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August 2025
Coast Guard Reservist Sues Smithfield Foods Corporation for Violating USERRA.
By Captain Samuel F. Wright, JAGC, USN (Ret.)[2]

1.1.1.6—USERRA applies to foreign employers in the U.S.
1.1.2.5—USERRA applies to managerial and executive employees.
1.2—USERRA forbids discrimination.
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[1] I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2,000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouses' Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 90% of the articles, but we are always looking for "other than Sam" articles by other lawyers.

[2] BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 45 years, I have collaborated with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the Federal reemployment statute) for 38 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. §§ 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at samwright50@yahoo.com.

1.7—USERRA regulations.
1.8—Relationship between USERRA and other laws/policies.

Robert J. Austin is a First-Class Boatswain's Mate (E-6) in the United States Coast Guard Reserve (USCGR). On June 13, 2025, he sued Smithfield Foods Corporation (SFC) in the United States District Court for the Eastern District of Virginia for violating his rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA).[3] Attorney Brian J. Lawler, a life member of ROA who is a San Diego attorney with a nationwide USERRA practice, leads a group of attorneys who represent Austin in this important lawsuit.[4]

Austin was employed by SFC from 2002 until March 2025, when SFC fired him upon return from two weeks of annual training in the USCGR. During his 23 years at SFC, Austin advanced from assistant product manager to director of business management.

SFC is the largest pork producer in the world. In 2013, a holding company based in the People's Republic of China purchased SFC for $4.72 billion.

Austin was away from his SFC job for Coast Guard service for 14 months, from July 2023 until October 2024. During his absence, which was clearly protected by USERRA, SFC "permanently replaced" Austin with another employee. Although Austin clearly met the five USERRA conditions for reemployment,[5] SFC refused to reemploy him in the

[3] I have placed a copy of the complaint at the end of this article.
[4] Here is a link to Brian Lawler's law firm website: https://pilotlawcorp.com/brian-j-lawler-founder-shareholder/.
[5] As I have explained in detail in Law Review 15116 (December 2015), a returning service member or veterans must meet five conditions to have the right to reemployment after release from a period of uniformed service. First, the individual must have left a civilian job (federal, state, local, or private sector) to perform voluntary or involuntary service in the uniformed services, as defined by USERRA. Austin clearly did that in July 2023. Second, the individual must have given the employer prior oral or written notice, unless giving such notice was precluded by military

position that he left and certainly would have continued to hold if his SFC career had not been interrupted by uniformed service.

In the fall of 2024, SFC rehired Austin into a position with undefined duties, and the company clearly violated USERRA in doing so. Because Austin met the five USERRA conditions, the company was required to reemploy him in the position of employment that he would have attained if he had remained continuously employed or in another position, for which he was qualified, that was of like seniority, status, and rate of pay.[6] Because Austin met the five conditions, the company was required to reemploy him promptly in an appropriate position *even if reemploying him necessitated laying off another employee.*[7]

Five months later, in March 2025, Austin was away from SFC job again, this time for two weeks of annual USCGR training. When he returned from that period of uniformed service, he was again entitled to prompt reemployment under USERRA, but the company fired him. The manager who fired Austin made several anti-military remarks, including accusing Austin of having participated in "the January 6 insurrection." The manager asked Austin if American service members "are trained to attack American citizens."

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necessity or otherwise impossible or unreasonable. Austin clearly gave prior notice. Third, the individual's cumulative period or periods of uniformed service must not have exceeded five years, and nine kinds of service are exempt from the computation of the individual's five-year limit. *See* Law Review 16043 (May 2016). Austin's cumulative periods of uniformed service were nowhere near the five-year limit. Fourth, the individual must have been released from the period of service without having received a disqualifying bad discharge from the military. Austin served honorably and did not receive a bad discharge, like a bad-conduct discharge or an other-than-honorable discharge. Indeed, Austin was not discharged at all, simply released from active duty. Fifth, the individual must have made a timely application for reemployment with the pre-service employer, after release from the period of service. After a period of service of 181 days or more, the individual has 90 days to apply for reemployment. Austin applied for reemployment within a few days after he was released from active duty in October 2024.

[6] 38 U.S.C. § 4313(a)(2)(A).

