

1 Babak Semnar (SBN 224890)  
bob@sandiegoconsumerattorneys.com  
2 Jared M. Hartman, Esq. (SBN 254860)  
jared@sandiegoconsumerattorneys.com  
3 400 S. Melrose Dr., Suite 209  
Vista, CA 92081  
4 Telephone: (951) 293-4187; Fax: (888) 819-8230

Attorneys for Plaintiff DONALD MASON

6 **U.S. DISTRICT COURT**  
7 **CENTRAL DISTRICT OF CALIFORNIA—EASTERN DIVISION**

8 DONALD MASON, an Individual,  
9 Plaintiffs,

vs.

10 ENVIRO-MASTER CORP.; &  
11 GORDON OLSON;  
12 Defendants.

Case No.:

**COMPLAINT FOR VIOLATIONS  
OF:**

1. **CALIFORNIA MILITARY  
AND VETERANS CODE,**
2. **UNIFORMED SERVICES  
EMPLOYMENT AND  
REEMPLOYMENT RIGHTS  
ACT**

13  
14 TO THE CLERK OF THE COURT, ALL PARTIES, AND THE HONORABLE  
SUPERIOR COURT JUDGE:

15  
16 Complainant, DONALD MASON, an Individual, by and through his attorneys of  
17 record, hereby complains and alleges in this Complaint as follows:

18 **INTRODUCTION**

19 1. This action arises out of Defendant ENVIRO-MASTER  
20 CORPORATION's (hereinafter "Defendant ENVIRO-MASTER") violations of the  
21 State of California Military and Veterans' Code (Calif. Military and Veteran's Code §

1 1, *et seq.*) (hereinafter “CMVC”) and the U.S. Uniformed Services Employment and  
2 Reemployment Rights Act (38 U.S.C. §§ 4301-4333) (hereinafter “USERRA”); as well  
3 as and Defendant GORDON OLSON’s (hereinafter “Defendant OLSON”) violations of  
4 the USERRA.

5 2. Plaintiff makes the allegations below on information and belief, with the  
6 exception of those allegations that pertain to Plaintiff personally, or to Plaintiff’s  
7 counsel, which Plaintiff alleges on personal knowledge.

8 3. While many violations are described below with specificity, this  
9 Complaint alleges violations of the statutes cited in their entirety.

10 **JURISDICTION & VENUE**

11 4. The U.S. District Court has original subject matter jurisdiction pursuant to  
12 38 U.S.C. § 4311, 38 U.S.C. § 4323, and 28 U.S.C. §§ 1331 because the USERRA  
13 specifically vests the District Courts with jurisdiction in 38 U.S.C. § 4323(b)(3).

14 5. Defendant ENVIRO-MASTER is a foreign corporation from the State of  
15 North Carolina, but conducts business within the State of California by maintaining  
16 physical locations within the Counties of Los Angeles, Orange, and San Bernardino,  
17 and therefore personal jurisdiction is established.

18 6. Defendant OLSON is the operator of the of Defendant ENVIRO-  
19 MASTER’s San Bernardino franchise location, and upon information and belief,  
20 Defendant OLSON resides within the City of Redlands, County of San Bernardino, and  
21 therefore personal jurisdiction is established.



1 4311(a), which reads as follows:

2 (a) A person who is a member of, applies to be a member of, performs,  
3 has performed, applies to perform, or has an obligation to perform service  
4 in a uniformed service shall not be denied initial employment,  
5 reemployment, retention in employment, promotion, or any benefit of  
6 employment by an employer on the basis of that membership, application  
7 for membership, performance of service, application for service, or  
8 obligation.

9 12. The prohibitions in Section 4311(a) are violated when the military  
10 member's "membership, application for membership, service, application for service, or  
11 obligation for service in the uniformed services is a motivating factor in the employer's  
12 action, unless the employer can prove that the action would have been taken in the  
13 absence of such membership, application for membership, service, application for  
14 service, or obligation for service", pursuant to Section 4311(c).

