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19 Attorneys for Plaintiff

20 **IN THE UNITED STATES DISTRICT COURT**
21 **FOR THE EASTERN OF WASHINGTON**

22 J. MITCH HALL and NATHAN
23 KAY,

24 Plaintiffs,

25 v.

L-3 COMMUNICATIONS
CORPORATION; and KATHY
HOLLAND and CHRIS ROOT,
individually.

Defendant.

NO. 2:15-cv-231

COMPLAINT FOR
VIOLATIONS OF USERRA
AND DEMAND FOR TRIAL
BY JURY

**EXEMPT FROM FILING
FEES UNDER 38 U.S.C. §
4323(h)(1)**

1 COMES NOW Plaintiffs, Joseph Mitch Hall and Nathan Kay, through
2 their attorneys, and alleges:
3

4 I. PARTIES AND JURISDICTION

5 1.1 Plaintiff JOSEPH "MITCH" HALL (Mr. Hall) resided in Spokane,
6 Washington during all times relevant to this case.

7
8 1.2 Plaintiff NATHAN KAY (Mr. Kay) resided in Spokane, Washington during
9 all times relevant to this case.

10 1.3 Defendant L-3 COMMUNICATIONS, CORP. (L-3) is a Delaware
11 corporation that is licensed to conduct business in this District, maintains a place
12 of business within this judicial district, and is an "private employer" as defined by
13 38 U.S.C. § 4323(i).

14
15 1.4 Defendant, CHRIS ROOT, is a Chief Pilot at L3, a supervisor of Mr. Hall,
16 had control of the employment opportunities of Mr. Hall and Mr. Kay, was a
17 primary decision maker regarding Defendants' violation of both Plaintiffs' rights,
18 and for the purposes of 38 U.S.C. § 4303(4) is an employer.

19
20 1.5 Defendant, KATHY HOLLAND, is a Chief Scheduler at L3, had control of
21 the employment opportunities of Mr. Hall, was a primary decision maker
22 regarding Defendants' violation of both Plaintiffs' rights, and for the purpose of
23 38 U.S.C. § 4303(4) is an employer.
24
25

1 1.6 The Federal Court for Eastern District of Washington has jurisdiction over
2 this matter under 38 U.S.C. § 4323(b)(1)-(3) and 28 U.S.C. § 1331.

3 1.7 Venue is proper in this district under 38 U.S.C. § 4323(c)(1)-(2) because the
4 Defendant conducts business in this judicial district. This Court has personal and
5 subject matter jurisdiction.
6

7 II. FACTS

8 2.1 Plaintiffs incorporate the above paragraphs.

9 2.2 At all times relevant hereto, L-3 maintained policies that prohibit unlawful
10 discrimination.
11

12 2.3 To the extent that Defendant's alleged application of any contract,
13 agreement, collective bargaining agreement, policy or practice of the Defendant
14 constitutes any limitation on Plaintiffs' rights under USERRA, it is illegal, null
15 and void, inapplicable and of no force or effect pursuant to 38 U.S.C. § 4302.
16

17 (Mitch Hall)

18 2.4 Mr. Hall is a veteran of the U.S. Air Force and Washington Air National
19 Guard.
20

21 2.5 Mr. Hall currently serves with the Washington Air National Guard and did
22 so at all times relevant to this lawsuit.

23 2.6 L-3 hired Mr. Hall in July 2013 to work as a pilot in L-3's S4 Program.
24
25

1 2.7 The S4 Program provides contract aviation support of U.S. Government
2 operations in Afghanistan.

3 2.8 Playing roles in Mr. Hall's employment with L-3 were Kathy Holland, the
4 L-3 S4 Program's "Chief Scheduler", Mark Barreault and Dave Akers, individuals
5 who formerly (Barreault) and currently (Akers) serve as the S-4 Program's
6 "Program Manager", Chris Root, the S4 Program's "Chief Pilot", Alan Campbell,
7 one of the S4 Program's two "Lead Pilots," and Randall Gladney, the S-4
8 Program's "Site Lead."
9

10
11 2.9 As the Chief Pilot, Mr. Root hires people into the S4 Program and works
12 with Kathy Holland in that capacity.