[7] *See* Law Review 25007 (February 2025). In that article, you will find a string of fifteen court decisions and other authorities showing that the lack of a current vacancy does not excuse the employer's failure to reemploy the returning service member or veteran who meets the five USERRA conditions.

Based on the facts as alleged in the complaint, SFC violated USERRA in at least five ways:

a. Failure to reemploy Austin properly in October 2024.
b. Failure to reemploy Austin in March 2025.
c. Discriminating against Austin, based on his membership in a uniformed service and his performance of uniformed service, by firing him in March 2025.
d. Firing Austin, without cause, during his special protection period after his October 2024 return from a period of uniformed service.
e. Harassing Austin for exercising his USERRA rights and thereby creating a hostile work environment.

I will discuss these five unlawful actions separately.

a. Failure to reemploy Austin properly in October 2024.

In October 2024, Austin met the five USERRA conditions for reemployment, and he was entitled to prompt reemployment in the position of employment that he would have attained if he had remained continuously employed, or in another position, for which he was qualified, that was of like seniority, status, and pay. When he left his civilian job for military service in July 2023, Austin was SFC 's Director of Business Management. When he applied for reemployment in October 2024, he was placed in an undefined position with no specific duties. Even if the salary were the same, the new position was not of like status to the position that he left and certainly would have retained but for his uniformed service.[8] This was SFC's first USERRA violation.

[8] *See* Law Review 25005 (February 2025).

b. Failure to reemploy Austin in March 2025.

In March 2025, Austin was again entitled to prompt reemployment when he returned from his two-week annual training tour in the USCGR. This was SFC's second USERRA violation.

c. Discriminating against Austin by firing him in March 2020.

Section 4311 of USERRA provides:

> A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, *retention in employment,* promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.[9]

By firing Austin because of annoyance with him for his absence from work to perform uniformed service, SFC violated section 4311(a) by denying Austin *retention in employment.*

To prove a violation of section 4311(a), Austin is not required to prove that the firing was motivated *solely* by his USCGR service. It is sufficient for Austin to prove that his USCGR service was *a motivating factor* in the employer's decision to fire him. If he proves that his service was a motivating factor, *the burden of proof shifts to the employer to prove that they would have fired him anyway for a lawful reason unrelated to his service.*[10]

In this case, it seems abundantly clear that Austin's USCGR service was at least a motivating factor, and probably the sole factor, in the employer's decision to fire him. Moreover, in this case it may not be

[9] 38 U.S.C. § 4311(a).
[10] *See* 38 U.S.C. § 4311(c). *See also* Law Review 17016 (March 2017).

necessary to prove a violation of section 4311(a) because he has an extraordinarily compelling case under section 4313 and section 4316.

d. Firing Austin during his special protection period.

Section 4316 of USERRA provides:

> A person who is reemployed by an employer under this chapter [USERRA] shall not be discharged from such employment except for cause (1) within one year after the date of such reemployment, if the person's period of service before the reemployment was more than 180 days; or (2) within 180 days after the date of such reemployment, if the person's period of service before the reemployment was more than 30 days but less than 181 days.[11]

Austin was reemployed by SFC in October 2024, after returning from 14 months of active duty (July 2023 to October 2024). Austin's one-year period of special protection against discharge, except for cause, did not expire until October 2025. SFC fired Austin in March 2025, during the period of special protection. Thus, the firing is unlawful unless SFC can *prove (not just say)* that the firing was for cause. Austin is not required to prove that the March 2025 firing was motivated by his membership in the USCGR and his performance of USCGR service. Because the one-year period of special protection was still in effect at the time of the firing, SFC must prove that the firing was for cause.

The reemployment statute that was enacted in 1940 and that was still in effect until USERRA was enacted on 10/13/1994 contained a similar provision. From the beginning, the federal reemployment statute has had a "special protection against discharge" provision because the Congress has always understood that employers will be tempted to

[11] 38 U.S.C. § 4316(c).

make a mockery of the reemployment obligation by reinstating the returning service member or veteran only to fire him or her shortly later and to invent a pretext for the firing.

