that
7 Guinan's termination was not part of a reduction in workforce but was a termination on
8 the basis of Guinan's service in the Army Reserves.
9

10 29. BCFD's violation of USERRA Section 4311 was willful under 38 U.S.C.
11 § 4323(d)(1)(C) in that BCFD showed reckless disregard for whether its conduct was
12 prohibited by the provisions of USERRA.
13

14 30. Because of BCFD's actions in violation of USERRA, Guinan has suffered a
15 substantial loss of earnings and other benefits in an amount to be proven at trial.
16

17 **Claim 2: Failure to Properly Reemploy in Violation of USERRA**

18 31. Pursuant to 38 U.S.C. § 4312(a), USERRA provides that "any person
19 whose absence from a position of employment is necessitated by reason of service in the
20 uniformed services shall be entitled to the reemployment rights and benefits and other
21 employment benefits of this chapter" if that person satisfies USERRA's notice, service
22 length, and discharge requirements.
23

24 32. Pursuant to 38 U.S.C. § 4313(a), USERRA provides that "upon completion
25 of a period of service in the uniformed services, [the service member] shall be promptly
26 reemployed in a position of employment . . . in the position of employment in which the
27 person would have been employed if the continuous employment of such person with the
28

1 employer had not been interrupted by such service, or a position of like seniority, status
2 and pay, the duties of which the person is qualified to perform.”

3 33. BCFD violated Sections 4312 and 4313 of USERRA (i) by failing to
4 promptly reemploy Guinan when he returned from active duty in October 2013; and (ii)
5 by failing or refusing to properly reemploy Guinan in an appropriate reemployment
6 position, *e.g.*, the position that he would have been employed if his continuous
7 employment had not been interrupted by his military service, or a position of like
8 seniority, status, and pay.
9

10 34. Guinan satisfied the notice, service length, and discharge requirements in
11 USERRA Section 4312 by timely providing BCFD with notice of his leave and request
12 for reemployment, serving for less than five years, and being honorably discharged from
13 active duty.
14

15 35. BCFD cannot establish an affirmative defense to this claim because it did
16 not experience a change in circumstances that would have required the elimination of
17 Guinan’s Fire Inspector position. Nor can BCFD demonstrate an undue hardship that
18 would have prevented it from reemploying Guinan.
19

20 36. BCFD’s violations of USERRA Sections 4312 and 4313 were willful under
21 38 U.S.C. § 4323(d)(1)(C).
22

23 37. Guinan has suffered a substantial loss of earnings and other benefits in an
24 amount to be proven at trial as a result of BCFD’s violations of USERRA.
25

26
27 **PRAYER FOR RELIEF**

28 WHEREFORE, Guinan prays that the Court enter judgment against BCFD and,

1 further, grant him the following relief:

2 A. Declare that BCFD's elimination of Guinan's Fire Inspector position and
3 termination of his employment were unlawful and in violation of USERRA;

4 B. Declare that BCFD's failure or refusal to promptly reemploy Guinan in an
5 appropriate reemployment position was unlawful and in violation of USERRA;

6 C. Order BCFD to comply fully with the provisions of USERRA by
7 reemploying Guinan in an appropriate reemployment position;

8 D. Order BCFD to comply fully with the provisions of USERRA by paying
9 Guinan for his lost wages and other benefits suffered by reason of BCFD's violations of
10 USERRA;

11 E. Declare that BCFD's violations of USERRA were willful;

12 F. Award Guinan liquidated damages in an amount equal to the amount of his
13 lost wages and other benefits suffered by reason of BCFD's willful violations of
14 USERRA, as authorized under 38 U.S.C. § 4323(d)(1)(C);

15 G. Award prejudgment interest on the amount of lost wages and benefits due;

16 H. Enjoin BCFD from taking any action with respect to Guinan that fails to
17 comply with USERRA; and

18 I. Grant such other and further relief as may be just and proper together with
19 the costs and disbursements of this lawsuit.

20
21
22 **JURY DEMAND**

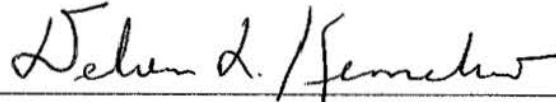
23 Guinan hereby demands a jury trial under Federal Rule of Civil Procedure 38.
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1 Date: May 4, 2015

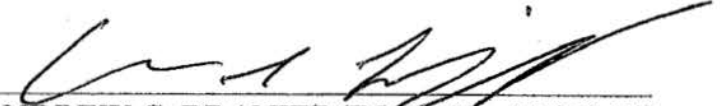
2
3 Respectfully submitted,

4 VANITA GUPTA
5 Principal Deputy Assistant Attorney General
6 Civil Rights Division

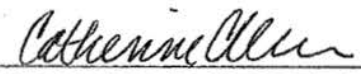
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