



3. Some went so far as to corner FFPM Heckenbach at work, physically tower over him, accuse him of being insubordinate, berate him as a “little f\*\*\*ing pimp,” belittle him by screaming “we’re tired of your s\*\*t,” “tired of your f\*\*\*ing around,” and telling him that his “little f\*\*\*ing games are going to stop.”

4. The Defendants’ response to FFPM’s Heckenbach’s efforts to balance his duties in serving his country and the Department is precisely the type of conduct USERRA and the Illinois laws designed to protect servicemembers’ rights were created to prevent.

5. Defendants also repeatedly and continue to violate the Illinois law designed to ensure public employees do not take a cut in pay due to their military obligations, namely, the Illinois Military Leave of Absence Act, 5 ILCS 325/1 (hereinafter “IMLOAA”).<sup>1</sup>

6. When FFPM Heckenbach sought to stop the discrimination, retaliation, hostility, and wrongful withholding of taxpayer dollars, Defendants not only willfully refused to comply with the law, but the harassment also increased so much so that the Defendants went outside the workplace and made a series of false and misleading statements to FFPM Heckenbach’s superiors in the Army Reserve designed to damage his otherwise excellent reputation as a professional career Soldier, falsely calling him a “problem,” “disobedient,” “late,” “insubordinate,” that he “has a

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<sup>1</sup> On January 1, 2019, Illinois enacted the Illinois Service Member Employment and Reemployment Rights Act (ISERRA). In enacting ISERRA, the legislature streamlined the various job-related protections afforded to Illinois service members by consolidating those protections into the ISERRA statute and repealing the state's *Military Leave of Absence Act*, *Public Employee Armed Services Rights Act*, *Municipal Employees Military Active Duty Act*, and *Local Government Employees Benefits Continuation Act*. (defining differential compensation as pay due when the employee’s *daily rate* of compensation for military service is less than his or her daily rate of compensation as a public employee.” 330 ILCS 61/1-10) (emphasis added). The Illinois General Assembly recently reaffirmed Illinois policy to “ensure public entities are model employers of reserve components,” and that the ISERRA “shall be liberally construed so as to effectuate the purposes and provides of this Act for the benefit of the service member who has set aside civilian pursuits to serve his or her country.” 330 ILCS 61/1-5 (1)(D) and (3).

M.O.,” was “dishonest,” and that the Defendants were going to “discipline him,” all of which constitute defamation *per se*.

7. FFPM Heckenbach attempted several times to resolve these issues short of litigation, through presenting the law to Defendants, his union, through the Illinois Attorney General, and three times through pre-filing attempts in which he asked Defendants only to comply with the law, nothing more.

8. In response to his pre-filing attempts to resolve the matter, Defendants continued to disparage FFPM Heckenbach’s professionalism by perpetuating falsehoods, which gave rise to this Complaint.

9. FFPM Heckenbach respectfully seeks back pay, compensation for personal and vacation days used for military duty, interest, compensatory damages, liquated damages, attorneys’ fees, and costs of suit.

#### **NATURE OF THE CASE**

10. In addition to serving the Village of Bloomingdale, Illinois as a Firefighter and Paramedic, FFPM Heckenbach is also a Staff Sergeant (E-6) in the United States Army Reserve.

11. Mobilized from his civilian public employment to active duty in the Army where he was assigned to guard dangerous international terrorists during their prosecutions at Guantanamo Bay, Cuba, Defendants willfully refused to pay him what the law requires for public employees called to active duty.

12. Upon return from mobilization, Defendants ordered FFPM Heckenbach to perform nine days of civilian work, but refused to fully compensate him.

13. Defendants also refused to grant FFPM Heckenbach military leave for weekend drills (Reserve duty one weekend per month, scheduled one year in advance) and periodic Army

Reserve training (two weeks annual summer training), compelling him to take vacation and personal days, or arrange for another firefighter to cover his shift.

14. When FFPM Heckenbach sought compliance with Federal and state law, Defendants began a series of increasingly more severe reprisals, motivated by anti-military animus, by requiring unrealistic amounts of advance notice, substantial paperwork, pay stubs, leave forms, shifting sands requirements for monthly weekend Reserve duty schedules, all while having FFPM Heckenbach's annual Army Reserve schedule for the year ahead of time.