15 13. Pursuant to 38 U.S.C. § 4323(a), (b), and (c), violations of USERRA are  
16 enforceable as private actions in the U.S. District Courts at the election of the aggrieved  
17 military member,

18 14. Pursuant to 38 U.S.C. § 4323(d)(1)(A)-(C), the aggrieved military member  
19 is entitled to equitable injunctive relief to enforce compliance with the Act, recovery of  
20 loss of wages and benefits, and double such monetary damages for willful violations.

21 15. Similarly, the California Military and Veterans' Code also prohibits  
discrimination against military members, pursuant to CMVC § 394(a), (d):

///

1 (a) No person shall discriminate against any officer, warrant officer or  
2 enlisted member of the military or naval forces of the state or of the  
3 United States because of that membership. No member of the military  
4 forces shall be prejudiced or injured by any person, employer, or  
5 officer or agent of any corporation, company, or firm with respect to  
6 that member's employment, position or status or be denied or  
7 disqualified for employment by virtue of membership or service in the  
8 military forces of this state or of the United States.

9 ...  
10 (d) No employer or officer or agent of any corporation, company, or  
11 firm, or other person, shall discharge any person from employment  
12 because of the performance of any ordered military duty or training or  
13 by reason of being an officer, warrant officer, or enlisted member of the  
14 military or naval forces of this state, or hinder or prevent that person  
15 from performing any military service or from attending any military  
16 encampment or place of drill or instruction he or she may be called  
17 upon to perform or attend by proper authority; prejudice or harm him or  
18 her in any manner in his or her employment, position, or status by  
19 reason of performance of military service or duty or attendance at  
20 military encampments or places of drill or instruction; or dissuade,  
21 prevent, or stop any person from enlistment or accepting a warrant or  
commission in the California National Guard or Naval Militia by threat  
or injury to him or her in respect to his or her employment, position,  
status, trade, or business because of enlistment or acceptance of a  
warrant or commission.

16 16. Violations of the California Military and Veterans Code are enforced as  
17 follows pursuant to CMVC § 394(g):

18 (g) Any person violating this section is guilty of a misdemeanor. In  
19 addition, any person violating any of the provisions of this section shall be  
20 liable for actual damages and reasonable attorney's fees incurred by the  
21 injured party.

17. The Notes pertaining to the California Legislature's enactment of CMVC §

1 394 state as follows:

2 It is the intent of the Legislature that persons who are members of the  
3 military services not be harmed by virtue of that membership, with respect  
4 to their employment.

5 It is further the intent of the Legislature to clarify that discrimination  
6 prohibited under subdivision (c) of Section 394 of the Military and Veterans  
7 Code is also prohibited by Sections 51 and 52 of the Civil Code, which  
8 apply to all arbitrary discrimination by business establishments.

9 By providing a civil remedy for the class of persons covered by this  
10 legislation, the Legislature does not intend to limit the availability of a  
11 similar remedy for other forms of arbitrary discrimination which are not  
12 specifically listed in this act or in Sections 51 and 52 of the Civil Code.

### 13 FACTUAL ALLEGATIONS

14 18. Plaintiff has been a member of the Army National Guard since 1996.

15 19. At all times relevant herein, Plaintiff's position with the Guard is one of  
16 Staff Sergeant, which requires him to oversee and command troops in a subordinate  
17 position.

18 20. In April of 2015, Plaintiff was hired by Defendant OLSON to work as a  
19 regional manager for Defendant ENVIRO-MASTER's Inland Empire franchise, to sell  
20 hygiene products to commercial establishments for installation and use within the  
21 commercial establishments' restrooms.

22 21. Plaintiff was retained with the promise of earning a base pay salary of  
\$500.00 per week plus commission.

23 22. Upon information and belief, Defendant OLSON purchased Defendant  
ENVIRO-MASTER's Inland Empire franchise for purposes of operating the same, and

1 within the regular course of his business duties Defendant OLSON “pays salary or  
2 wages for work performed [and] ... has control over employment opportunities”, which  
3 makes Defendant OLSON an “employer” within the meaning of 38 U.S.C. § 4303(4).