13 2.10 As the lead, Pilot Mr. Campbell is in charge of day-to-day scheduling with
14 regard to the S4 Program's operations in Afghanistan. Lead Pilots report to the
15 Chief Pilot and the Chief Pilot reports to the Program Manager.
16

17 2.11 Pilots employed with the S4 program rotate from their homes of record
18 (Spokane, in Mr. Hall's case) to Afghanistan to perform their duties as
19 government aviation contractors and, when their tour (which spans one to three
20 months) ends, rotate home and take leave until the next tour begins.
21

22 2.12 At times, however, the U.S. Armed Services activates individuals, like Mr.
23 Hall, for military duty which, in turn, makes it difficult for L-3 to schedule pilots
24 for its overseas rotations.
25

1 2.13 Because military reserve activations sometimes cause L-3 S4 Program
2 managers difficulty in scheduling, those managers openly exhibit hostility towards
3 employees who are members of the military reserve.

4 2.14 During a September 2012 L-3 new pilot orientation session in Greenville,
5 Texas Mr. Berrault asked new L-3 employee, Justin Bridges-Crawford (a newly
6 hired L-3 pilot who previously served in the U.S. Air Force) whether he
7 (Crawford) was in the military reserves. When Mr. Bridges-Crawford replied
8 “no” Mr. Berrault said “reservists are always trying to get over and get out of
9 work.”
10
11

12 2.15 In August 2013, during Mr. Hall’s L-3 new pilot orientation session, Mr.
13 Hall informed Ms. Holland that he (Hall) had a military reserve obligation with
14 the Air National Guard. In response Ms. Holland angrily remarked “you’re one of
15 those Guard guys who gets to go home whenever he wants.”
16

17 2.16 Ms. Holland, in retaliation for Mr. Hall informing her of his military
18 commitment, delayed Mr. Hall’s processing into the L-3 program which, in turn,
19 caused Mr. Hall to lose pay.
20

21 2.17 By way of comparison, upon information and belief, the other seven non-
22 military reserve pilots in Mr. Hall’s new employee orientation class were allowed
23 to wait for their rotation to begin *while* collecting pay whereas Mr. Hall *was not*
24 afforded pay while he waited for his rotation to begin.
25

1 2.18 During 2013 Mr. Hall's Air National Guard service did not affect Mr.
2 Hall's L-3 schedule as he was able to perform military duty during times when he
3 was not in Afghanistan with L-3.

4 2.19 During 2014, however, Mr. Hall's military service affected his work
5 schedule.
6

7 2.20 On or about October 10, 2014, Mr. Hall informed L-3 of upcoming
8 (December 2014 – January 2015) military duty.

9 2.21 Mr. Hall's orders for the above timeframe began on or about December 6,
10 2015 and ran through January 31, 2015.
11

12 2.22 Mr. Hall served honorably during the above-referenced timeframe.

13 2.23 On or about December 22, 2014, Mr. Hall texted Mr. Root, requested re-
14 employment, and informed Mr. Root that he (Hall) would be able to be on-site
15 February 5, 2015.
16

17 2.24 On January 2, 2015, Mr. Hall emailed Ms. Holland and requested to return
18 to work on February 5, 2015. In that email request Mr. Hall informed Ms.
19 Holland that his Air National Guard unit had been overwhelmed by non-forecast
20 deployments.
21

22 2.25 On January 6, 2015, Ms. Holland informed Mr. Hall that L-3 was "very
23 short on pilots" in January – February 2015 and stated L-3 needed Mr. Hall "on
24 site next week."
25

1 2.26 On January 6, 2015, Mr. Hall informed Ms. Holland that his military orders
2 would not end until January 31, 2015.

3 2.27 On January 15, 2015, Mr. Hall again requested re-employment and, that
4 same day, Ms. Holland informed Mr. Hall that she was “waiting PM approval on a
5 30 day rotation” and stated she did not ‘have any manning needs for the month of
6 March so I can’t send you out there for 60 days.”