15. None of Defendants' demands was authorized or required by law.

16. This discrimination and retaliation resulted in a hostile work environment where harassment, derision, and marginalization of FFPM Heckenbach was authorized and encouraged.

17. Defendants went so far to repeatedly contact FFPM Heckenbach's military command and falsely spread information that he was disobedient, less than truthful, failed to follow procedure, had an "M.O.," and that he would be disciplined for not turning in departmentally-required paperwork.

18. Defendants cornered Plaintiff at work, screamed at him, physically towered over him, and called him a "little f\*\*\*ing pimp" so loudly that the entire firehouse heard the screaming.

19. The hostile and harassing work environment, motivated by anti-military animus, did not stop; rather, it increased, with additional paperwork requirements, refusals to grant military leave, and labeling FFPM Heckenbach as a "problem-child," which resulted in his becoming ostracized and not trusted as a team player, something that can prove fatal for a firefighter.

20. FFPM Heckenbach asks the Court to direct Defendants to pay him only what the law requires, stop the discrimination, end the retaliation and harassment, and compensate him for the workplace abuse and their having defamed and damaged his excellent reputation as a career

non-commissioned officer in the United States Army Reserve and professional firefighter and paramedic.

### **JURISDICTION AND VENUE**

21. This Court has jurisdiction pursuant to 38 U.S.C. § 4311 and 4323(b), and 28 U.S.C. § 1331 (Federal question). This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367 as they are part of the same case or controversy as the Federal claims.

22. Venue is proper in this judicial district under 28 U.S.C. §1391(b) and (c) because Plaintiff and all Defendants either reside in this district or have their principal place of business in this district, and all events giving rise to Plaintiff's claims occurred within this district.

### **THE PARTIES**

23. FFPM Heckenbach is an adult individual citizen of the United States, residing in Elgin, Illinois.

24. Since 2006, FFPM Heckenbach has been employed by the Village of Bloomingdale through its Fire Protection District 1.

25. FFPM Heckenbach is also a non-commissioned officer in the United States Army Reserve.

26. Presently holding the rank of Staff Sergeant (E-6), the Army has awarded him the Army Overseas Ribbon, Army Service Ribbon, Army NCO Professional Development Ribbon, Armed Forces Reserve Medal, Outstanding Volunteer Service Medal, the Global War on Terror Service Medal, the Global War on Terror Expeditionary Medal, National Defense Medal, the Good Conduct Medal, Army Achievement Medal, and the Army Commendation Medal.

27. Defendant VILLAGE OF BLOOMINGDALE is a municipality incorporated under the laws of the state of Illinois. The Village administers itself through its departments, one of which is Fire Protection District 1.

28. Defendant JEFFREY JANUS is Bloomingdale Fire Protection District 1's Fire Chief who oversees all operations of the Bloomingdale Fire Protection District 1.

29. Defendant DONALD KADERBEK was Bloomingdale Fire Protection District 1's Deputy Chief who supervised the District's Battalion Chiefs and was responsible for communications between the Battalion Chiefs and the Fire Chief.

30. Defendant CHRISTOPHER WILSON is a Battalion Chief with Bloomingdale Fire Protection District #1 and Firefighter Heckenbach's direct supervisor.

#### **STATEMENT OF FACTS**

31. The Bloomingdale Fire Protection District 1, like most fire departments, operates a shift schedule of 24 hours on duty followed by 48 hours off duty.

32. Since joining the Bloomingdale Fire Protection District 1, FFPM Heckenbach has obtained certifications in the Firefighter III Course, Firefighter Rescue Technician, Vehicle Machine Operator, Vehicle Machinery Technician, and Fire Investigator.

33. FFPM Heckenbach served on the Fire Investigation and Hazmat Team, and is currently the Coordinator for the District's Honor Guard and a member of the Water Rescue Team.

34. During his service with the Bloomingdale Fire Protection District 1, he was awarded with a Company Citation for Meritorious Service performed during a fire in 2009, and also received a Certificate of Excellence in Collaborative Care from Amita Health for services provided during an EMS call in 2016.

35. FFPM Heckenbach has satisfactorily performed his duties with Bloomingdale Fire Protection District 1.

36. As a member of the Army Reserve, FFPM Heckenbach is required to participate in monthly (one weekend) and annual training (two weeks usually during summer).

