

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

CHARLES O'DONNELL,

Plaintiff,

v.

WIFI ALLIANCE,

Defendant.

Civil Action No. 1:18-CV-0185

Jury Trial Demanded

**COMPLAINT**

Plaintiff Charles O'Donnell ("O'Donnell"), by the undersigned attorneys, alleges the following:

1. This action is brought under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301, *et seq.* ("USERRA").
2. O'Donnell, a Lieutenant Colonel in the U.S. Army Reserve, was terminated by WiFi Alliance due to his military service obligations.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over the subject matter of this civil action under 28 U.S.C. § 1331 and 38 U.S.C. § 4323(b).
4. Venue is proper in this judicial district under 38 U.S.C. § 4323(c)(2) because Defendant WiFi Alliance maintains a place of business in this judicial district and is considered a "private employer" as defined in 38 U.S.C. § 4323(i). Additionally, venue is proper under 28 U.S.C. § 1391(b) because the events or omissions giving rise to this action occurred in this judicial district.

5. Venue is proper in the Austin Division because all or a substantial part of the events or omissions giving rise to this cause of action took place in Austin, Texas.

### **PARTIES**

6. Plaintiff O'Donnell resides in Austin, Texas, which is located within Williamson County. Williamson County is within the jurisdiction of this Court.

7. Defendant WiFi Alliance is a non-profit organization that maintains its headquarters at 10900-B Stonelake Boulevard, Suite 126, Austin, Texas 78759.

8. WiFi Alliance 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**

#### **A. Military Background**

9. O'Donnell graduated from the United States Military Academy in 1992. He directly commissioned onto Active Duty with the U.S. Army and served in that capacity from 1992 until 1997. He then transitioned into the U.S. Army Reserve. He remains a U.S. Army Reservist to the present day.

10. During the relevant time period, from 2013 through 2016, O'Donnell's yearly military duty schedule consisted of one two-week annual tour of duty and up to 48 four-hour periods of Inactive Duty Training (IDT) periods throughout the year. O'Donnell usually performed his IDT periods in one-week blocks along with scattered afternoons and evenings throughout the year.

#### **B. O'Donnell's Employment**

11. Wi-Fi Alliance is a non-profit organization that conducts certification, coordination, testing, and development of new WiFi technologies.

12. WiFi Alliance's work is generally divided into two main areas: Development (the creation and implementation of new technologies) and Sustainment (continued development of and support for existing technologies).

13. Program Managers at WiFi Alliance typically acted as "Core Team Managers," administering development projects and ensuring the team met milestones and scheduling expectations.

14. When a Core Team successfully completed a project, that project would switch over to the Sustainment side where a Program Manager would work with vendors on implementation and troubleshoot technical and non-technical issues that arose once the technology went live.

15. On February 28, 2013, WiFi Alliance hired O'Donnell as a Program Manager.

16. O'Donnell was a Core Team Program Manager for several Core Teams in 2014, but, due in part to his extensive technical expertise, he transitioned to the Sustainment side of WiFi Alliance's projects.

17. In 2015 and 2016, O'Donnell was the only Program Manager assigned to Sustainment. This meant that while other Program Managers coordinated an overall program launch of one to three technologies, O'Donnell assisted all launch teams with vendor software and hardware readiness and managed all completed Core Team projects post-launch for general maintenance, testing, and certification.

### **C. The Layoff**

18. In 2015, WiFi Alliance struggled financially. It projected a \$1.3 million decline in revenue for the upcoming year.

19. Upon information and belief, during the period that the company experienced financial difficulties, the company culture discouraged employee absences from the office. No employee other than O'Donnell took leave of more than a few days at a time. One employee cut short his own vacation to avoid being away from the office for a full week.

20. By comparison, O'Donnell took two full weeks of military leave per year for his Annual Training and two additional one-week periods for his IDTs.

21. Upon information and belief, WiFi Alliance instituted a reduction in force ("RIF") in 2016 involving the removal of four vacant positions and laying off six current employees.

22. There was no formal RIF plan, no guidelines for how to select an employee for termination, and no consistent set of criteria.

23. O'Donnell was on military leave from WiFi Alliance from May 19, 2016 to June 5, 2016, supporting West Point Admissions at the United States Military Academy.

24. Upon information and belief, the decision to lay off six employees was announced to the WiFi Alliance Board of Directors on June 6, 2016, and it was determined that one of these six would be from Program Management.

25. At the time of O'Donnell's termination, WiFi had approximately seven Program Managers, including O'Donnell.

26. On or about June 21, 2016, only fifteen days after he returned from military leave, O'Donnell's department manager, David Baczewski, selected O'Donnell to be the sole Program Manager terminated from his employment with WiFi Alliance. Mr. Baczewski informed O'Donnell on July 1, 2016 of his termination, and O'Donnell was escorted from the building immediately.