7 2.28 On, at least, January 21, 23 and 26th, Mr. Hall requested, through Mr. Root,
8 that he be re-employed with L-3.
9

10 2.29 On January 26, 2015, Mr. Root rejected Mr. Hall’s request for
11 reemployment saying that he was “not able to get” Mr. Hall’s “tour approved.”
12

13 2.30 However, as of January 26, 2015, at least three L-3 pilot openings existed
14 for which Mr. Hall was qualified.
15

16 2.31 In early February 2015 Justin Bridges-Crawford, one of Mr. Hall’s L-3 S4
17 co-worker pilots, asked Mr. Campbell why Mr. Hall was not at work.

18 2.32 Mr. Bridges-Crawford asked that question because the S4 Program was
19 short on personnel and working additional hours.
20

21 2.33 For example, S4 pilot Greg Lufker had been sent home for unspecified
22 reasons, S4 pilot Mike Day quit, and the S4 Program’s hours were increased due
23 to another L3 program’s in-country requirements in Afghanistan.
24

1 2.34 Mr. Bridges-Crawford, in Mr. Campbell's office, said words to the effect of
2 "why don't we bring Mitch out here." To that Mr. Campbell replied "Mitch is all
3 about Mitch...because Mitch went on military orders when we needed him around
4 for the holidays." Mr. Bridges-Crawford informed Mr. Campbell that Mr. Hall
5 lost money because of his holiday military duty and informed Mr. Campbell that
6 "Mitch is ready to come to Afghanistan" because he is "off military orders."
7

8 2.35 Mr. Campbell replied "just because Mitch gets off orders doesn't mean he
9 can come back to work here just because he wants to."
10

11 2.36 As of February 12, 2015, L-3's website reflected at least three L-3 pilot
12 openings in Afghanistan.

13 2.37 Mr. Hall continued to request re-employment with L-3, and, during that
14 process gave L-3 notice of additional upcoming military obligations. To wit:
15

16 **From:** mitch hall [mailto:jmitchhall@gmail.com]
17 **Sent:** Wednesday, April 29, 2015 8:28 PM
18 **To:** Holland, Kathy @ AS - C3ISR
19 **Cc:** Root, Chris @ AS - C3ISR
20 **Subject:** my revised rotations

21 Hi Kathy,

22 I had a couple of questions regarding my upcoming rotations. It
23 looks like both of my next two R&R's are short by 9 and 11
24 days. Since I require 60 days at home to maintain my currencies
25 with the ANG, shorting those R&R's makes it very difficult to
keep up with my obligations here. I don't mind extending for you
anytime you need but I really do need to have a full 60 when I'm
home.

1 Thanks for your understanding.

2 Mitch

3
4 2.38 In response to Mr. Hall's email Mr. Root replied:

5 **From:** <Chris.Root@l-3com.com>

6 **Date:** April 30, 2015 at 8:09:23 AM PDT

7 **To:** <jmitchhall@gmail.com>, <Kathy.Holland@l-3com.com>

8 **Cc:** <David.Akers@l-3com.com>

9 **Subject: RE: my revised rotations**

Hi Mitch,

10 We will do our best to help you schedule your guard unit
11 responsibilities but there are company scheduling goals as well.
12 We do see ourselves as your primary employer. We have a legal
13 obligation and a corporate policy to adjust our schedules based on
14 the Military Orders you receive but not every convenient unit
15 activity available. We also have a Program Policy to rotate the
16 employees that work the Christmas holiday each year. In order to
17 accomplish that goal, we do have to adjust the 60/60 rotations up
18 to 10 days each rotation, as I tell every applicant in the telephone
19 interview. If we adjust your schedule out for straight 60 day R and
20 R's you would be stuck in a schedule that locks you in to working
21 Christmas every year, which is not our goal. At this point, we will
22 not be adjusting your current schedule based on Military
23 responsibilities without receiving orders from the Government.

Thanks for your understanding,

20 Chris Root

21 Chief Pilot – S4

22 L3 Communications

23 C³ ISR Services

24 Chris.root@l-3com.com

25 O: (469) 698-8206

M: (903) 217-9572

1 2.39 Under USERRA all Mr. Hall has to do is provide simple notice of his
2 military obligations. 20 C.F.R. §1002.85(c). As such, L-3's refusal to
3 accommodate Mr. Hall's schedule without receipt of military orders violates
4 USERRA.