37. As a result of the needs of his military unit, and his rank as a non-commissioned officer, FFPM Heckenbach is from time-to-time required to perform additional military duties, often with short notice from his Army Reserve unit, beyond those stated in paragraph 36.

38. Between October 2014 and September 2015, FFPM Heckenbach served on active duty in response to Federal mobilization orders to Guantanamo Bay, Cuba supporting *Operation Enduring Freedom*.

39. Upon returning to civilian work in September 2015, FFPM Heckenbach worked nine days.

40. Defendants initially refused to compensate him fully for his work for those nine days.

41. Defendant CHRISTOPHER WILSON scoffed that FFPM Heckenbach's nine days of duty were "voluntary" and thus not deserving of compensation.

42. Defendants only agreed to pay FFPM Heckenbach after he asserted his rights as a service member.

43. At all times relevant, Defendants were aware that FFPM Heckenbach served in the United States Army Reserve, had "drill weekends" once per month (otherwise known as "Battle Assemblies" or "Multiple Unit Training Assemblies," or "MUTAs"), had two weeks of annual training in the summer, and was subject to mobilization to active duty.

44. The Army Reserve publishes its training schedule such that Soldiers assigned to each unit know which weekend during each month requires attendance at drill.

45. The training schedule is issued so that Soldiers know their monthly Battle Assembly weekend one year in advance.

46. FFPM Heckenbach provided Defendants with his annual Reserve Battle Assembly weekend drill schedule.

47. Defendants knew of each of FFPM Heckenbach's monthly drill weekends.

48. In February 2016, Defendants began to chastise, ridicule, and accuse FFPM Heckenbach of being less than candid about military duties.

49. Defendants began a series of increasingly more severe accusations that FFPM Heckenbach was not providing sufficient information or notice of military duties in a timely fashion.

50. At all times relevant, Defendants had no formal military leave policy.

51. Defendants to this date have no formal military leave policy.

52. Between August 2012 and October 2014, Defendants compelled FFPM Heckenbach to use personal vacation days, find another firefighter to cover his shift (trade), and use "Kelly" days to cover all military leave. (A "Kelly" day is a day off given to a municipal firefighter to reduce their hours worked in a pay period, which would otherwise lead to excess amounts of money spent on overtime.).

53. Requiring FFPM Heckenbach to use personal, vacation, trade shifts, and use "Kelly" days was unlawful in violation of USERRA, in that it violated the provision stating that a USERRA-protected employee "shall not be denied ... any benefit of employment by an employer on the basis of that employee's military service." 38 U.S.C. § 4311 (a).

54. Between November 2015 and March 2017, FFPM Heckenbach used his personal vacation days to cover weekend drills.

55. FFPM Heckenbach used a total of 20 Vacation days between 2012 and 2017, resulting in a loss of \$15,936.48 in accrued vacation wages.

56. Refusing to accept FFPM Heckenbach's annual drill weekend schedule, Defendants, motivated by anti-military animus, pressed FFPM Heckenbach between 2016 and the present for his monthly Leave and Earnings Statements (military pay voucher), Defense Finance and Accounting Service records (centralized military paymaster records), orders from his US Army Reserve Unit (orders are not given for monthly drills), an "employer letter," (a request to the Reserve command to verify military duty), a Departmental leave slip, pre-deployment checklists (medical, dental, personnel, legal, life insurance, pay, and related requirements before a Soldier can deploy which are not required for monthly drills or annual summer training), Battle Assembly schedule (monthly weekend drills when the annual schedule had been previously provided), and other documentation, none of which is required by law.

57. These unrequired and increasingly more detailed, demanding, and changing requirements were motivated by anti-military animus, discrimination, retaliation, and contributed to the hostile and harassing work environment and defamed FFPM Heckenbach as deceitful, disobedient, insubordinate – all the contrary to traits respected as a Soldier and a professional firefighter and paramedic.

58. At various times, Defendant JEFFREY JANUS refused to approve military leave without copies of military orders or FFPM Heckenbach's Leave and Earnings Statements from the US Army Reserve.

59. Motivated by anti-military animus, Defendant JEFFREY JANUS told one Bloomindale Fire Protection District Officer to “keep an eye on” FFPM Heckenbach, which was unfounded and designed to ostracize him from other personnel and defame his reputation within the Fire Protection District.

