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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 MARK FARAM, an individual,
12 **Plaintiff,**
13 v.
14 MEGA INTERNATIONAL LLC, a
15 Delaware limited liability company,
16 **Defendants.**

Case No.: 2:19-cv-8936

COMPLAINT FOR DAMAGES
VIOLATIONS OF 38 U.S.C. §4301
ET SEQ;

FILING FEE WAIVED PER 38
U.S.C. § 4323(h)

DEMAND FOR JURY TRIAL

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18 Plaintiff MARK FARAM (“Plaintiff”) hereby complains against Defendant
19 MEGA INTERNATIONAL LLC, (“MEGA”) as follows:

20 **NATURE OF ACTION**

21 1. This is a civil action brought pursuant to the Uniformed Services
22 Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 et. seq.
23 (“USERRA”). It is brought by Plaintiff against Defendant MEGA.

24 **PARTIES**

25 2. Plaintiff, Mark Faram, is a citizen of the United States and a resident of
26 Norfolk, Virginia. Plaintiff was employed by MEGA by its office located at Sightline
27 Media Group, 1919 Gallows Road, Suite 400, Vienna, Virginia 22182. Plaintiff was in
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1 the Virginia Army National Guard (“VNG”) and Maryland Army National Guard
2 (“MNG”) from March 1993 through March 1996. From May 2000 through May 2006,
3 Plaintiff was in the United States Navy Reserve (“USNR”).

4 3. At all relevant times, Plaintiff was and is a qualified employee and
5 member of the uniformed services for purposes of 38 U.S.C. §4303(3), (9), and (16).

6 4. Plaintiff is informed, believes and alleges based on that information and
7 belief, that Defendant MEGA is a for-profit limited liability company organized under
8 the laws of the State of Delaware with a principal place of business at 9720 Wilshire
9 Blvd., 6th Floor, Beverly Hills, California 90212. MEGA’s agent for service of process
10 in California is Incorporating Services, Ltd, located at 7801 Folsom Blvd., Suite 202,
11 Sacramento, CA 95826. At all times relevant, MEGA was and is an employer for
12 purposes of 38 U.S.C. § 4303 (4)(A)(i) and § 4323(i).

13 5. Whenever and wherever reference is made to individuals who are not
14 named as defendants in this action, but were employees/agents of defendants, or any
15 of them herein, such individuals at all times acted on behalf of defendants named in
16 this action within the scope of their respective employments and agencies.

17 6. Whenever and wherever reference is made in this Complaint to any
18 conduct of defendants, or any of them, such allegations or references shall also be
19 deemed to mean the conduct of each defendant, acting individually, jointly and
20 severally.

21 7. Plaintiff is informed and believes, and on the basis of that information and
22 belief alleges, that at all times mentioned in this complaint, defendants were the agents
23 and employees of their codefendants, and in doing the things alleged in this complaint
24 were acting within the course and scope of that agency and employment.

25 **JURISDICTION AND VENUE**

26 8. This complaint arises under the Uniformed Services Employment and
27 Reemployment Rights Act, 38 U.S.C. §§4301-4335. The jurisdiction of this court is
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1 founded on federal question jurisdiction, 28 U.S.C. §1331, as conferred by 38 U.S.C.
2 §4323(b)(3). Venue is proper because MEGA maintains a place of business in this
3 district, as provided in 38 U.S.C. §4323(c)(2), 28 U.S.C. §1391(b).

4 9. Pursuant to 38 U.S.C. § 4323(h), “No fees or court costs may be charged
5 or taxed against any person claiming rights under [USERRA].”

6 **GENERAL FACTUAL ALLEGATIONS**

7 10. Plaintiff re-alleges and incorporates herein by reference each and every
8 allegation contained within paragraphs 1 through 9, inclusive, as though set forth at
9 length herein and made a part hereof.

10 11. Plaintiff was employed by MEGA or one of its predecessor entities as a
11 writer from May 1992 through August 2019. Plaintiff joined the VNG in 1993 and the
12 USNR in 1999. At various times between 1993 and 2006 Plaintiff performed periods
13 of military service with the VNG, MNG or USNR during his employment with
14 Defendant or its predecessor entities.

15 12. Defendants knew Plaintiff had military service obligations with the VNG,
16 MNG and USNR during his employment. In 1995 Plaintiff was called to active federal
17 duty and deployed to Bosnia-Herzegovina for three months. Upon release from active
18 duty, was re-employed by Defendant at the same position and salary.

19 13. In 2013, while working for Defendant or its predecessor entities, Plaintiff
20 applied for reinstatement to the USNR which the USNR denied due to having an
21 artificial hip, considered at the time as a condition not compatible with enlistment.
22 None of Defendant’s employees objected to Plaintiff’s application or noted any
23 potential conflict of interest during this process.

24 14. In 2018, while working for Defendant or its predecessor entities, Plaintiff
25 began the process to re-enlist on active duty in the Navy to complete the four years of
26 service necessary to qualify for retirement. In April 2019, Plaintiff took a military
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1 physical exam and in May, was given a physical fitness test. Plaintiff was told by his
2 recruiter he had passed both requirements.

3 15. As of October 2019, the Navy has yet to inform the Plaintiff if he is
4 qualified to re-enlist on active duty into the Navy due to his age of 60 years, two-years
5 shy of the age 62 mandatory retirement.