5
6 2.40 Although L-3 professes to afford pilots a 10 days per year "differential pay"
7 bonus (which covers the difference between a service-members lower paying
8 military job and his or her higher paying L-3 job), L-3 has not paid that benefit to
9 Mr. Hall.

10
11 2.41 Upon information and belief, the U.S. Government (as is standard practice
12 with certain DoD contracts) reimburses and/or funds L-3 the 10 days per year
13 "differential pay." Or, put differently, L-3 does not pay its military reserve
14 employees the 10/day per year differential pay out of its own bottom line.

15
16 2.42 L-3 did not employ Mr. Hall for the February – April 2015 rotation even
17 though work was available.

18 2.43 L-3 did re-employ Mr. Hall on or about May 12, 2015.

19
20 2.44 However, L-3's re-employment of Mr. Hall in May 2015 does not cure its
21 February 2015 USERRA violation as regulations governing USERRA require an
22 employer to "promptly" re-employ an employee within, at the latest, 14 days of
23 that employee's request for re-employment.
24
25

1 2.45 Had Mr. Hall not been called to military duty he would have been promoted
2 to a “Safety Officer” position, which, in turn, would have increased Mr. Hall’s
3 monthly pay approximately \$60.00/day.

4 2.46 Randall Gladney, the S-4 Program Site Lead, told Mr. Hall (in the early-
5 July 2015 timeframe) that Mr. Hall did not get the Safety Officer promotion
6 because Mr. Hall was “not reliable” given that Mr. Hall was gone too much
7 because of his military obligations.
8

9
10 **(Nathan Kay)**

11 2.47 On or about October 3, 2014 Mr. Kay applied, online, for employment with
12 L-3 as a “Basic Pilot.”

13 2.48 During that timeframe Benjamin Jones, a pilot in Mr. Kay (and Mr. Hall’s)
14 Air National Guard unit also applied for employment with L-3 as a pilot.
15

16 2.49 On his online application Mr. Kay, who exceeded the minimum
17 qualifications for the job, noted that he was a member of the Washington Air
18 National Guard.
19

20 2.50 Upon information and belief, Mr. Jones also exceeded the minimum
21 qualifications for the L-3 pilot job for which he applied.

22 2.51 On December 22, 2014, Mr. Hall (who is in the same Air National Guard
23 unit as Nate Kay) asked Mr. Root whether he (Root) had reviewed Nate Kay’s
24 resume.
25

1 2.52 Upon information and belief, both Mr. Campbell, and Ms. Holland
2 considered Mr. Kay's employment application but rejected it, in part, because of
3 Mr. Kay's reserve military status.

4 2.53 As of January 13, 2015, at least nine pilot openings existed at L-3, all of
5 which Mr. Kay (and Mr. Jones) was qualified to fill.

6 2.54 As of February 17, 2015, the Basic Pilot position remained open.

7 2.55 L-3 never employed Mr. Kay.

8 2.56 L-3 never employed Mr. Jones.

9
10 2.57 Although required by federal law, 38 U.S.C. § 4334, L-3 does not maintain
11 (at the appropriate workplaces) the federally required poster that informs
12 employee of their rights, and an employer's obligations, under USERRA.
13

14 2.58 At all times relevant hereto, L-3 had a duty to conduct itself in compliance
15 of the law, including the USERRA and ensure its agents followed the Act. The
16 above actions by L-3, and its agents breached those duties and are the proximate
17 cause of Plaintiffs' damages.
18

19
20 *////*

21 *////*

22 *////*

23 *////*
24
25

III. CAUSES OF ACTION

1
2 2.59 Plaintiff re-alleges the above paragraphs.

3 **(Count 1 – Violation of USERRA 38 U.S.C. § 4312, 4313, 4316, & 4318 –**
4 **Plaintiff Hall)**

5 2.60 In order to prevail on a USERRA re-employment claim an employee must
6 give notice of his military obligation, serve honorably, serve less than five years,
7 and give notice of his or her intent to return to work.
8

9 2.61 Mr. Hall gave L-3 notice of his military obligation in October 2014.