60. Defendants’ actions in March 2017 provide a representative example of the monthly ongoing violations of Federal and state law by Defendants.

61. In March 2017, Defendant JEFFREY JANUS stated that he could only approve military leave upon receipt of orders signed by the President of the United States.

62. The President of the United States does not sign orders for Army Reserve monthly battle assemblies or annual summer training.

63. Defendant JEFFREY JANUS’s statement was misleading and in violation of USERRA and the IMLOAA.

64. In March 2017, Defendant JEFFREY JANUS stated that he needed 30 days advance notice before he could lawfully approve any military leave.

65. Defendant JEFFREY JANUS’s statement was misleading and in violation of USERRA and the IMLOAA.

66. In March 2017, Defendant JEFFREY JANUS stated that he could call FFPM Heckenbach’s military command any time he wanted to state he was needed at work.

67. Defendant JEFFREY JANUS’s statement was misleading and in violation of USERRA and the IMLOAA.

68. In March 2017, Defendant CHRISTOPHER WILSON informed FFPM Heckenbach that his military leave would be granted, but unpaid.

69. Defendant CHRISTOPHER WILSON's statement was misleading and in violation of USERRA and the IMLOAA.

70. As a result, FFPM Heckenbach took a personal vacation day to cover his March 2017 drill weekend so that he could be paid.

71. Recognizing that the Defendants had no military leave policy, and that no other Reservists experienced such intense, increasing, and changing demands from their civilian employers, FFPM Heckenbach provided the law concerning notice of military duty, that prohibits discrimination based on military status, that public employees may take military leave rather than personal leave for military duty, be paid civilian salary for annual military training, and differential pay for Battle Assemblies and other training requirements.

72. But, April 2017 provides another representative example of the Defendants' unwillingness to comply with the law, anti-military animus, and continued unlawful conduct.

73. In April 2017, FFPM Heckenbach submitted paperwork requesting military leave for annual summer training.

74. In response, Defendant JEFFREY JANUS stated that he was not able to pay FFPM Heckenbach unless he found a trade to cover his shifts.

75. Defendant JEFFREY JANUS's statement was misleading and in violation of USERRA and the IMLOAA.

76. In April 2017, Defendant JEFFREY JANUS stated that the District would pay FFPM Heckenbach's civilian salary only if he forwarded his base military pay to the District and arranged his own time off for drill weekends.

77. Defendant JEFFREY JANUS's statement was misleading and in violation of USERRA and the IMLOAA.

78. For his annual military training in 2017, Defendants failed to fully compensate FFPM Heckenbach his full civilian pay as required by law.

79. Recognizing that the anti-military animus and non-compliance with the law continued, in June 2017, FFPM Heckenbach filed a “Request for Assistance” through the Illinois Attorney General’s Military & Veteran’s Rights Bureau.

80. FFPM Heckenbach requested confirmation of the Federal and state law, including the forfeiture of his military pay for Battle Assembly weekends and annual training and relief from the onerous and unlawful documentary requirements insisted upon by Defendants.

81. The Illinois Attorney General confirmed Defendants’ duties under USERRA and IMLOAA were consistent with FFPM Heckenbach’s representations to the Department.

82. However, in January 2018, Defendants, motivated by anti-military animus, contacted FFPM Heckenbach’s military chain-of-command and made material misrepresentations about his professions (firefighter and Soldier).

83. Defendant DONALD KADERABEK wrote to representatives of the US Army Reserve: “This in regards to the constant lack of notice from Sergeant Heckenbach’s request for military leave from BFPD.”

84. Defendant DONALD KADERABEK stated to representatives of the US Army Reserve, “If he continues to do so, then discipline will follow.”

85. Defendant CHRISTOPHER WILSON wrote in several texts to FFPM Heckenbach’s military chain of command, that he was “Trying to light a fire under his a\*\*,” “The pattern is blatant on his submission times,” “he thinks last minute notifications to the fire department are okay,” and “This is his M.O.,” all of which were false and denigrating FFPM Heckenbach’s professional reputation as a Soldier and firefighter paramedic.

86. Defendants complained and misrepresented to the Army that FFPM Heckenbach was not following the rules on requesting leave and had been a “problem” for years.

87. Defendants hosted a conference call with FFPM Heckenbach’s US Army Reserve Command to discuss his lack of adhering to the notification requirements set forth by the District, none of which were required by law.

