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10 11 <i>Counsel for Plaintiff</i>					
	12 UNITED STATES DISTRICT COURT				
	HE DISTRICT OF ARIZONA PHOENIX DIVISION				
	14				
15)			
	16	LARRY GREEN,			
	17	Plaintiff,) Civ. Action No.		
	18	v.) COMPLAINT		
s.	19	WATERMARK SOLUTIONS,) JURY TRIAL DEMANDED		
	20	Defendant.)		
	21				
	22	COMPLAINT			
	23	Plaintiff, Larry Green (Green), by the undersigned attorneys, alleges:			
	24	1. This civil action is brought under the Uniformed Services Employment and			
	38 U.S.C. § 4301, et seq. (USERRA).				
	27	27 JURISDICTION AND VENUE			
	28	2. This Court has jurise	liction over the subject matter of this civil action under 28		

U.S.C. § 1331 and 38 U.S.C. § 4323(b).

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3. Venue is proper in this judicial district under 38 U.S.C. 4323(c)(2) because Defendant Watermark maintains a place of business in this judicial district and is considered a "private employer." Venue is also proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this action occurred in this judicial district.

PARTIES

4. Plaintiff Green resided in Gilbert, Arizona, within the jurisdiction of this Court, at the time of the events giving rise to this lawsuit.

5. Watermark Solutions (Watermark) is a private, for-profit company located in Phoenix, Arizona, which is within the jurisdiction of this Court. Watermark manufactures cleaning products and provides commercial cleaning equipment to various business segments including hotels, healthcare companies, major league baseball entities, and industrial entities. Watermark is an "employer" within the meaning of 38 U.S.C. § 4303(4)(A), and is subject to suit under USERRA under 38 U.S.C. § 4323(a).

FACTUAL ALLEGATIONS

6. Green repeats the factual allegations set forth in paragraphs 1-5.

7. Green joined the active duty United State Air Force as an enlisted member in June 2009 as an Airman First Class, and was ultimately promoted to Staff Sergeant. In 2015, Green sought to fulfill the remainder of his military service as a Reserve Staff Sergeant and began looking for full-time civilian employment. His active duty service term ended in July 2015, and his reserve unit did not require his participation until September 2015 when he entered the Air Force Reserves as a Staff Sergeant.

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8. In June 2015, Green began interviewing for a service technician position with

Watermark. Watermark Vice President Mark Simmons (Simmons) met Green through a veteran's program designed to facilitate employment and entrepreneurial opportunities for servicemembers.

9. On or around July 13, 2015, Watermark hired Green as a full-time Service Technician where his responsibilities included ensuring that customers were satisfied with Watermark's cleaning agents, and servicing and repairing equipment.

10. When Green began at Watermark, he informed Simmons that he would need four months of leave from the office to fulfill his military training requirements in the coming months. Green required four months of military leave due to his transition from active duty to the Reserves. In this transition, Green changed his specialty from aircraft maintenance to vehicle maintenance. This specialty change required that Green undergo 3-1/2 months of vehicle maintenance training, in addition to the two weeks of annual reserve training. Simmons was fully aware of that obligation.

11. At the time of his hiring, Green was the sole Service Technician for Watermark, and responsible for ensuring customer satisfaction with the company's cleaning agents and providing service maintenance and repairs on equipment. Simmons introduced Green to the company's clients and trained him on servicing equipment. Green was on call 24 hours daily, during the week and on weekends, and serviced about 40 customers, some of whom were located as far as two hours away from Watermark's Phoenix Office. After being trained by Simmons, Green worked most jobs independently, was given significant responsibility servicing the company's customer base, and assisted Simmons on certain jobs that required more than one person. Customers called Green directly and Green managed his own schedule based on responding to direct-customer calls and managing monthly maintenance requirements. Green was never made aware of any customer complaints, and was never counseled by the company for poor

performance. Between January and March 2016, Simmons texted Green to thank him for his work and informed Green that he was doing a "good job."

During the course of his employment with Watermark, Green received updates 12. from his commanding officer in the Reserves as to when his military training would need to begin. Green kept Simmons informed of those updates.

Around May 9, 2016, Green informed Simmons that his military training would 13. begin in June 2016. On June 6, 2016. Green told Simmons that his military training would begin 8 on June 24, 2016, and end about four months later at the end of October 2016.

