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7 STATE OF WASHINGTON
8 SPOKANE COUNTY SUPERIOR COURT

9 CHRISTINA MARTIN, JASON
10 LONGORIA, CHARLES ARNOLD
11 and JOHN SAGER on behalf of
12 themselves and all others similarly
13 situated,

14 Plaintiffs,

15 v.

16 THE STATE OF WASHINGTON, the
17 WASHINGTON STATE PATROL,
18 JEFFREY DEVERE, JAY
19 CABEZUAELA, TIMOTHY
20 WINCHELL, and JOHN BATISTE,

21 Defendants.

NO. 14-2-00016-7

ORDER DENYING DEFENDANTS'
MOTION TO DISMISS

22 Defendants moved the Court under CR 12 to dismiss Plaintiffs' claims. Specifically,
23 Defendants asked the Court to rule as a matter of law that (1) the remedy for violation of
24 RCW 41.04.010 is a writ of mandamus, not a civil action for damages in superior court; (2)
25 the remedy for violation of RCW 38.40.060 is a writ of mandamus, not a civil action for
26 damages in superior court; (3) the Court lacked jurisdiction over any action brought under
state law as Plaintiffs did not file a tort claim; (4) there is no private right of action against
individuals under USERRA; (5) many of Plaintiffs' claims under USERRA are barred by the

ORDER DENYING
DEFENDANTS' MOTION TO
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1 statute of limitations; and (6) the complaint failed to state a claim for violation of the
2 Plaintiffs' Fifth and Fourteenth Amendment due process rights under 42 U.S.C. § 1983.

3 The Court considered the records and files herein, including the following:

- 4 1. Defendants' Motion for Dismissal Pursuant to CR 12(b);
- 5 2. Defendants' Memorandum in Support of Motion to Dismiss;
- 6 3. Declaration of John Scott Blonien;
- 7 4. Plaintiffs' Memorandum in Response to Motion to Dismiss;
- 8 5. Defendants' Reply Memorandum in Support of Motion to Dismiss; and
- 9 6. The argument at hearing by counsel for the parties.

10
11 Defendants were represented by Jason Brown, Assistant Attorney General. Plaintiffs
12 were represented by Matthew Crotty and Thomas Jarrard. Upon consideration of the
13 pleadings on file and arguments of counsel, the Court finds as follows:

- 14 1. The Uniformed Services Employment and Reemployment Rights Act, (USERRA) 38
15 U.S.C. § 4301 *et. seq.*, is to be construed broadly.
- 16 2. Plaintiffs properly state claims under 38 U.S.C. §§ 4311(a), 4316(a), and 4316(d)
17 against the defendants.
- 18 3. There is a private right of action against individuals under USERRA, as employers, as
19 defined in the Act, 38 U.S.C. § 4304.
- 20 4. USERRA, 38 U.S.C. § 4302, supersedes state law and the notice of claims
21 requirements of RCW 4.92.100.
- 22 5. A writ of mandamus is not the sole remedy for violation of RCW 41.04.010;
- 23 6. A writ of mandamus is not the sole remedy for violation of RCW 38.40.060;
- 24
- 25
- 26

- 1 7. The Court does not lack jurisdiction over this action, because Plaintiffs' claim are
2 brought under federal, not state law, and a tort claim is therefore unnecessary;
3 8. There is no statute of limitations under 38 U.S.C. § 4327; and
4 9. Plaintiffs did not fail to state a claim under 42 U.S.C. § 1983. However, the Court
5 grants leave to bring a subsequent summary judgment motion on Plaintiffs' 42 U.S.C.
6 § 1983 claim following discovery in this case.

7 Therefore, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

8 Defendants' Motion to Dismiss is DENIED.

9
10 DONE IN COURT this 19 day of March, 2014.

11 MARYANN C. MORENO

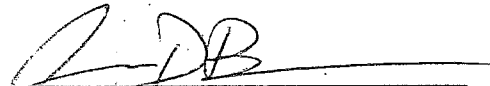
12 JUDGE MARYANN C. MORENO

13
14 DATED this _____ day of March, 2014.

15
16 Presented By:

17 ROBERT W. FERGUSON
18 Attorney General

Approved, with Notice of Presentment Waived,
by:
19 THE LAW OFFICE OF THOMAS G.
20 JARRARD, PLLC

21 
22 JASON BROWN, WSBA No. 39366,
23 OID # 91106

24 Assistant Attorney General
25 Attorneys for Defendants, The State of
26 Washington, The Washington State
Patrol, Jeffrey Devere, Jay Cabezuela,
Timothy Winchell, and John Batiste

ELECTRONICALLY APPROVED Nattle (for)
THOMAS G. JARRARD, WSBA #39774 *3/20/14*
Attorneys for Plaintiff

CROTTY & SON LAW FIRM, PLLC


MATTHEW Z. CROTTY, WSBA #39284
Attorneys for Plaintiff