88. Upon information and belief, Defendants sought to have the US Army Reserve order FFPM Heckenbach to obey the unlawful requirements of his civilian public employer rather than follow the law.

89. Defendant DONALD KADERABEK stated to FFPM Heckenbach in January 2018, immediately following the conference call “You heard it here; we’re tired of your sh\*\*. We’ve been putting up with your sh\*\* for over a year. The chief has done nothing but bend over backwards for you and all you want to do is f\*\*\* around. These f\*\*\*ing games are going to stop.”

90. Also in January 2018, Defendant DONALD KADERABEK threatened FFPM Heckenbach by physically intimidating him while screaming “Look up and look at me. You little f\*\*\*ing pimp.”

91. The discrimination, retaliation, hostility, harassment, and shifting sands requirements for military leave, pay, notice, and documentation nearly resulted in Defendant DONALD KADERABEK physically striking FFPM Heckenbach.

92. In February 2018, FFPM Heckenbach filed a grievance with his local union.

93. After the grievance, the hostility and harassment did not abate, rather, continued.

94. Defendants’ conduct set the tone that it was acceptable and authorized to belittle FFPM Heckenbach and to portray him as “a trouble-maker.”

95. Defendants' conduct resulted in stigmatizing FFPM Heckenbach as an outsider, a pot-stirrer, a trouble maker, and because Defendant JEFFREY JANUS can mistreat him, the Fire Chief, others can too.

96. In August 2018, FFPM Heckenbach requested back pay from 2014 through 2018 because the Defendants incorrectly calculated his Differential Pay while on Active and Inactive Duty.

97. Defendants did not follow the proper calculations as set forth in the IMLOAA.

98. Other Illinois public employers, for example, the Chicago Police Department and the Sycamore, Illinois Fire Department, follow the calculation FFPM Heckenbach presented to Defendants, which is derived directly from the applicable statute.

99. The amount of back pay presently due is \$27,547.61.

100. Defendants' repeated refusals to comply with state law pay requirements violates USERRA's anti-discrimination provisions as negatively affecting a material condition of FFPM Heckenbach's employment.

101. To date, FFPM Heckenbach's back pay has not been paid and he has incurred attorneys' fees, costs, and interest to vindicate his rights under Federal and Illinois law.

102. FFPM Heckenbach's service in the United States Army Reserve was a motivating factor in Defendants' decisions to deny his compensation, create unlawful demands for military leave paperwork and notice, and to discriminate and retaliate against FFPM Heckenbach, to harass, intimidate, and ostracize him at work, to include repeatedly defaming him to the United States Army Reserve and within the Fire Protection District.

103. Defendants' denying FFPM Heckenbach his accrual of vacation days and benefit time, forcing him to take unpaid leave, and denying his legally required compensation during his active duty violates USERRA and IMLOAA.

### **CLAIMS**

#### **COUNT I (*USERRA: Failure to Provide Differential Pay*)**

104. Plaintiff incorporates the allegations raised in paragraphs 1 through 103 above.

105. USERRA prohibits discrimination in employment against individuals who have been called to duty in the uniformed service, and retaliation against those who avail themselves of the rights guaranteed to them by USERRA.

106. Specifically, 38 U.S.C. § 4311 provides that an employee may not be denied a "benefit of employment" because of the employee's membership in the uniformed service.

107. Proper compensation is a "benefit of employment" as that term is broadly defined under section 4303(2) of USERRA, 38 U.S.C. § 4303(2).

108. Defendants discriminated and retaliated against FFPM Heckenbach in violation of USERRA when they willfully and repeatedly refused to properly compensate him after he provided the law, sought the Assistance of the Illinois Attorney General, filed a union grievance, and attempted to resolve this matter prior to the filing of this Complaint.

109. Defendants' violations of USERRA were willful and FFPM Heckenbach requests an award of liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(C).

110. Defendants misapplied the law to deny FFPM Heckenbach \$27,547.61 in statutorily required differential pay between October 2014 and the present.

#### **COUNT II (*USERRA: Disparate Treatment Discrimination and Retaliation*)**

111. Plaintiff incorporates the allegations raised in paragraphs 1 through 103 above.

112. USERRA prohibits discrimination in employment against individuals who have been called to duty in the uniformed service, and retaliation against those who avail themselves of the rights guaranteed to them by USERRA.

