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FILED
OCT 31 2011
RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

~~FILED~~
RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

Fee waived

ISS.
⑧

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15 Attorneys for Plaintiff Anthony Totaro

16
17 **IN THE UNITED STATES DISTRICT COURT**
18 **IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA**

ADR

19 NO. CV-

011-05446

EDL

20 ANTHONY TOTARO,

21 Plaintiff,

22 v.

23 LAWRENCE LIVERMORE
24 NATIONAL SECURITY, LLC,

25 Defendant.

26 PLAINTIFF ANTHONY TOTARO'S
27 COMPLAINT FOR VIOLATIONS
28 OF THE UNIFORMED SERVICES
EMPLOYMENT AND
REEMPLOYMENT RIGHTS ACT,
DEMAND FOR DAMAGES AND
JURY TRIAL

**EXEMPT FROM FILING FEES
UNDER 38 U.S.C. 4323(h)(1)**

1 COMES NOW Plaintiff ANTHONY TOTARO, by and through his
2 attorneys, and alleges:

3
4 **I. PARTIES AND JURISDICTION**

5 1. Plaintiff, ANTHONY TOTARO (“Mr. Totaro”) resided in the Northern
6 District of California at all times pertinent hereto.

7
8 2. Defendant, LAWRENCE LIVERMORE NATIONAL SECURITY, LLC
9 (“Lawrence Livermore”) is licensed to conduct business within the State of
10 California. Lawrence Livermore's address is 7000 East Avenue, Livermore, CA
11 94550-9234.

12
13 3. Mr. Totaro is an employee of Lawrence Livermore.

14
15 4. For the purposes of 38 U.S.C. § 4303(4), Defendant, Lawrence Livermore is
16 a private employer operating within the State of California.

17
18 5. Upon information and belief, Nils Carlson, Bruce Warner, and possibly
19 others are or were employed by Lawrence Livermore, act, or acted, as agents of
20 the same, and may be named in their representative capacities should discovery
21 reveal that their acts and omissions caused Mr. Totaro harm.

22
23 6. All acts complained of occurred within the Northern District of California.

24
25 7. The Federal Court for the Northern District of California has personal
26 jurisdiction over the parties and subject matter jurisdiction for the claims in this
27 complaint pursuant to 38 U.S.C. § 4323(b) and 28 U.S.C. 1331.
28

1 8. Venue is proper in the Federal Court for the Northern District of California
2 under 38 U.S.C. § 4323(c) and 28 U.S.C. § 1391(b) because the acts and
3 omissions complained herein occurred in the Northern District and because the
4 parties reside there.
5

6 **II. INTRADISTRICT ASSIGNMENT**

7

8 9. This action arose in Alameda County; therefore, pursuant to local rules it
9 should be assigned to the San Francisco/Oakland Division.
10

11 **III. FACTS**

12 10. Plaintiff re-alleges paragraphs 1 through 9.

13 11. Mr. Totaro is a twenty-nine (29) year veteran of the United States Air
14 Force, Air National Guard and Air Force Reserve. His service includes
15 deployments to United Arab Emirates, Kuwait, and Turkey, in support of
16 Operations Iraqi Freedom and Enduring Freedom and he retired as a Lieutenant
17 Colonel in the United States Air Force Reserve.
18

19 12. All of Mr. Totaro's records for discharge from active duty reflect honorable
20 service to the United States, and include both personal and unit decorations for
21 valor and meritorious service in combat.
22

23 13. The applicable service periods for Mr. Totaro in the uniformed service do
24 not exceed 5 years.
25
26
27
28

1 14. Mr. Totaro started work at Lawrence Livermore as an imagery
2 analyst/political scientist, job classification 295.0, on March 17, 1997.

3
4 15. From 1997 until 2000, Mr. Totaro worked at Lawrence Livermore and
5 received positive performance evaluations.

6
7 16. Mr. Totaro earned annual merit increases at Lawrence Livermore prior to
8 his military activation.

9
10 17. On June 5, 2000, Mr. Totaro received orders to active duty and gave a copy
11 of the same to Lawrence Livermore. Thereafter, Lawrence Livermore recorded
12 Mr. Totaro's status as an imagery analyst/political scientist/295.0 on military
13 leave.