10 2.62 Mr. Hall’s period of military service (December 6, 2014 – January 31,
11 2015) was less than five years.
12

13 2.63 Mr. Hall served honorably during the above timeframe.

14 2.64 Mr. Hall gave L-3 notice of his intent to return to work on, among other
15 days, December 22, 2014, January 2, 15, 21, 23 and 26, 2015.
16

17 2.65 Upon Mr. Hall’s satisfying of USERRA’s re-employment criteria L-3 was
18 required to re-employ Mr. Hall in either his (a) pre-deployment position (b) a
19 position similar the pre-service position in like seniority, status, and pay, or (c) the
20 next closet position.
21

22 2.66 By failing to promptly re-employ Mr. Hall in February 2015, L-3 violated
23 USERRA’s re-employment statute.
24
25

1 2.67 The Defendant violated 38 U.S.C. § 4318, among other ways, by denying
2 Mr. Hall the right to make contributions to a retirement plan and by failing to give
3 timely and adequate notice to the plan administrator as required under the
4 USERRA.

5
6 2.68 The Defendant violated 38 U.S.C. § 4316, among other ways, by denying
7 Mr. Hall the seniority (and-non seniority) benefits given by the company to his
8 non-military peers such as, without limitation, prompt reemployment of similarly
9 situated disabled personnel as defined under the Family Medical Leave Act.

10
11 **(Count 2 – Violation of USERRA 38 U.S.C. § 4311(a)&(b) – Plaintiffs Hall**
12 **and Kay)**

13 2.69 Under USERRA an employee’s military status cannot serve as a motivating
14 factor in an adverse employment decision. Adverse employment decisions
15 include, without limitation, failure to hire, failure to promptly re-employ, and/or
16 failure to afford an employee (or prospective employee) any benefit of
17 employment.
18

19 2.70 Under USERRA an employer cannot retaliate against an employee, or third
20 party, who attempts to enforce or exercises any right set out under USERRA.

21
22 2.71 L-3 violated USERRA’s anti-discrimination statute by using Mr. Kay’s Air
23 National Guard status as a motivating factor in deciding not to hire him.

1 2.72 L-3 violated USERRA's anti-discrimination statute by failing to promptly
2 re-employ Mr. Hall in February 2015, by failing to pay Mr. Hall his differential
3 pay, by not promoting Mr. Hall to "Safety Officer", by delaying Mr. Hall's
4 accession into the L-3 program and by not paying him during that timeframe
5 while his similarly situated non-military peers received payment, and by refusing
6 to adjust Mr. Hall's rotation schedule in violation of 20 C.F.R. §1002.85(c).
7

8 2.73 L-3 violated USERRA's anti-retaliation statute by delaying Mr. Hall's
9 accession into the L-3 program (and by not paying him during the delayed entry)
10 after Mr. Hall exercised his right under USERRA in August 2013 by informing
11 Ms. Holland of his military obligation.
12

13 2.74 As a result of Defendants unlawful conduct in violation of USERRA and
14 the necessity of this action to seek a remedy, Mr. Hall fears further retaliation
15 against his employment rights by Defendants or its managers, directors or
16 employees. Therefore, the employment relationship that Mr. Hall enjoyed at 1-3
17 prior to the events giving rise to this action is irreparably damaged through no
18 fault of his own.
19
20

21 ////

22 ////

23 ////

24

1 **(Count 3 – Violation of the Washington Law Against Discrimination**
2 **(WLAD) – Plaintiffs Hall & Kay)**

3 2.75 The WLAD bars an employer from discriminating against an employee on
4 account of that employee’s military or veteran status.

5 2.76 Mr. Kay’s military/veteran status was, for the reasons set out above, a
6 substantial factor in L-3’s decision not to employ him.