113. Specifically, 38 U.S.C. § 4311 provides that an employee may not be denied a “benefit of employment” because of the employee's membership in the uniformed service.

114. Proper compensation is a “benefit of employment” as that term is broadly defined under section 4303(2) of USERRA, 38 U.S.C. § 4303(2).

115. Defendants discriminated and retaliated against FFPM Heckenbach in violation of USERRA when they willfully refused to properly compensate him.

116. The opportunity to select work hours is a “benefit of employment” as that term is broadly defined under § 4303(2) of USERRA, 38 U.S.C. §4303(2).

117. Defendants discriminated against FFPM Heckenbach in violation of USERRA when the Village forced him to alter his work schedule, secure shift trades, and compelled him to use his vacation or personal days to perform military service.

118. USERRA prohibits retaliation for having taken an action to enforce a protection afforded an individual under USERRA or for having exercised a right provided for under USERRA. Specifically, section 4311(b) provides that an employer may not discriminate in employment or take any adverse employment action against any person regardless of whether they have performed service in the uniformed service. 38 U.S.C. § 4311(b).

119. Defendants discriminated against FFPM Heckenbach in violation of USERRA when they demanded paperwork, orders, leave requests, schedules, pay stubs, and changed those requirements repeatedly, none of which was required by law, which constitutes harassment and hostility motivated by anti-military animus.

120. Defendants discriminated against FFPM Heckenbach in violation of USERRA by creating a hostile work environment, by engaging in a series of increasingly more severe reprisals by demanding paperwork not required by law, ostracizing him, making him a pariah, and setting conditions for others to be distrustful and disrespectful of him, to include making false reports to his military chain of command, because he sought to vindicate his rights under the law.

121. USERRA provides that the term “employer” means any person, institution, organization, or other entity that pays salary or wages for work performed or that has control over employment opportunities. 38 U.S.C. §4303 (4)(A). As such, individual supervisors may be held personally liable under USERRA if they have a direct influence over performance related decisions.

122. Defendants JANUS, KADERABEK, and WILSON had direct influence over the decisions giving rise to violations of the law, to include failing to compensate FFPM Heckenbach as required by law during mobilization, requiring him to find “trades” or use personal time instead of military leave, demanding excessive paperwork not required by law for monthly drill weekends and other military duties, creating a hostile and harassing work environment, verbally and physically assaulting him, calling him a “little f\*\*\*ing pimp,” defaming FFPM Heckenbach with his military command, and setting conditions for FFPM Heckenbach to be ostracized and viewed as non-trustworthy.

123. Defendants’ violations of USERRA were willful and FFPM Heckenbach requests an award of liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(C).

124. Because of Defendants’ actions, FFPM has suffered injuries and damages including but not limited to, loss of past and future earnings, loss of past and future benefits, damage to

professional reputation, undue pain and suffering, emotional distress, and other make whole damage.

**COUNT III (*USERRA: Hostile Work Environment*)**

125. Plaintiff incorporates the allegations raised in paragraphs 1 through 103 above.

126. USERRA prohibits discrimination in employment against individuals who have been called to duty in the uniformed service, and retaliation against those who avail themselves of the rights guaranteed to them by USERRA.

127. Specifically, 38 U.S.C. § 4311 provides that an employee may not be denied a “benefit of employment” because of the employee's membership in the uniformed service.

128. USERRA also prohibits retaliation for having taken an action to enforce a protection afforded an individual under USERRA or for having exercised a right provided for under USERRA. Specifically, section 4311(b) provides that an employer may not discriminate in employment or take any adverse employment action against any person regardless of whether they have performed service in the uniformed service. 38 U.S.C. § 4311(b).

129. Defendants discriminated against FFPM Heckenbach in violation of USERRA when they demanded paperwork, orders, leave requests, schedules, pay stubs, and changed those requirements repeatedly, none of which was required by law, which constitutes harassment and hostility motivated by anti-military animus.

130. Defendants also discriminated against FFPM Heckenbach in violation of USERRA by creating a hostile work environment in engaging in a series of increasingly more severe reprisals by demanding paperwork not required by law, ostracizing him, making him a pariah, and setting conditions for others to be distrustful and disrespectful of him, to include making false reports to his military chain of command, because he sought to vindicate his rights under the law.