6 16. On July 31, 2019, Plaintiff received a text message from Andrew
7 Tilghman, the executive editor of the Military Times newspapers (Defendant or its
8 predecessor entity) asking Plaintiff to participate in a phone call that day. On the phone
9 call, Tilghman informed Plaintiff that his editor, Carl Prine had received a letter from
10 the Office of Personnel Management seeking to verify his employment. During the
11 subsequent phone call, Tilghman asked the Defendant the reason for the letter and if
12 he was "applying for government jobs," and wanted to know "If everything was ok."

13 17. Defendant told Tilghman that he believed the letter was sent because the
14 Navy was performing an investigation for a secret security clearance. Plaintiff then
15 detailed his efforts to re-enlist as the reason for the clearance process. Plaintiff told
16 Tilghman he had not yet been approved for re-entry by the Navy. In concluding the
17 call, Tilghman thanked Defendant for being straight-forward and made no mention of
18 any possible conflict of interest.

19 18. On August 2, 2019, Plaintiff received a text message asking him to
20 participate in a phone call at noon that day. Shortly after, Plaintiff received an email
21 with teleconference call in details. At first, Plaintiff and Mr. Tilghman were the only
22 persons on the line but were soon joined by Abigale Arellano, Senior Manager of
23 Human Resources for Defendant's parent company.

24 19. Mr. Tilghman told Plaintiff that in his opinion, he had violated the
25 company's conflict of interest policy by trying to join the Navy. Mr. Tilghman accused
26 Plaintiff of "currying favor" with then Vice Adm. Robert P. Burke, who at the time of
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1 Plaintiff's application was the chief of naval personnel, saying "you asked the chief of
2 naval personnel for waivers and that is asking for a favor."

3 20. Ms. Arellano told Plaintiff, "Think about it Mark, you are the personnel
4 reporter for Navy Times, and you are trying to join the Navy while you are covering
5 the chief of naval personnel who is in charge of recruiting. That is a violation of our
6 conflict of interest policy." Ms. Arellano then informed Plaintiff that for this reason,
7 employment was being terminated immediately and that he would be offered no
8 transition benefits except for what was required by law.

9 21. Mr. Tilghman told Plaintiff that "the newsroom is no longer comfortable
10 publishing any of your stories after what you did."

11 22. On August 6, 2019, the top story on Defendant's website carried
12 Plaintiff's byline and was there since August 5, 2019. On August 12, 2019, Defendant
13 published a magazine with the Defendant's story featured as the cover. Two other
14 Plaintiff-bylined stories appeared inside the magazine. As of Oct. 10, the stories were
15 still on the Defendant's website.

16 23. On August 6, Plaintiff received a letter from Defendant via email, offering
17 him a severance of "\$1,584 additional week's salary, less applicable taxes and
18 withholdings" should he sign a "voluntary release" that releases the company from "any
19 and all claims she (sic) has or may have against the company."

20 **Violations of 38 U.S.C. §4301 et seq.**

21 24. Plaintiff hereby alleges and incorporates all paragraphs 1-21 above by
22 reference herein.

23 25. USERRA prohibits "discrimination against persons because of their
24 service in the uniformed services." 38 U.S.C. §4301(a)(3).

25 26. Plaintiff's protected status as an applicant for enlistment with the Navy was
26 a substantial and motivating factor in Defendants' denial of Plaintiff's benefits of
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1 employment without good cause, including but not limited to, terminating Plaintiff
2 because of his service obligations

3 27. Section 4311(a) of USERRA provides, in relevant part, that a person “who
4 is a member of . . . performs, has performed . . . or has an obligation to perform services in
5 a uniformed services shall not be denied initial employment. . . *retention in employment* . . .
6 or any benefit of employment by an employer on the basis of that membership . . .
7 performance of service, or obligation.” (emphasis added).

8 28. Section 4311 (c) further provides, in relevant part, that “[a]n employer
9 shall be considered to have engaged in actions prohibited . . . if the person's
10 membership . . . or obligation for service in the uniformed services is a motivating factor
11 in the employer's action.”

12 29. Defendants, and each of them, knowingly and willfully violated USERRA
13 by, among other ways, discriminating against Plaintiff, and by denying him benefits of
14 employment, specifically terminating him, “on the basis of” his “obligation to perform
15 service in a uniformed service.”

16 30. As a direct and proximate result of the conduct of Defendants as set forth
17 in this count, Plaintiff has suffered injuries and damages including but not limited to,
18 loss of past earnings and benefits, and loss of future earnings and benefits, all to his
19 damage in an amount to be proven at trial.

20 31. Plaintiff alleges such violations of USERRA were willful and requests
21 liquidated damages in an amount equal to the amount of his lost wages and other
22 benefits pursuant to 38 U.S.C. §4323(d)(1)(C).

23 32. Pursuant to 38 U.S.C. §4323(h), Plaintiff further requests an award of
24 reasonable attorney's fees, expert witness fees, and other litigation expenses.

25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, based on the foregoing, Plaintiff prays for relief against
27 Defendant as follows:

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury of all issues triable as of right by a jury in the above action.

Respectfully Submitted,

Dated: October 17, 2019

PILOT LAW, P.C.

By: /s/ Brian J. Lawler

BRIAN J. LAWLER

Attorney for Plaintiff

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