14
15 18. As of June 5, 2000, Mr. Totaro's salary was comparable to his peers at
16 Lawrence Livermore with similar job classification, duties, education and
17 experience.
18

19 19. Mr. Totaro communicated with Lawrence Livermore throughout his
20 military leave and provided Lawrence Livermore with copies of new orders each
21 time such orders became available.
22

23 20. From June 2000, to present, Mr. Totaro's peers received periodic
24 evaluations resulting in either annual merit pay, or similar salary increases, from
25 Lawrence Livermore.
26
27
28

1 21. During Mr. Totaro's military leave, Lawrence Livermore did not make any
2 merit or other increase to Mr. Totaro's salary or benefits.

3
4 22. Mr. Totaro's military service lasted until May 31, 2010. Several weeks
5 prior to that date, Mr. Totaro gave Lawrence Livermore notice of his intent to
6 return to work.

7
8 23. Mr. Totaro returned to work at Lawrence Livermore in June 2010. Rather
9 than re-employ Mr. Totaro as required by federal statute, Lawrence Livermore
10 placed Mr. Totaro in a position different from his peers, and without a comparable
11 salary.
12

13 24. To this day, Lawrence Livermore continues to pay Mr. Totaro a salary
14 significantly lower than his peers who have not performed military service.
15

16 25. Upon information and belief, Lawrence Livermore continues to deny Mr.
17 Totaro the opportunity to participate in a USERRA protected retirement plan.
18

19 26. From June 2010, to present, Mr. Totaro made repeated requests for
20 Lawrence Livermore to correct his salary and repeatedly informed Lawrence
21 Livermore of his protected status and rights under USERRA, but these efforts led
22 nowhere.
23

24
25 27. In March 2011, Lawrence Livermore denied Mr. Totaro the opportunity to
26 participate in the Variable Compensation Program based on his military related
27 absence.
28

IV. FEDERAL CAUSES OF ACTION

1
2 28. Plaintiff re-alleges paragraphs 1 through 27.

3
4 29. Defendant violated Mr. Totaro's rights as guaranteed by the USERRA 38
5 U.S.C. §§ 4301 to 4335, including but not limited to: 38 U.S.C. § 4311
6 discrimination and retaliation in employment; 38 U.S.C. §§ 4312, 4313
7
8 reemployment rights; § 4316, and 20 C.F.R. § 1002.247, rights and benefits of
9 persons absent from employment for service in the armed forces; and § 4318, and
10 20 C.F.R. § 1002.262(a), employee pension and benefit plans.

11
12 **(CAUSE OF ACTION NO. 1 – VIOLATION OF 38 U.S.C. §4311)**

13 30. Plaintiff re-alleges paragraphs 1 through 29.

14
15 31. Defendant violated 38 U.S.C. § 4311 of USERRA, among other ways, by
16 discriminating against Mr. Totaro when Defendant denied him employment
17 benefits, including pay, promotion and training, because of his membership,
18 service, or obligation to perform military service.

19
20 **(CAUSE OF ACTION NO. 2 – VIOLATION OF 38 U.S.C. §§4312&4313)**

21
22 32. Plaintiff re-alleges paragraphs 1 through 31.

23 33. Defendant violated 38 U.S.C. §§ 4312, 4313, among other ways, by failing
24 to reemploy Mr. Totaro in a position of seniority with other rights and benefits
25 determined by seniority plus the additional seniority, and rights, and benefits, that
26 Mr. Totaro would have attained had he remained continuously employed.
27
28

1 **(CAUSE OF ACTION NO. 3 – VIOLATION OF 38 U.S.C. §4316)**

2 34. Plaintiff re-alleges paragraphs 1 through 33.

3 35. Defendant violated 38 U.S.C. § 4316, among other ways, by denying Mr.
4 Totaro the rights and benefits determined by seniority and such other rights and
5 benefits not determined by seniority Mr. Totaro would have attained if he had
6 remained continuously employed at Lawrence Livermore.
7

8 **(CAUSE OF ACTION NO. 4 – VIOLATION OF 38 U.S.C. §4318)**

9 36. Plaintiff re-alleges paragraphs 1 through 35.