10 14. Simmons responded to Green that a temporary replacement could not be hired and 11 that he would be terminated. Green told Simmons that his termination was prohibited under 12 USERRA. 13

15. On or around June 10, 2016, Watermark issued Green a Termination Letter and 14 15 Separation and Release of Claims Agreement. Under the Separation and Release of Claims 16 Agreement, Watermark offered Green four weeks of severance pay.

16. On or around June 13, 2016, Green notified Simmons of his refusal to sign the 18 Separation and Release of Claims Agreement. On June 16, 2016, Green again notified Watermark 19 by email that his military service obligation would begin on June 24, and that he would return to 20 21 work by around November 7, 2016.

22 17. By around October 31, 2016, after Green fulfilled his military obligations, he 23 notified Watermark that he was prepared to resume work by as early as November 1, 2016. 24 Watermark informed Green that his position had been filled with someone else and that the 25 company was not hiring. 26

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At the time of his termination, Green's annual salary with Watermark was \$48,000. 18.

1	19. On October 28, 2016, Green filed a complaint with the United States Department				
2	of Labor, Veterans Employment and Training Service (VETS) alleging Watermark violated				
3	USERRA by terminating his employment due to his military service.				
4	<u>COUNT I</u>				
5	USERRA, 38 U.S.C. § 4311				
6	Termination in Violation of USERRA				
7 8	20. Green re-alleges and incorporates by reference all of the foregoing allegations.				
o 9	21. Section 4311 of USERRA prohibits the denial of "reemployment [or] retention in				
10	employment" by an employer against a person who is a servicemember or has an "obligation to				
11	perform service in the uniformed services" on the basis of that person's military status. 34 U.S.C.				
12	§ 4311(a) & (c). USERRA defines "service in the uniformed services" as				
13	"the performance of duty on a voluntary or involuntary basis in a uniformed service under				
14 15	competent authority and includes* * * active duty for training, initial active duty for training, [and]				
16	inactive duty training." 38 U.S.C. § 4303(13). An employer violates this prohibition when				
17	military status "is a motivating favor in the employer's action." 34 U.S.C. § 4311(c).				
18	22. As described in paragraphs 6 through 19, Green is a member of the U.S. Air Force				
19	Reserves who was employed by Watermark from July 13, 2015 to June 15, 2016.				
20	23. Watermark violated Section 4311 of USERRA by terminating Green on the basis				
21	of his membership in the U.S. Air Force Reserves, his absence to perform military service,				
22	and/or his military service obligations.				
23 24					
25	24. Green's military service was a motivating factor in Watermark's termination				
26	decision.				
27	25. Watermark acted with willful disregard to Green's USERRA rights when it				
28	terminated his employment.				

1	26.	Because of Watermark's actions in violation of USERRA, Green has suffered a		
2	substantial lo	ss of earnings and other benefits in an amount to be proven at trial.		
3	27.	Green requests, to the extent authorized by law, a trial by jury.		
4				
5		PRAYER FOR RELIEF		
6				
7	WHEREFORE, Green prays that this Court grant the following relief:			
8 9	А.	Declare that Watermark's termination of Green's employment was unlawful and a		
9 10	violation of USERRA;			
11	в.	Order Watermark to comply fully with the provisions of USERRA by		
12	compensating	g Green for his lost wages and other benefits suffered by reason of Watermark's		
13	violations of USERRA;			
14	C.	Award prejudgment interest to Green on the amount of lost wages and benefits due;		
15	D.	Direct Watermark to re-employ Green at the position he had at the time of his		
16	unlawful termination;			
17				
18 19	E.	Enjoin Watermark from taking any action with respect to Green that fails to comply		
20	with USERRA;			
20	F.	Declare that Watermark's USERRA violation was willful, and award Green		
22	liquidated damages in an amount equal to his lost wages; and			
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1	G. Grant such other and further relief as may be just and proper together with the costs
2	and disbursements of this lawsuit.
3	Date: December 18, 2018
4	Respectfully submitted,
5	ERIC DREIBAND
6	Assistant Attorney General
7	Civil Rights Division
8	DELORA L KENNEBREW (GA Bar No. 414320) Chief
9	ANDREW G. BRANIFF (IN Bar No. 23430-71)
10	Special Litigation Counsel
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12 13	Fallilade
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