Section 4331(a) of USERRA gives the Secretary of Labor the authority to promulgate regulations about the application of this law to state and local governments and private employers.[12] The Secretary has promulgated such regulations, and those regulations are published in title 20 of the Code of Federal Regulations (C.F.R.), Part 1002. Two sections of the regulations are pertinent here:

> **Does USERRA provide the employee with protection against discharge?**
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> **Yes.** If the employee's most recent period of service in the uniformed services was more than 30 days, he or she must not be discharged except for cause—(a) For 180 days after the employee's date of reemployment if his or her most recent period of uniformed service was more than 30 days but less than 181 days; or (b) For one year after the date of reemployment if the employee's most recent period of uniformed service was more than 180 days.[13]
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> **What constitutes cause for discharge under USERRA?**
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> The employee may be discharged for cause based either on conduct or, in some circumstances, based on the application of other legitimate nondiscriminatory reasons. (a) In a discharge based on conduct, the employer bears the burden of proving that it is reasonable to discharge the employee for the conduct in question, and that he or she had notice, which was express or can be fairly implied, that the conduct would constitute cause for

[12] 38 U.S.C. § 4331(a).
[13] 20 C.F.R. § 1002.247 (bold question and bold "Yes" in original).

> discharge. (b) If based on the application of other legitimate nondiscriminatory reasons, the employee's job position is eliminated, or the employee is placed on layoff status, either of these situations would constitute cause for purposes of USERRA. The employer bears the burden of proving that the employee's job would have been eliminated or that he or she would have been laid off.[14]

It seems most unlikely that SFC will be able to prove that Austin was guilty of misconduct or that Austin's job would have been eliminated anyway even if he had not been away from work for USCGR service for 14 months.

e. Austin's supervisor harassed him for his USCGR service and created a hostile work environment.

Austin's complaint in the United States District Court for the Eastern District of Virginia described the harassment that Austin was subjected to by his immediate supervisor, because the supervisor was annoyed with Austin because of his USCGR service. If Austin proves that this harassment occurred, that it was pervasive, and that it created a hostile work environment, the harassment violated section 4311 of USERRA.[15] Moreover, the anti-military statements made by Austin's direct supervisor go a long way to proving that SFC's decision to fire Austin was motivated by Austin's USCGR service and that the company violated USERRA willfully.

Q: If Austin prevails in this lawsuit, what relief is available?

A: Section 4323 of USERRA provides:

[14] 20 C.F.R. § 1002.248 (bold question in original).
[15] *See* Law Review 20049 (May 2020).

In any action under this section, the court may award relief as follows:

(A) The court may require the employer to comply with the provisions of this chapter.
(B) The court may require the employer to compensate the person for any loss of wages or benefits suffered by reason of such employer's failure to comply with the provisions of this chapter.
(C) The court may require the employer to pay the person the amount referred to in subparagraph (B) and interest on such amount, calculated at a rate of 3 percent per year.
(D) The court may require the employer to pay the person the greater of $50,000 or the amount equal to the amounts referred to in subparagraphs (B) and (C) as liquidated damages, if the court determines that the employer knowingly failed to comply with the provisions of this chapter.[16]

Q: You wrote that Austin was the company's "Director of Business Management" before he left his job for active military service in July 2023. That sounds like an executive position. Does USERRA apply to employees who leave executive positions for military service?

A: Yes. The pertinent section of the Department of Labor (DOL) USERRA Regulation is as follows: "USERRA applies to all employees. There is no exclusion for executive, managerial, or professional employees."[17]

Q: You wrote that a holding company in China owns SFC. How does USERRA apply to foreign companies operating in the United States?

A: The pertinent section of the DOL USERRA Regulation is as follows: "USERRA applies to foreign employers doing business in the United

[16] 38 U.S.C. § 4323(d)(1).
[17] 20 C.F.R. § 1002.43. *See also* Law Review 21068 (October 2021).

States. A foreign employer that has a physical location or branch in the United States (including United States territories and possessions) must comply with USERRA for any of its employees in the United States."[18]

Q: Austin worked for SFC for 22 years, before he was fired in March 2025. What SFC pension benefits is Austin entitled to under USERRA?