27. The only reason WiFi Alliance offered for O'Donnell's termination was that his duties were more easily transferred to other Program Managers than their duties could be transferred to him.

28. However, in contrast to WiFi Alliance's purported justification, O'Donnell had been a full-time Core Team Leader in the past, and had significant experience leading Core Teams.

29. O'Donnell also had more seniority and the same performance rating as another non-military Program Manager who was not laid off.

30. Upon information and belief, no other Program Manager had the technical expertise and experience O'Donnell had across dozens of technologies.

31. Upon information and belief, no other Program Manager threatened with the reduction in force had experience performing O'Donnell's role for more than short periods of time while he was away on leave.

32. Upon information and belief, no other Program Manager was away from the office as frequently or for as long as O'Donnell.

33. At the time of his termination, O'Donnell's annual salary was \$98,951.04.

34. On December 23, 2016, O'Donnell filed a complaint with the United States Department of Labor, Veterans Employment and Training Service ("VETS"), alleging WiFi Alliance had violated USERRA by eliminating his Program Manager position and terminating his employment on the basis of his military service.

**COUNT I**

**USERRA, 38 U.S.C. § 4311  
Termination in Violation of USERRA**

35. O'Donnell re-alleges and incorporates herein by reference all of the foregoing allegations.

36. USERRA prohibits discrimination in employment against an individual on the basis of his or her military service. Specifically, 38 U.S.C. § 4311 provides that “[a] person who is a member of . . . a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.”

37. As described in paragraphs 9 through 34, O'Donnell is a member of the U.S. Army Reserve who was employed by WiFi Alliance from March 31, 2013, through July 1, 2016.

38. WiFi Alliance violated Section 4311 of USERRA by selecting O'Donnell for layoff from his Program Manager position and terminating him on the basis of his membership in the U.S. Army Reserve, his absences to perform military service, and/or his military service obligations.

39. Evidence establishing that O'Donnell's military service was a motivating factor in his selection for termination includes: the timing of O'Donnell's selection coincided with his military leave; O'Donnell's military commitment required significant time away from the office, including two full weeks of Annual Training and two one-week IDT periods per year; O'Donnell had seniority over another Program Manager who was not terminated; and the proffered reason for his selection, the alleged portability of his position, is pretextual because O'Donnell's position was unique and difficult to reassign compared with other Program Managers.

40. Because of WiFi Alliance's actions in violation of USERRA, O'Donnell has suffered a substantial loss of earnings and other benefits in an amount to be proven at trial.

**PRAYER FOR RELIEF**

WHEREFORE, O'Donnell prays that the Court enter judgment against WiFi Alliance and, further, grant him the following relief:

a) declare that WiFi Alliance's elimination of O'Donnell's Program Manager position and termination of his employment were unlawful and in violation of USERRA;

b) order WiFi Alliance to comply fully with the provisions of USERRA by paying O'Donnell for his lost wages and other benefits suffered by reason of WiFi Alliance's violations of USERRA;

c) award prejudgment interest on the amount of lost wages and benefits due;

d) enjoin WiFi Alliance from taking any action with respect to O'Donnell that fails to comply with USERRA; and

e) grant such other and further relief as may be just and proper together with the costs and disbursements of this lawsuit.

**JURY DEMAND**

41. The United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

BY: JOHN M. GORE  
Acting Assistant Attorney General  
Civil Rights Division

JOHN F. BASH  
United States Attorney  
Western District of Texas

DELORA L. KENNEBREW (GA Bar No. 414320)  
Chief  
Employment Litigation Section

/s/ Andrew G. Braniff

---

ANDREW G. BRANIFF (IN Bar No. 23430-71)  
Special Litigation Counsel  
Employment Litigation Section  
Andrew.Braniff@usdoj.gov

/s/ Torie A. Atkinson

---

TORIE A. ATKINSON (NY Bar, no number)  
Trial Attorney  
U.S. Department of Justice  
Civil Rights Division  
Employment Litigation Section  
950 Pennsylvania Avenue, NW  
Patrick Henry Building, Room 4239  
Washington, DC 20530  
Torie.Atkinson@usdoj.gov  
Telephone: (202) 305-3544  
Facsimile: (202) 514-1005

/s/ James E. Dingivan

---

JAMES E. DINGIVAN (TX Bar No. 24094139)  
Assistant United States Attorney  
United States Attorney's Office  
Western District of Texas  
600 NW Loop 410  
San Antonio, TX 78216  
Telephone: (210) 384-7372  
Facsimile: (210) 384

*Attorneys for Plaintiff Charles O'Donnell*