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**Salt Lake City, Utah 84111**  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
NORTHERN DIVISION**

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JOSE A. ORTEGA,	*	
Plaintiff,	*	<b>Case Number</b>
vs.	*	
SYNAPSE DATA AND TELECOM, INC.	*	
and MATTHEW MOSSBARGER,	*	
Defendants.	*	

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**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, Jose A. Ortega (“Ortega”), by the undersigned attorneys, makes the following averments:

1. This civil action is brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301-4333 (“USERRA”).

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to 38 U.S.C. § 4323(b).

3. Venue is proper in this district under 38 U.S.C. § 4323(c)(2) because Defendant Synapse Data and Telecom, Inc. (“Synapse”) operated as a business in Ogden, Utah, within this judicial district, and Defendant Matthew Mossbarger (“Mossbarger”) resides within this judicial

district. Additionally, venue is proper under 28 U.S.C. § 1391(b) because the events giving rise to this lawsuit occurred in this judicial district.

PARTIES

4. Ortega resides at 367 West 1225 North, Layton, Utah, within the jurisdiction of this Court.

5. Synapse was organized and incorporated in Utah. Synapse was voluntarily dissolved on or about January 12, 2009. The capacity to be sued for a corporation is determined by the law under which it was organized. Fed. R. Civ. P. 17(b). Under Utah law, a corporation may be sued after dissolution. Utah Code § 16-10a-1405(2)(e). Synapse operated within the jurisdiction of this Court and at all relevant times was an employer within the meaning of 38 U.S.C. § 4303(4).

6. Mossbarger, Synapse's former owner and operator, resides at 1378 Marilyn Drive, Ogden, Utah, within the jurisdiction of this Court, and is an employer within the meaning of 38 U.S.C. § 4303(4).

CLAIM FOR RELIEF: DISCRIMINATION

7. In or about August 2007, Ortega was hired by Mossbarger to work as a Network Administrator for Synapse in Ogden, Utah.

8. On or about April 1, 2008, Ortega enlisted in the Utah National Guard and was given orders to report for basic training in Kentucky on May 20, 2008.

9. On or about April 3, 2008, Ortega informed Mossbarger of his military enlistment and attempted to provide Mossbarger with a copy of his orders to report for basic training on

May 20, 2008. Mossbarger attempted to convince Ortega to rescind his military obligation, offering him benefits, a raise, and management opportunities.

10. On or about April 4, 2008, Mossbarger terminated Ortega when Ortega declined to withdraw from the Utah National Guard.

11. On or about April 10, 2008, Ortega filed a complaint against Synapse under USERRA with the Veterans Employment and Training Service (“VETS”) of the United States Department of Labor.

12. Synapse and Mossbarger violated Section 4311 of USERRA by terminating Ortega’s employment because of his membership in and/or obligation to perform service in the uniformed services.

13. As a result of Synapse and Mossbarger’s unlawful discrimination, Ortega has suffered a loss of earnings and other benefits of employment.

14. All conditions precedent have occurred or have been performed.

PRAYER FOR RELIEF

WHEREFORE, Ortega prays that this Court enter judgment against Synapse and Mossbarger and all persons in active concert or participation with them, as follows:

15. Declare that Synapse and Mossbarger’s discrimination against Ortega was unlawful and in violation of USERRA;

16. Order that Synapse and Mossbarger fully comply with the provisions of USERRA by paying Ortega for his loss of earnings and other benefits suffered by reason of Synapse and Mossbarger’s failure or refusal to comply with provisions of USERRA;

17. Enjoin Synapse and Mossbarger from taking any action against Ortega that fails to comply with the provisions of USERRA;

18. Award Ortega prejudgment interest on the amount of lost compensation found due;  
and

19. Grant such other and further relief as may be just and proper.

JURY TRIAL DEMAND

Pursuant to Fed. R. Civ. P. 38, Ortega demands a trial by jury.

LORETTA KING  
Acting Assistant Attorney General  
Civil Rights Division

BY:                   /s/ John M. Gadzichowski                    
JOHN M. GADZICHOWSKI  
(WI Bar No. 1014294)  
Chief

                  /s/ William B. Fenton                    
WILLIAM B. FENTON  
(D.C. Bar No. 41490)  
Principal Deputy Chief

                  /s/ Hilary J. Funk                    
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JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Jose A. Ortega

(b) County of Residence of First Listed Plaintiff Davis  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)  
Jeannette F. Swent, U.S. Attorney's Office for the District of Utah  
185 South State Street, Suite 300; Salt Lake City, Utah 84111  
Telephone: 801.524.5682 (see attached list of additional attorneys)

**DEFENDANTS**

Synapse Data & Telecom, Inc.  
Matthew Mossbarger

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)  
Blain H. Johnson, Law Offices of Smith Knowles  
4723 Harrison Boulevard, Suite 200; Ogden, Utah 84403  
Telephone: 801.476.0303

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>LABOR</b>	<b>SOCIAL SECURITY</b>
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			<b>IMMIGRATION</b>	<b>FEDERAL TAX SUITS</b>
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN**

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

38 U.S.C. 4311

Brief description of cause:

Discrimination on the basis of membership in and/or obligation to perform service in the uniformed services

**VII. REQUESTED IN COMPLAINT:**

- CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
- DEMAND \$** \_\_\_\_\_
- CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

05/07/2009

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jeannette F. Swent

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

Additional Attorneys for the Plaintiff:

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William B. Fenton, Principal Deputy Chief

Hilary J. Funk, Senior Trial Attorney

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