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CV'11 - 1320 PK

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

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PORTLAND DIVISION

MATTHEW KING,

Civil No. **CV'11-1320** . **PK**

Plaintiff,

COMPLAINT

v.

LOWE'S,

**Uniformed Services Employment and
Reemployment Rights Act of 1994
38 U.S.C. §§ 4301 - 4335**

Defendant.

DEMAND FOR JURY TRIAL

Plaintiff, Matthew E. King ("King"), by the undersigned attorneys from the U.S.

Department of Justice pursuant to 38 U.S.C. § 2022, alleges the following:

1. This is a civil action brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 - 4335 ("USERRA").

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 38 U.S.C. § 4323(b).
3. Venue is proper in this district under 38 U.S.C. § 4323(c)(1) and 28 U.S.C. § 1391(b). Defendant, Lowe's, is a company that maintains a place of business in this judicial district. Additionally, a substantial part of the events giving rise to the claim occurred in this district.

CLAIM FOR RELIEF

4. In April 2008, King was hired by Lowe's at its Regional Distribution Center in Lebanon, Oregon for the position of "team member." King's duties included being a fork-lift operator and unloading of heavy items from trailers.
5. At the time of his hire by Lowe's, King was a member of the Army National Guard ("Guard"). On or about July 2008, King reported to Lowe's that his Guard unit would be deployed to Iraq in the Spring of 2009. In September 2008, King provided Lowe's a copy of his military orders which activated him to begin pre-deployment training in Georgia.
6. King left his employment at Lowe's in September 2008 and began military training in Georgia. King was deployed to Iraq on May 2, 2009. He returned to the United States on April 15, 2010, but remained on active military orders until May 21, 2010 and was then honorably discharged from his duties.
7. King's period of military service was more than 180 days.
8. On or about between May 28, 2010 and May 30, 2010, King sought unemployment benefits from the state of Oregon on the basis of his discharge from federal military service, and submitted a copy of his military orders in support of his claim to the Oregon Employment Department (OED).
9. King later learned that OED denied unemployment benefits because he had taken vacation instead of actively seeking work. King did not receive any unemployment benefits in May or June 2010, and did not take any steps to dispute that determination or initiate further contact with OED.

10. In June 2010, King received a letter from Lowe's notifying him he had 90 days to return to work. On or about June 7, 2010, King contacted Lowe's and requested to return to work. King returned to work at Lowe's within 90 days of being discharged from his military service.
11. On August 11, 2010, King reported to the Human Resources Office at Lowe's at the request of management. In a meeting at the Human Resources Office, he was accused being dishonest by having claimed unemployment benefits on the basis of being a temporary worker, and having received unemployment benefits while he was employed by Lowe's. Despite King's protests to this accusation, he was terminated from his job on the spot, but was told he could have his job back if he had documentation to prove that Lowe's was wrong.
12. Promptly after being escorted from Lowe's property on August 11, 2010, King went to the Oregon Employment Office in Albany, Oregon. King requested and received documentation, dated August 11, 2010, displaying that he had received no earnings from OED, as well as showing that the benefit claim type King had made included the code "UCX." King also obtained printed documentation from the internet which further clarified that a "UCX" claim signifies eligibility for unemployment under 20 C.F.R. 614.3 based upon federal military service.
13. Within a few hours of being terminated, on August 11, 2010, King returned to Lowe's with this documentation, but was prohibited from entering the property. King provided the paperwork to security personnel.
14. A week after his termination, King received his final paycheck from Lowe's by

certified mail. Lowe's made no further contact with King.

15. King filed a complaint under USERRA with the United States Department of Labor on September 9, 2010.
16. The United States Department of Labor's Veterans Employment and Training Service ("VETS") conducted an investigation, determined that King's claim had merit, and, upon King's request, referred the matter to the Attorney General.
17. Lowe's has violated Section 4316 of USERRA by discharging King within one year of reemployment upon his return from military service.
18. Lowe's actions were willful under 38 U.S.C. § 4323(d)(1)(C).
19. Because of Lowe's conduct, King has suffered monetary damages, including lost benefits, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, King prays that the Court enter judgment against Lowe's as follows:

- A. Declare that Lowe's discharge of King without cause following his military training was unlawful and in violation of USERRA;
- B. Order Lowe's to fully comply with the provisions of USERRA, and pay King for lost earnings, with interest, and benefits suffered by reason of Lowe's failure or refusal to comply with USERRA;
- C. Order Lowe's to pay King liquidated damages;
- D. Order Lowe's to fully comply with the provisions of USERRA by offering to re-employ King, removing all accusations of dishonesty concerning

King from Lowe's employment records, and placing King in a position with the appropriate seniority, status and compensation as that he would have attained had he remained employed continuously with Lowe's until the present, including during the time of his military training;

- E. Enjoin Lowe's from failing to comply in the future with all provisions of USERRA; and,
- F. Grant such other and further relief as may be just and proper together with the costs and disbursements of this lawsuit.

JURY DEMAND

Matthew King hereby demands a trial by jury of all issues so triable.

Dated: November 3, 2011

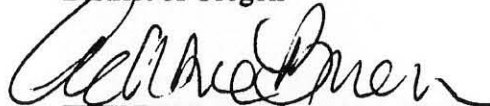
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