

1 DELORA L. KENNEBREW  
Chief  
2 Georgia Bar No. 414320  
KAREN D. WOODARD  
3 Deputy Chief  
Maryland Bar – No Number Issued  
4 [Karen.Woodard@usdoj.gov](mailto:Karen.Woodard@usdoj.gov)  
ALLAN K. TOWNSEND  
5 Senior Trial Attorney  
Maine Bar No. 9347  
6 United States Department of Justice  
Civil Rights Division  
7 Employment Litigation Section  
950 Pennsylvania Avenue, NW, PHB 4037  
8 Washington, DC 20530  
Telephone: (202) 305-3302  
9 Facsimile: (202) 514-1005  
[Allan.Townsend@usdoj.gov](mailto:Allan.Townsend@usdoj.gov)

10  
11 ANN BIRMINGHAM SCHEEL  
Acting United States Attorney  
District of Arizona

12  
13 SHERIDAN L. ENGLAND  
Assistant U.S. Attorney  
New York State Bar No. 4392205  
14 40 North Central Avenue, Ste. 1200  
Phoenix, Arizona 85004-4408  
15 Telephone: (602) 514-7500  
Facsimile: (602) 514-7760  
16 E-mail: [Sheridan.England@usdoj.gov](mailto:Sheridan.England@usdoj.gov)

17 Attorneys for Plaintiff Brian Bailey

18 **IN THE UNITED STATES DISTRICT COURT**  
19 **FOR THE DISTRICT OF ARIZONA**

20  
21  
22 Brian Bailey,  
23 Plaintiff,

24  
25 v.  
26 Home Depot U.S.A., Inc.,  
27 Defendant.

Case No. \_\_\_\_\_

Jury Trial Demanded

1 **COMPLAINT**

2 Plaintiff, Brian Bailey, by the undersigned attorneys, makes the following averments:

3 1. This civil action is brought pursuant to the Uniformed Services Employment and  
4 Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 – 4333 (“USERRA”).

5 **JURISDICTION AND VENUE**

6 2. This Court has jurisdiction over the subject matter of this action pursuant to  
7 38 U.S.C. § 4323(b).

8 3. Venue is proper in this district under 38 U.S.C. § 4323(c)(2) because defendant,  
9 Home Depot U.S.A., Inc. (“Home Depot”), maintains a place of business within this judicial  
10 district. Additionally, the Court has jurisdiction under 28 U.S.C. § 1391(b) because a substantial  
11 part of the events giving rise to this lawsuit occurred in this judicial district.

12 **CLAIM FOR RELIEF**

13 4. Mr. Bailey began his employment with Home Depot as a Sales Associate at one  
14 of its stores in Flagstaff, Arizona on or about November 9, 2007.

15 5. On or about March 10, 2008, Mr. Bailey was promoted to the position of  
16 Department Supervisor and he was assigned to the plumbing department. On or about  
17 September 5, 2008, Mr. Bailey was transferred and became the Department Supervisor assigned  
18 to the kitchen and bath department. He remained employed in that capacity until the time of his  
19 termination from Home Depot.

20 6. Prior to Mr. Bailey’s employment with Home Depot, he served in the United  
21 States Army and, for a period of time, he served in the Iraq war. After the Army honorably  
22 discharged Mr. Bailey, he joined the California Army National Guard (“National Guard”).

23 7. For the entire duration of Mr. Bailey’s employment with Home Depot, he was a  
24 member of the National Guard. Throughout Mr. Bailey’s employment with Home Depot, he  
25 periodically took leave from work in order to fulfill his military obligations with the National  
26 Guard.

27 8. During the course of Mr. Bailey’s employment with Home Depot, Home Depot  
28 managerial personnel responsible for the store where Mr. Bailey worked expressed their desire to

1 remove Mr. Bailey from his position as Department Supervisor because of the leave from work  
2 he required due to his military obligations.

3 9. On or about May 25, 2010, Home Depot terminated Mr. Bailey's employment  
4 because of his military obligations. At least one of the managers who expressed a desire to  
5 remove Mr. Bailey from his position because of his military leave took part in the decision to  
6 terminate Mr. Bailey and other managerial personnel who expressed this same desire influenced  
7 the decision to terminate Mr. Bailey.

8 10. On or about October 8, 2010, Mr. Bailey filed a USERRA claim against Home  
9 Depot with the United States Department of Labor.

10 11. The United States Department of Labor's Veterans' Employment and Training  
11 Service conducted an investigation and found that Mr. Bailey's claim had merit.

12 12. Home Depot violated § 4311 of USERRA by terminating Mr. Bailey's  
13 employment due to his military obligations.

14 13. Home Depot's violation of USERRA was willful. Managers who decided to  
15 terminate Mr. Bailey and who influenced the decision to terminate him knew or showed reckless  
16 disregard for whether their conduct violated USERRA.

17 14. Because of Home Depot's conduct, Mr. Bailey suffered monetary damages,  
18 including lost wages and benefits, in an amount to be proven at trial.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Mr. Bailey prays that the Court enter judgment against Home Depot and,  
21 further, that the Court:

22 a. declare that Home Depot's termination of Mr. Bailey's employment was in  
23 violation of § 4311 of USERRA;

24 b. require that Home Depot comply with USERRA by paying Mr. Bailey all  
25 amounts due to him for his loss of wages and benefits caused by Home Depot's violation of  
26 USERRA;

27 c. declare that Home Depot's violations of USERRA were willful;

1 d. order that Home Depot pay Mr. Bailey as liquidated damages an amount equal to  
2 the amount of his lost wages and other benefits suffered by reason of Home Depot's willful  
3 violation of USERRA;

4 e. enjoin Home Depot from taking any action against Mr. Bailey, or any other  
5 military service member, that fails to comply with the provisions of USERRA;

6 f. award Mr. Bailey prejudgment interest on the amount of lost wages and benefits  
7 found due;

8 g. order that Home Depot reinstate Mr. Bailey to an appropriate position; and

9 h. grant such other and further relief as may be just and proper.

10 **JURY DEMAND**

11 Plaintiff hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the  
12 Federal Rules of Civil Procedure.

13 DATED: April 5, 2012

14 THOMAS E. PEREZ  
15 Assistant Attorney General  
16 Civil Rights Division

ANN BIRMINGHAM SCHEEL  
Acting United States Attorney  
District of Arizona

17 BY:  
18 /s/ Delora L. Kennebrew  
19 DELORA L. KENNEBREW  
20 Chief  
21 United States Department of Justice  
22 Civil Rights Division  
23 Employment Litigation Section

BY:  
/s/ Sheridan L. England  
Sheridan L. England  
Assistant U.S. Attorney

24 /s/ Karen D. Woodard  
25 KAREN D. WOODARD  
26 Deputy Chief  
27 United States Department of Justice  
28 Civil Rights Division  
Employment Litigation Section

/s/ Allan K. Townsend  
ALLAN K. TOWNSEND  
Senior Trial Attorney  
United States Department of Justice  
Civil Rights Division  
Employment Litigation Section

Attorneys for Plaintiff Brian Bailey