4 23. Upon information and belief, Defendant ENVIRO-MASTER is the  
5 ultimate owner of the Inland Empire franchise, and within the regular course of his  
6 business he “pays salary or wages for work performed [and] ... has control over  
7 employment opportunities”, which makes Defendant ENVIRO-MASTER an  
8 “employer” within the meaning of 38 U.S.C. § 4303(4) and CMVC §394(a) & (d).

9 24. Plaintiff was forthcoming with Defendants regarding his status as a  
10 member of the Army National Guard during the application process, and Defendants  
11 were therefore very aware of Plaintiff’s obligations to the military upon hiring him.

12 25. After just one day of employment, Plaintiff was fired by Defendant  
13 OLSON by email dated April 29, 2015, which reads as follows:

14 Donald,

15 We don't think you are the right fit for this position. You have a lot  
16 going on with the military still and I need someone singleminded and  
17 focused to fill this position. I am going to be in meetings this morning  
18 until after 10:00 and my phone will be on silent. I wanted to let you  
19 know so you weren't waiting on a call. Please email me your address  
20 and I'll get a check sent out right away.

21 Thank you,  
Gordon

22 26. Defendant OLSON’s email makes it very clear that Plaintiff’s military  
23 obligations and membership therein were substantial motivating factors for the decision

1 to deny Plaintiff retention in Defendants' employment.

2 27. As a result of the denial of retention, Plaintiff has suffered loss of wages,  
3 loss of salary, loss of commission, and has also suffered mental anguish by way of  
4 feeling bitter, angry, frustrated, depressed, and hopeless over the thought of being  
5 deprived of gainful employment due to his dutiful and honorable service for our  
6 country.

7 28. At all relevant times, Defendant OLSON was acting on behalf of, at the  
8 direction of, and in association with, Defendant ENVIRO-MASTER.

9 **FIRST CAUSE OF ACTION**  
10 **CALIF. MILITARY AND VETERANS' CODE**  
**AS AGAINST DEFENDANT ENVIRO-MASTER ONLY**

11 29. Plaintiff repeats, re-alleges, and incorporates by reference all other  
12 paragraphs, as if fully set forth herein.

13 30. To establish a certain factor as a motivating factor, a claimant need  
14 not show that it was the sole cause of the employment action, but rather that it is one of  
15 the factors that a truthful employer would list if asked for the reasons for its decision.  
16 *Brandasse v. City of Suffolk, V.A. (E. Dist. VA, Norfolk 1999) 72 F. Supp. 2d 608, 617.*

17 31. Military status is a motivating factor if the defendant relied on, took into  
18 account, considered, or conditioned its decision on that consideration. *Id.*

19 32. By terminating Plaintiff's employment based upon Plaintiff's status as a  
20 member of the Army National Guard, and based upon Plaintiff's obligations thereto,  
21 Defendant OLSON thereby discriminated against Plaintiff in violation of CMVC 394(a)



1 & (d).

2 33. Because Defendant OLSON was at all times acting on behalf of, at the  
3 direction of, and in association with, Defendant ENVIRO-MASTER, Defendant  
4 OLSON's discriminatory action flows through as liability to Defendant ENVIRO-  
5 MASTER through *respondeat superior*.

6 34. As a result, Plaintiff is entitled to actual damages and reasonable attorneys'  
7 fees pursuant to CMVC §394(g).

8 35. Plaintiff has suffered actual damages by way of lost wages, lost salary, loss  
9 of commission, and mental anguish and emotional distress as explained above.

10 **SECOND CAUSE OF ACTION**  
11 **USERRA**

12 **AS AGAINST BOTH DEFENDANTS JOINTLY AND SEVERALLY**

13 36. Plaintiff repeats, re-alleges, and incorporates by reference all other  
14 paragraphs, as if fully set forth herein.

15 37. To establish a certain factor as a motivating factor, a claimant need  
16 not show that it was the sole cause of the employment action, but rather that it is one of  
17 the factors that a truthful employer would list if asked for the reasons for its decision.  
18 *Brandasse v. City of Suffolk, V.A.* (E. Dist. VA, Norfolk 1999) 72 F. Supp. 2d 608, 617.