10 37. Defendant violated 38 U.S.C. § 4318, among other ways, by denying Mr.
11 Totaro the right to make contributions to a retirement plan, by failing to give
12 timely and adequate notice to the plan administrator as required under the
13 USERRA, and denying Mr. Totaro the opportunity to fully participate in his
14 retirement plan.
15
16
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18

19 **(CLAIM FOR LIQUIDATED DAMAGES – 38 U.S.C. §4323)**

20 38. Plaintiff re-alleges paragraphs 1 through 37.

21 39. Plaintiff is entitled to liquidated damages under USERRA because the
22 Defendant knew, or showed reckless disregard regard for whether its conduct was
23 prohibited under USERRA.
24
25
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1 40. Defendant's conduct was willful as defined by §4323(d), 20 C.F.R. §
2 1002.312(c), because Mr. Totaro gave Defendant multiple notices that its actions
3 violated USERRA and Defendant showed reckless disregard for the matter.
4

5 **(CONFLICTING AGREEMENTS ARE INVALID – 38 U.S.C. §4302)**

6 41. Plaintiff re-alleges paragraphs 1 through 40.
7

8 42. To the extent that Defendant's allege application of any agreement that
9 constitutes any limitation on Mr. Totaro's rights under USERRA, it is illegal, null
10 and void, inapplicable and of no force or effect pursuant to 38 U.S.C. § 4302.
11

12 **V. PRAYER FOR RELIEF**

13 Plaintiff respectfully prays for:

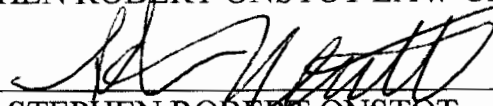
14
15 A. Compensation for all injury and damages suffered by ANTHONY
16 TOTARO including, but not limited to, both economic and non-economic
17 damages, in the amount to be proven at trial including back pay, front pay, pre and
18 post judgment interest, lost benefits of employment, negative tax consequences of
19 any award, liquidated damages, exemplary damages, and punitive damages as
20 provided by law.
21

22
23 B. Plaintiff's reasonable attorney, expert fees, and costs, pursuant to 38 U.S.C.
24 § 4323, and as otherwise provided by law.
25

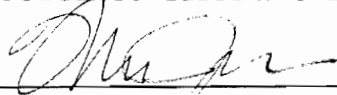
26 C. For such other and further relief as this Court deems just and equitable,
27 including injunctive relief enjoining future violations of the USERRA.
28

Respectfully submitted this 25 day of OCTOBER, 2011.

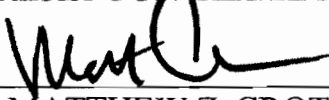
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WITHERSPOON KELLEY

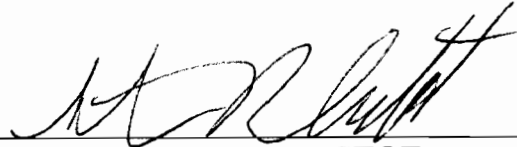
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Attorneys for Plaintiff Anthony Totaro

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38 or any similar rule of law, Plaintiff demands a trial by jury for all causes of action and issues for which trial by jury is available.

By: _____



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CIVIL COVER SHEET

JS 44 (Rev. 12/07) (CAND Rev 1/10)

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 PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS ANTHONY TOTARO DEFENDANTS LAWRENCE LIVERMORE NATIONAL SECURITY, LLC (b) County of Residence of First Listed Plaintiff ALAMEDA (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant ALAMEDA (IN U.S. PLAINTIFF CASES ONLY) (c) Attorney's (Firm Name, Address, and Telephone Number) STEPHEN ONSTOT 1601 BARTON RD., #3902 REDLANDS, CA 92373

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

IV. NATURE OF SUIT (Place an "X" in One Box Only) CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES

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. 4301, et seq. Brief description of cause: Violation of the Uniformed Services Employment and Reemployment Rights Act

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 PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AN "X" IN ONE BOX ONLY) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

DATE 10/25/11 SIGNATURE OF ATTORNEY OF RECORD [Signature]