7 2.77 Mr. Hall’s military/veteran status was, for the reasons set out above, a
8 substantial factor in L-3’s decision to, among other things, delay his accession into
9 the company (without pay), deny his differential pay, and delay Mr. Hall’s re-
10 employment with L-3.
11

12 **(Claim for Liquidated Damages)**

13 2.78 At all relevant times hereto L-3 maintained contracts with the United States
14 Government which required it to follow the requirements and provisions of 38
15 U.S.C. § 4212.
16

17 2.79 The L-3 Managers and Directors who had responsibly over the employment
18 decisions at L-3 during the time frame alleged in this complaint had access to the
19 requirements imposed upon employers under the USERRA, including, but not
20 limited to, posted USERRA workplace notices and L-3’s applicable employment
21 policies or procedures.
22
23
24
25

1 2.80 The persons charged with employment related decision at L-3 during the
2 time frame alleged in this complaint were familiar with the requirements imposed
3 upon employers under the USERRA.

4 2.81 The Defendant either knew or showed reckless disregard for whether its
5 conduct was prohibited under the provisions of USERRA, and its conduct was
6 willful as defined by 38 U.S.C. § 4323(d), 20 C.F.R. § 1002.312(c), because it
7 was given notice that its intended actions violated the law and the Defendant
8 carried out said illegal conduct with knowledge and responsibility.
9
10

11 **III. PRAYER FOR RELIEF**

12 3.1 Plaintiffs respectfully demand a jury trial as to the USERRA and state law
13 claims and further to be awarded compensation for all injury and damage suffered.
14

15 To wit:

16 a. both economic and non-economic damages in the amount
17 to be proven at trial including back pay, front pay, lost benefits of
18 employment, negative tax consequences of any award;

19 b. liquidated damages, exemplary damages, and punitive
20 damages as provided by law; and,
21

22 c. reasonable attorney and expert fees, and costs, pursuant
23 to 38 U.S.C. § 4323 and as otherwise provided by law.
24
25

1 3.2 Under USERRA, a court may order equitable remedies, including
2 reinstatement and recoupment of any loss of wages or benefits. 38 U.S.C. §
3 4323(d)(1)(A, B).

4 3.3 USERRA also empowers a court to use “its full equity powers,
5 including temporary or permanent injunctions, temporary restraining orders,
6 and contempt orders, to vindicate fully the rights or benefits” of the service
7 member. *Id.* § 4323(e). A court may award the prevailing party reasonable
8 attorneys’ fees, expert witness fees, and other litigation expenses. *Id.* §
9 4323(h)(2).
10
11

12 3.4 Based on the violations discussed previously, Plaintiffs asks the Court for
13 the following:

14 a. Declare that Defendant’s failure to promptly reemploy
15 Plaintiff Hall and to employ Plaintiff Kay, in part because of their
16 military service, was unlawful and violated USERRA, 38 U.S.C. §
17 4311(a);
18

19 b. Declare that Defendant’s failure to promptly employ Plaintiff
20 Hall partly because he took action to enforce protections afforded to
21 him under USERRA is a retaliatory action in violation of USERRA,
22 38 U.S.C. § 4311(b);
23
24
25

1 c. Declare that Defendant's failure to reemploy Plaintiff Hall
2 was unlawful and violated USERRA 38 U.S.C. §§ 4312, 4313;

3 d. Declare that Defendant's denial of Mr. Hall the right to
4 make contributions to a retirement plan, and failure to give timely and
5 adequate notice to the plan administrator as required under the
6 USERRA was unlawful and violated USERRA 38 U.S.C. § 4318;

7 e. Declare that Defendant's violations of USERRA were willful
8 pursuant to, 38 U.S.C. § 4323(d)(1)(C);
9

10 f. Reinstate Plaintiffs to positions within L-3 had Defendant not
11 violated USERRA;
12

13 g. Order Defendant to pay Plaintiffs' lost wages incurred and
14 the value of benefits lost, including lost retirement contributions;
15

16 h. Order Defendant to pay prejudgment interest on the amount
17 of wages and lost benefits found due;

18 i. Order Defendant to pay liquidated damages in the amount of
19 lost wages calculated in Paragraph 4.6(g), pursuant to 38 U.S.C. §
20 4323(d)(1)(C); and
21

22 j. Order such other relief as may be just and proper.
23

24 DATED this 3rd day of September 2015.

25 /s Matthew Z. Crotty

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