A: Under section 4318 of USERRA,[19] Austin is entitled to be treated **as if he had been continuously employed by SFC during all the periods when he was away from his SFC job for military service.**[20]

It is likely that there will be settlement negotiations to resolve Austin's USERRA claims. Any settlement must compensate Austin for all that he has lost because of the company's willful and egregious USERRA violations. The pension claims alone are probably worth more than $100,000.

Q: Is this lawsuit unusual?

A: No. Each week, there are several new USERRA lawsuits filed against private employers, state and local governments, and federal executive agencies, and most of those lawsuits are meritorious. The only thing unusual about this case is that the plaintiff is a member of the USCGR, which is by far the smallest Reserve Component of the armed forces. The USCGR has 6,179 members. The largest Reserve Component, the Army National Guard, has 329,705 members.

Please join or support ROA.

This article is one of 2,300-plus "Law Review" articles available at www.roa.org/lawcenter. The Reserve Officers Association, now doing

[18] 20 C.F.R. § 1002.34(b). *See also* Law Review 07015 (March 2007).
[19] 38 U.S.C. § 4318.
[20] *See* Law Review 25011 (March 2025).

business as the Reserve Organization of America (ROA), initiated this column in 1997. We add new articles each month.

ROA is the nation's only national military organization that exclusively and solely supports the nation's reserve components, including the Coast Guard Reserve (6,179 members), the Marine Corps Reserve 32,599 members), the Navy Reserve (55,224 members), the Air Force Reserve (68,048 members), the Air National Guard (104,984 members), the Army Reserve (176,171 members), and the Army National Guard (329,705 members).[21]

ROA is more than a century old—on 10/2/1922 a group of veterans of "The Great War," as World War I was then known, founded our organization at a meeting in Washington's historic Willard Hotel. General of the Armies John J. Pershing, who had commanded American troops in the recently concluded "Great War" invited junior officers who had served under him in Europe to the meeting. One of those junior officers was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide adequate national security. For more than a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

Through these articles, and by other means, including amicus curiae ("friend of the court") briefs that we file in the Supreme Court and other courts, we advocate for the rights and interests of service members and educate service members, military spouses, attorneys, judges, employers, Department of Labor (DOL) investigators, Employer

[21] *See* https://crsreports.congress.gov/product/pdf/IF/IF10540/. These are the authorized figures as of 9/30/2022.

Support of the Guard and Reserve (ESGR) volunteers, federal and state legislators and staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's eight[22] uniformed services, you are eligible for membership in ROA,[23] and a one-year membership only costs $20 or $450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at https://www.roa.org/page/memberoptions or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Organization of America
1 Constitution Ave. NE
Washington, DC 20002[24]

[22] Congress recently established the United States Space Force as the eighth uniformed service.
[23] Spouses, widows, and widowers of past or present members of the uniformed services are also eligible to join.
[24] You can also contribute on-line at www.roa.org.

Here is a copy of the complaint that attorney Brian J. Lawler and other attorneys filed on behalf of Robert J. Austin, on 6/13/2025.

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION.

Robert J. Austin, Plaintiff, v. Smithfield Foods, Inc., Defendant. Civil Action No. 2:25-cv-352. COMPLAINT FOR VIOLATION OF THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (38 U.S.C. §§ 4301 ET SEQ.) JURY DEMAND.

COMPLAINT Plaintiff, Robert J. Austin ("Plaintiff"), brings this action against Defendant Smithfield Foods, Inc. ("Smithfield" or "Defendant"). Plaintiff alleges, upon actual knowledge with respect to himself and his own acts, and upon information and belief as to all other matters as follows: NATURE OF THE ACTION 1. This is an action for violation of the Uniformed Services Employment and Reemployment Rights Act, under 38 U.S.C. §§ 4301 et seq. THE PARTIES 2. 3. Plaintiff is an individual with a residence in Portsmouth, Virginia. Smithfield is an entity organized in the Commonwealth of Virginia with its principal place of business in Smithfield, Virginia, in Isle of Wight County. JURISDICTION AND VENUE 4. The United States District Court for the Eastern District of Virginia has jurisdiction over this action pursuant to the provisions of 28 U.S.C. §§ 1331 and 1331(a) in that this matter is a civil action arising under the Constitution, laws, or treaties of the United States, namely, under 38 U.S.C. §§ 4301 et seq., commonly known as the Uniformed Services Employment and Reemployment Rights Act ("USERRA"). 5. 6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 (b)(2) and (c)(2). FACTS COMMON TO ALL CLAIMS The plaintiff began his employment with Smithfield in 2002 as an Assistant Product Manager and eventually advanced to Director of Business Management. Throughout his decades-long career with Smithfield, Plaintiff received positive performance reviews; in fact, it was his outstanding performance that led to his selection as Smithfield's first long-term expatriate employee, who was sent overseas for two years to develop business operations in Japan. 7. In December 2017, Plaintiff joined the United States Coast Guard Reserve as a Boatswain Mate and is

