

1 GREGORY A. BROWER  
2 United States Attorney  
3 HOLLY VANCE  
4 Assistant United States Attorney  
5 Colorado Bar 22895  
6 100 West Liberty Street, Suite 600  
7 Reno, Nevada 89501  
8 Telephone: (775) 784-5438  
9 Facsimile: (775) 784-5181

LORETTA KING  
Acting Assistant Attorney General  
JOHN M. GADZICHOWSKI  
Chief  
WI Bar No. 1014294  
LOUIS LOPEZ  
Deputy Chief  
DC Bar No. 461662  
JOHN P. BUCHKO  
Trial Attorney  
DC Bar No. 452745  
United States Department of Justice  
Civil Rights Division  
Employment Litigation Section  
950 Pennsylvania Avenue, NW, PHB 4040  
Washington, DC 20530  
Telephone: (202) 305-1528  
Facsimile: (202) 514-1005

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20 ATTORNEYS FOR PLAINTIFF UNITED STATES



1 district under 28 U.S.C. § 1391(b) because the events giving rise to this lawsuit occurred in this  
2 judicial district.

3 **THE PARTIES**

4 4. Plaintiff is the United States of America.

5 5. Defendants are the State of Nevada and the Office of the State Controller, a  
6 constitutional officer of the state. The State of Nevada and the Office of the State Controller are  
7 “employers” within the meaning of 38 U.S.C. § 4303(4)(A), and are subject to suit under  
8 USERRA by the United States under 38 U.S.C. § 4323(a).

9 **CLAIMS FOR RELIEF**

10 6. Arthur Ingram joined the Army Reserves in 1983. By 2003, Ingram had attained  
11 the rank of Colonel.

12 7. On February 17, 2003, Nevada hired Ingram as Chief Deputy Controller (“Chief  
13 Deputy”) to State Controller Kathy Augustine.

14 8. The Army notified Ingram on March 3, 2003, that he was being mobilized for active  
15 duty. Ingram presented his orders to Augustine on March 15, 2003. Ingram served on active  
16 duty from June 1, 2003, through April 14, 2006, and again from April 22, 2006, through April  
17 25, 2008, when he was honorably discharged from the Army.

18 9. While Ingram was on active duty in 2006, Kim Wallin was elected Controller, and  
19 took office in January 2007. Ingram informed Wallin in April 2007 that he would be on active  
20 duty until 2008. At that time, Wallin gave no indication that Ingram would not be reemployed by  
21 Nevada when he returned.

1           10. Throughout Ingram's military service, Nevada paid him military duty leave pay  
2 and made contributions into his pension account.

3           11. In April 2008, Ingram formally notified Nevada of his request for reemployment.  
4 At a June 4, 2008 meeting regarding his reemployment, Wallin, for the first time, expressed an  
5 unwillingness to reemploy Ingram as Chief Deputy.

6           12. On June 17, 2008, Nevada offered Ingram, by letter, the position of Chief  
7 Accountant in the Controller's office, contingent upon Ingram serving a one-year probationary  
8 period and passing an examination demonstrating that he met the minimum qualifications for the  
9 position. The Chief Accountant position reported to the Chief Deputy and paid considerably less  
10 than the Chief Deputy position. Nevada did not consider Ingram for any other positions.

11           13. Also on June 17, 2008, Ingram sent Wallin a letter expressing his desire to return  
12 to work as Chief Deputy and his intent to start on July 24, 2008. After receiving Nevada's letter  
13 offering him the Chief Accountant position, Ingram filed a USERRA complaint with the  
14 Veterans' Employment Training Service ("VETS") on June 25, 2008.

15           14. After receiving Ingram's June 17, 2008 letter, Wallin responded with a June 26,  
16 2008 letter reiterating the offer to Ingram of the Chief Accountant position. After VETS  
17 informed Nevada of Ingram's USERRA complaint, Wallin sent VETS a July 8, 2008 letter  
18 repeating the offer of the Chief Accountant position.

19           15. Ingram reported for work on July 24, 2008. Ingram advised Wallin that he was  
20 there to begin working at whatever job was offered but that he would continue to pursue his  
21 USERRA claim because he believed he was entitled to the Chief Deputy position. Nevada  
22 officials responded that they were rescinding the Chief Accountant job offer because Ingram had

1 filed a USERRA complaint that was still under investigation, and that Ingram would not be  
2 reemployed in any position by the State until and if Ingram prevailed in the complaint.

3 16. In a December 15, 2008 letter, Nevada terminated Ingram's employment effective  
4 January 1, 2007, the day Wallin became Controller.

5 17. Nevada's conduct, as set forth above, violates Sections 4312 and 4313 of  
6 USERRA because the State (I) failed to promptly reemploy Ingram; and (ii) failed to properly  
7 reemploy Ingram in the appropriate "escalator" position, *i.e.*, in the same position or a position of  
8 similar seniority, status and pay to the position that Ingram would have held had he remained  
9 continuously employed.