131. Defendants also discriminated and retaliated against Plaintiff by requiring him to find “trades” or use personal time instead of military leave, demanding excessive paperwork not required by law for monthly drill weekends and other military duties, creating a hostile and harassing work environment, verbally and physically assaulting him, defaming FFPM Heckenbach with his military command, and setting conditions for FFPM Heckenbach to be ostracized and viewed as non-trustworthy.

**COUNT IV (*Illinois Military Leave of Absence Act*)**

132. Plaintiff incorporates the allegations raised in paragraphs 1 through 103 above.

133. The Illinois Military Leave of Absence Act states that any member of the Reserve who is mobilized to active duty shall continue during the period of active duty to receive his or her benefits and regular compensation as a State employee, minus an amount equal to his or her military active duty base pay, commonly referred to as “differential pay.”\

134. The Illinois Military Leave of Absence Act also requires public employees to be granted military leave for military duties.

135. Defendants misapplied the law to deny FFPM Heckenbach \$27,547.61 in statutorily required differential pay between October 2014 and the present.

136. Defendants compelled FFPM Heckenbach to take vacation and personal days by refusing to grant him military leave as required under the IMLOAA which caused \$15,936.48 in lost vacation wages.

**COUNT V (*Defamation Per Se*)**

137. Plaintiff incorporates the allegations raised in paragraphs 1 through 103 above.

138. Defendant DONALD KADERABEK threatened FFPM Heckenbach by physically intimidating him while screaming “Look up and look at me. You little f\*\*\*ing pimp.”

139. Defendant KADERABEK screamed your “little f\*\*\*ing games are going to stop.”

140. Defendant KADERABEK stated to FFPM Heckenbach’s military command that his insubordination and failure to follow requirements would result in discipline.

141. Defendant WILSON wrote in several texts to FFPM Heckenbach’s military chain of command, that he was “Trying to light a fire under his a\*\*,” “The pattern is blatant on his submission times,” “he thinks last minute notifications to the fire department are okay,” and “This is his M.O.,” all of which were false and casting FFPM Heckenbach in a negative light with his military command.

142. Individual Defendants were working as agents of their employer within the scope of their employment and their employer is vicariously liable for the malfeasance of its employees.

143. These falsehoods were defamatory *per se* because they are so obviously and materially harmful to FFPM Heckenbach, that injury to his reputation may be presumed.

144. These falsehoods cast FFPM Heckenbach as a bad employee, non-team player, unable to follow orders, dishonest, questioning of his integrity, disrespectful, unprofessional, and insubordinate to District Officers, thereby prejudicing him as a military non-commissioned officer and professional firefighter and paramedic.

145. This conduct was willful, wanton, malicious, and the statements were made with actual malice.

146. The publication of these falsehoods to third parties was not privileged.

147. As a direct and proximate cause of these actions, FFPM Heckenbach has suffered injuries and damages, including but not limited to damage to his professional reputation as a military non-commissioned officer and loyal public servant.

**RELIEF SOUGHT**

WHEREFORE, FFPM Heckenbach respectfully seeks that the Court order the following relief:

- A. Declaratory and injunctive relief requiring Defendants to implement policies against discriminating and retaliating against military service members.
- B. Compensatory damages, including but not limited to, back-pay and actual damages, loss of past and future earnings, loss of benefit time, emotional distress, damage to professional reputation, humiliation, embarrassment, and pain and suffering.
- C. An order directing Defendants to pay Plaintiff \$27,547.61 in back pay.
- D. An order directing Defendants to pay \$15,936.48 in lost vacation and personal wages/benefits.
- E. Liquidated damages for Defendants' willful and repeated violations of USERRA – conduct known by Defendants to be prohibited – pursuant to 38 U.S.C. § 4323(d)(1)(C).
- F. An order requiring compliance pursuant to 38 U.S.C. § 4323(d)(1)(A).
- G. Punitive damages for Defendants' defaming statements, made with actual malice, maligning his professional integrity as a career Soldier and firefighter paramedic.
- H. Costs of suit, inclusive of reasonable attorneys' fees, expert witness fees, and other litigation expenses.
- I. Interest, costs and disbursements.
- J. Such other and further relief as the Court may deem just and proper.

Dated: April 30, 2019

**/s/ John N. Maher**

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