currently serving as a non-commissioned officer, with the grade of E-6. 8. On or about July 2023, Plaintiff notified his manager, Mr. Greg Dady, Vice President of Management, of a pending deployment. Plaintiff also informed Smithfield Human Resources ("HR") of his deployment. 9. Before his departure, Plaintiff timely informed both his manager, Mr. Dady, and HR that he intended to return to Smithfield and resume his role as Director of Business Management after his deployment. 10. On or about July 2023, Plaintiff took a military leave of absence and deployed for fourteen (14) months with the U.S. Coast Guard. While he was deployed, Plaintiff kept in touch with Mr. Dady and received differential pay from Smithfield. 11. On or about September 2024, Plaintiff timely informed Mr. Dady and HR of his intention to return to Smithfield and exercise his reemployment rights. 2 On or around October 1, 2024, Plaintiff returned to work with Smithfield. While Plaintiff was deployed, Smithfield backfilled Plaintiff's role with a less experienced and less senior employee, who remains employed with Smithfield to this day. Mr. Dady informed the Plaintiff that he would no longer be his manager and Plaintiff would instead report to Mr. John Zabel, Vice President of Fresh Pork. 13. Mr. Zabel told Plaintiff that because he was his "friend," he made sure Smithfield "made-up" a new position specifically for him; Plaintiff was reemployed into a position that did not previously exist. 14. On or around October 14, 2024, Plaintiff requested an official job description for his new role, but Mr. Zabel never provided one. Instead, he casually told Plaintiff he would oversee "international things." 15. On January 24, 2025, during a work trip, Plaintiff's manager, Mr. Zabel, accused him of participating in the "January 6 Insurrection." Mr. Zabel also proceeded to accuse him of voting for a "fascist" and asked if all military members are "trained to attack American citizens." 16. On January 27, 2025, Plaintiff's manager informed him that he would not be eligible for a bonus due to his military service-related absence. When Plaintiff asked Mr. Zabel for clarification, he responded by telling Plaintiff, "…nobody expected you to come back." In the same conversation, Mr. Zabel asked Plaintiff to begin monetizing any tasks he was working on. Plaintiff asked if other employees were being asked to monetize their tasks as well, to which his manager responded by saying it was because his role was being questioned. In response, Plaintiff provided lengthy justification of savings and earnings he produced in the role. 17. On or around February 18, 2025, at approximately 7:00 a.m., Mr. Zabel called Plaintiff, demanding to know where he would physically be during his upcoming

monthly military service obligation, or drill. Mr. Zabel also inquired about the nature of the work he would be performing while on military duty, how long he planned to remain in the Coast Guard, and whether he intended to reenlist. 18. On or around February 21, 2025, Plaintiff contacted Smithfield's HR representative, Ms. Courtney Keffer, to inquire about his bonus eligibility and year-over-year company pay raise owed to him upon his return from deployment. He also mentioned his manager's line of questioning, to which Ms. Keffer forwarded Plaintiff's concern to another HR representative, Mr. Brad Thornton. 19. On or around March 13, 2025, Plaintiff spoke with Mr. Thornton about Mr. Zabel's comments. Mr. Thornton acknowledged the comments were inappropriate and apologized for the line of questioning, but suggested Plaintiff "work it out" with his manager. 20. On or around March 17, 2025, just after Plaintiff returned from his annual two-week military training, Mr. Zabel told Plaintiff, "If an employee can miss two weeks of work, then they are not needed." 21. Just days later, March 20, after Mr. Zabel's comment to Plaintiff about not being "needed," Plaintiff was terminated. Mr. Zabel stated it was because his position had been eliminated. To date, Plaintiff's previous role, Director of Business Management under the Vice President of Business Management, for which he was employed before his deployment, has not been eliminated and Smithfield, at the time of Plaintiff's termination, has several open positions on its website that are comparable to Plaintiff's previous role.