19 38. Military status is a motivating factor if the defendant relied on, took into  
20 account, considered, or conditioned its decision on that consideration. *Id.*

21 39. By terminating Plaintiff's employment based upon Plaintiff's status as a  
member of the Army National Guard, and based upon Plaintiff's obligations thereto,

1 Defendant OLSON thereby discriminated against Plaintiff in violation of 38 U.S.C. §  
2 4311(a).

3 40. An individual supervisor who initiated the discriminatory action may be  
4 held liable under the broad definition of “employer” within USERRA. *Brandasse*,  
5 *supra*, at 619.

6 41. Because Defendant OLSON was at all times acting on behalf of, at the  
7 direction of, and in association with, Defendant ENVIRO-MASTER, Defendant  
8 OLSON’s discriminatory action flows through as liability to Defendant ENVIRO-  
9 MASTER through *respondeat superior*.

10 42. The individual supervisor’s discriminatory action flows through as liability  
11 to the employer. *Staub v. Proctor Hospital* (2011) 131 S. Ct. 1186, 1194; 562 U.S. 411;  
12 179 L. Ed. 2d 144.

13 43. As a result, Plaintiff is entitled to loss of wages and benefits as actual  
14 damages as well as reasonable attorneys’ fees pursuant to 38 USC §4323(d)(1)(B) and  
15 (h) from both Defendants jointly and severally.

16 44. Defendants’ violations were willful, because Defendant OLSON was  
17 informed by Plaintiff of his military status and obligations thereto during the application  
18 process, yet Defendant OLSON used those as the sole criterion for denying retention of  
19 Plaintiff’s employment, and thereby acted with reckless disregard of—or deliberate  
20 indifference to—the statutory obligations of an employer under USERRA, which  
21 entitles Plaintiff to double the monetary damages pursuant to 38 USC §4323(d)(3). *See*

1 *also Serricchio v. Wachovia Secs., LLC* (Dist. Conn. 2009) 606 F. Supp. 2d 256, 265.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff prays that judgment be entered against all Defendants  
4 individually, and Plaintiff be awarded damages as follows:

5 **As To the First Cause of Action from Defendant ENVIRO-MASTER only:**

- 6 1. An award of actual damages pursuant to Calif. Military and Vets.’ Code §  
7 394(g), as will be proven at trial;
- 8 2. An award of costs of litigation and reasonable attorney’s fees pursuant to  
9 Calif. Military and Vets.’ Code § 394(g);
- 10 3. Prejudgment interest;
- 11 4. Such further relief as this Court may deem just and proper.

12 **As to the Second Cause of Action as against both Defendants jointly and severally:**

- 13 1. An award of actual damages by way of loss of wages and benefits from all  
14 Defendants jointly and severally pursuant to 38 U.S.C. § 4323(d)(1)(B), as will be  
15 proven at trial;
- 16 2. Double the above actual damages for willful violations pursuant to 38  
17 U.S.C. § 4323(d)(1)(C);
- 18 3. An award of costs of litigation and reasonable attorney’s fees pursuant to  
19 38 U.S.C. § 4323(h);
- 20 4. Prejudgment interest;

21 ///

1           5.       Such further relief as this Court may deem just and proper.

2 DATED: 5/9/2015

SEMNAR & HARTMAN, LLP

3

/S/ Jared M. Hartman

4

JARED M. HARTMAN, Esq.  
Attorneys for Plaintiff

5

6

**TRIAL BY JURY**

7

Pursuant to the Seventh Amendment to the Constitution of the United States of  
8 America, Plaintiffs are entitled to, and so demand, a trial by jury.

9

DATED: 5/9/2015

SEMNAR & HARTMAN, LLP

10

/s/ Jared M. Hartman

11

JARED M. HARTMAN, Esq.  
Attorneys for Plaintiff

12

13

14

15

16

17

18

19

20

21