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		STATES DISTRICT COURT STRICT OF ARIZONA
	TOKTILDI	
K	Lyle A. Sharp,)
	Plaintiff,	
	v.	COMPLAINT
	erviceMaster 24-Hour; Gregory Cullar,) COMPLAINT
	— 0 - 1)
	Defendants.))
	D1_!tiff W_1 A G1 ///G1 S	2) 1411111
	Plaintiff, Kyle A. Sharp ("Sharp"	"), by the undersigned attorneys, alleges:

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1. This civil action is brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301-4333 ("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)(2) because Defendant ServiceMaster 24-Hour ("ServiceMaster") operates as a business in Scottsdale, Arizona, within this judicial district, and Defendant Gregory Tullar ("Tullar") resides within this judicial district. Additionally, venue is proper under 28 U.S.C. § 1391(b) because the events giving rise to this lawsuit occurred in this judicial district.

PARTIES

- 4. Sharp resides in Glendale, Arizona, within the jurisdiction of this Court.
- 5. ServiceMaster operates within the jurisdiction of this Court and is an employer within the meaning of 38 U.S.C. § 4303(4).
- Tullar, ServiceMaster's owner and operator, resides in Scottsdale, Arizona, 6. within the jurisdiction of this Court, and is an employer within the meaning of 38 U.S.C. § 4303(4).

CLAIM FOR RELIEF

- 7. In or around August 2009, Sharp was hired by Tullar to work as Crew Chief for ServiceMaster in and around Scottsdale, Arizona.
- 8. On or about February 25, 2010, Sharp enlisted in the Army National Guard and was given orders to report for active military training on May 3, 2010.
- 9. On or about February 25, 2010, Sharp informed Tullar of his military enlistment and orders to report for active military training on May 3, 2010.
- 10. On or about April 5, 2010, Sharp gave Tullar a letter to notify him that his last day of work prior to leaving for active duty would be April 28, 2010.
 - 11. On November 16, 2010, Sharp sent Tullar an email notifying Tullar that he

would be returning from active military duty on November 21, 2010, and stating that he would like to "com[e] back to work for [Tullar] full time if the position is there." Tullar responded, stating that he was implementing a new program at ServiceMaster and thought that Sharp would be a good fit for a new position. Sharp was open to this option and said that he would be in touch.

- 12. On November 22, 2010, Sharp completed his Army National Guard training, was released from active duty, and contacted Tullar to let him know he was returning from training. Tullar told Sharp to contact him when he returned.
- 13. On November 29, 2010, Sharp met with Tullar, who stated that a new crew chief had replaced Sharp while he was on active military duty and would continue in that position. Tullar described a new position to Sharp, stated that he wanted Sharp to work for him but that he did not know if he could afford him, and asked Sharp to get back to him with a salary requirement within a week. The following week, Sharp notified Tullar that he was seeking a take-home salary comparable to the salary he had earned as Crew Chief. Tullar informed Sharp the following week that he could not afford to pay him that salary; Tullar provided no counteroffer and did not reemploy Sharp in any position.
- 14. On January 5, 2011, Sharp filed a complaint against ServiceMaster under USERRA with the Veterans' Employment and Training Service ("VETS") of the United States Department of Labor.
- 15. The Department of Labor Solicitor's Office concluded that the USERRA complaint Sharp filed against ServiceMaster had merit and referred the matter to the United States Department of Justice.
- 16. ServiceMaster and Tullar violated Sections 4312 and 4313 of USERRA by failing to reemploy Sharp in either the position he would have held had his employment not been interrupted by military service, or a position of like seniority, status and pay.
- 17. As a result of ServiceMaster and Tullar's failure to reemploy Sharp, Sharp has suffered a loss of earnings and other benefits of employment.
 - 18. All conditions precedent have occurred or have been performed.

PRAYER FOR RELIEF 1 WHEREFORE, Sharp prays that this Court enter judgment against ServiceMaster 2 and Tullar and all persons in active concert or participation with them, as follows: 3 19. Declare that ServiceMaster and Tullar's failure to reemploy Sharp was 4 unlawful and in violation of USERRA; 5 20. Order that ServiceMaster and Tullar fully comply with the provisions of 6 USERRA by reemploying Sharp and paying him for his loss of earnings and other 7 benefits suffered by reason of ServiceMaster and Tullar's failure to comply with 8 USERRA's provisions; 9 21. Enjoin ServiceMaster and Tullar from taking any action against Sharp that 10 fails to comply with USERRA's provisions; 11 22. Award Sharp prejudgment interest on the amount of lost compensation 12 found due; and 13 Grant such other and further relief as may be just and proper. 23. 14 15 Date: September 22, 2011 16 Respectfully submitted, 17 THOMAS E. PEREZ 18 Assistant Attorney General 19 LORETTA KING Deputy Assistant Attorney General 20 /s Delora L. Kennebrew By: 21 DELORA L. KENNEBREW (GABN 414320) 22 Chief 23 /s Karen D. Woodard 24 KAREN D. WOODARD (MD – No number issued) 25 **Deputy Chief** 26 /s Hilary J. Funk 2.7 HILARY J. FUNK (VABN 46872) Senior Trial Attorney 28

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