COUNT I USERRA VIOLATIONS 22. Section 4311 of USERRA provides in relevant part, that "an employer may not discriminate in employment against or take any adverse employment action against any person because such person . . . has exercised a right provided for in this chapter." 38 U.S.C. §4311(b). Further, Section 4311(a) provides that "[a] person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation." 23. Section 4312 of USERRA provides, in relevant part, that "any person whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and

other employment benefits." 24. Section 4313 of USERRA provides, in relevant part, that "a person entitled to reemployment under section 4312, upon completion of a period of service in the uniformed services, shall be promptly reemployed in a position of employment… in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform…." 25. Section 4316(a) of USERRA provides, "[a] person who is reemployed under this chapter is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service in the uniformed services plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed." 26. Defendants knowingly and willfully violated USERRA, including but not limited to Sections 4311, 4312, 4313, and 4316. Plaintiff, a long-serving employee of Smithfield since 2002, was deployed for active duty with the United States Coast Guard for a period of approximately 14 months. Upon his return, Defendants failed to properly reemploy Plaintiff in the same position or a position of like seniority, status, and pay, as required by law. Instead, Defendants had permanently backfilled his prior role and placed him in a fabricated, undefined position with no clear duties, no meaningful responsibilities, and no job description – effectively stripping Plaintiff of job security and denying him the seniority and stability to which he was entitled. 27. In this contrived role, Plaintiff was subjected to discriminatory treatment and hostility on the basis of his military service. His manager made repeated, inappropriate comments about Plaintiff's military affiliation, including insinuations about Plaintiff's participation in the January 6th Capitol riot and questions about whether the military trains service members to "attack American citizens." The hostile environment culminated in Plaintiff's termination mere days after he was questioned about his intention to continue serving in the Coast Guard – despite the fact that comparable positions remained posted on Defendants' careers website and available at the time. 28. Further, had Plaintiff not deployed for military service, he would have remained in his original role, which continued to exist post-deployment and was occupied by a less senior and less qualified individual. Plaintiff's termination, under the pretext of a corporate "restructuring," was a direct and foreseeable consequence of Defendants' failure to properly reinstate him under USERRA and their

discriminatory animus toward his military obligations. 29. Plaintiff's military service obligations were a motivating factor for Defendant's conduct, and as a direct and proximate result of that conduct, Plaintiff has suffered substantial economic harm, including lost wages, lost benefits, and diminished earning capacity. Plaintiff is entitled to full reinstatement, back pay, front pay, restoration of benefits, liquidated damages due to the knowing nature of Defendant's conduct, and attorneys' fees and costs as provided by 38 U.S.C. §4323(d). PRAYER FOR RELIEF WHEREFORE, Plaintiff prays for judgment against Defendant as follows: 1. That Plaintiff be awarded monetary damages in accordance with 38 U.S.C. § 4323(d)(1)(B), in an amount to be proven at trial; 2. That Plaintiff be awarded pre- and post-judgment interest of three percent (3%) on the amount in number 1 above, in accordance with 38 U.S.C. § 4323(d)(1)(C); 3. That Plaintiff be awarded liquidated damages for Defendant's knowing USERRA violations pursuant to 38 U.S.C. § 4323(d)(1)(D), in an amount to be proven at trial; 4. That Plaintiff be awarded his attorney's fees, expert witness fees, and other litigation expenses pursuant to 38 U.S.C. § 4323(h); and 5. For such other and further relief as the Court deems just and proper under the circumstances. JURY DEMAND Plaintiff Robert Austin, by counsel, demands a trial by jury.

Dated: June 13, 2025.

By: /s/ Brewster S. Rawls, David A. Tierney; Rawls Law Group PC 211 Rocketts Way, Suite 100 Richmond, VA 23231 (804) 344-0038 (804) 782-0133 – Facsimile brawls@rawlslawgroup.com, dtierney@rawlslawgroup.com.

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