10 18. Nevada's conduct, as set forth above, violates Section 4311 of USERRA because  
11 the State retaliated against Ingram for filing a USERRA complaint by refusing to reemploy him  
12 when he reported for work on July 24, 2008, and by terminating his employment on December  
13 15, 2008.

14 19. Nevada's violations of USERRA were willful under 38 U.S.C. § 4323(d)(1)(c).

15 20. Ingram has suffered a substantial loss of earnings and other benefits in an amount  
16 to be proven at trial as a result of Nevada's violations of USERRA.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, the United States prays that the Court enter judgment against Nevada, its  
19 officers, agents, employees, successors, and all persons in active concert or participation with it,  
20 as follows:

21 A. Declare that Nevada's failure to promptly reemploy Ingram in an appropriate  
22 position was unlawful and in violation of USERRA;

1           B. Order Nevada to comply fully with the provisions of USERRA by placing Ingram  
2 in the same position or a position of similar seniority, status, and pay to the position Ingram  
3 would have attained had he remained employed continuously with Nevada;

4           C. Order Nevada to comply fully with the provisions of USERRA by paying Ingram  
5 all amounts due to him for loss of wages and benefits caused by Nevada's violations of  
6 USERRA;

7           D. Declare that Nevada's violations of USERRA were willful;

8           E. Award Ingram liquidated damages in an amount equal to the amount of lost wages  
9 and other benefits suffered by reason of Nevada's willful violation of USERRA, pursuant to 38  
10 U.S.C. § 4323(d)(1)(C);

11          F. Award Ingram prejudgment interest on the amount of lost compensation found due;

12          G. Enjoin Nevada from taking any action with respect to Ingram that fails to comply  
13 with the provisions of USERRA; and

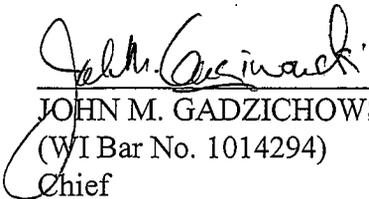
14          H. Grant such other and further relief as may be just and proper.

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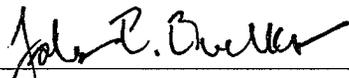
1 GREGORY A. BROWER  
2 United States Attorney  
3 for the District of Nevada  
4

LORETTA KING  
Acting Assistant Attorney General  
Civil Rights Division

5  
6 BY: s/ Holly Vance  
7 HOLLY VANCE  
8 (CO Bar 22895)  
9 Assistant United States Attorney  
10 Office of the U.S. Attorney  
11 for the District of Nevada  
12 100 West Liberty Street, Suite 600  
13 Reno, Nevada 89501  
14 Telephone: (775) 784-5438  
15  
16 Facsimile: (775) 784-5181

BY:   
JOHN M. GADZICHOWSKI  
(WI Bar No. 1014294)  
Chief

  
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(DC Bar No. 461662)  
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(DC Bar No. 452745)  
Trial Attorney  
U.S. Department of Justice  
Civil Rights Division  
Employment Litigation Section  
950 Pennsylvania Avenue, NW  
PHB 4040  
Washington, DC 20530  
Telephone: (202) 305-1528  
Facsimile: (202) 514-1005  
Email: [John.Buchko@usdoj.gov](mailto:John.Buchko@usdoj.gov)

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30 Dated: June 15, 2009

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JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p><b>I. (a) PLAINTIFFS</b> United States of America</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c)</b> Attorney's (Firm Name, Address, and Telephone Number) (see attachment)</p>	<p><b>DEFENDANTS</b> State of Nevada and the Office of the State Controller</p> <p>County of Residence of First Listed Defendant <u>Carson City</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%;"><input type="checkbox"/> 4</td> <td style="width:10%;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4														
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)						
CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
V. ORIGIN (Place an "X" in One Box Only)						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION** Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
38 U.S.C. § 4301 et seq.

Brief description of cause:  
Denial of prompt and proper reemployment of service member; retaliation

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ \_\_\_\_\_ CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 06/15/2009 SIGNATURE OF ATTORNEY OF RECORD: s/ John P. Buchko

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**Attachment**

I.(c) Attorneys

United States Department of Justice  
Civil Rights Division  
Employment Litigation Section  
950 Pennsylvania Avenue, N.W., PHB 4500  
Washington, D.C. 20530  
Telephone: (202) 305-1528  
Louis Lopez, Deputy Chief  
John P. Buchko, Trial Attorney

AO 440 (Rev. 02/09) Summons in a Civil Action

**UNITED STATES DISTRICT COURT**

for the

\_\_\_\_\_ District of \_\_\_\_\_

_____	)	
<i>Plaintiff</i>	)	
v.	)	Civil Action No.
_____	)	
<i>Defendant</i>	)	

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4(1))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: