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PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

NERISSA DEL ROSARIO,

Plaintiff,

vs.

BATES TECHNICAL COLLEGE, and  
RONALD LANGRELL,

Defendants.

Case No. 18 2 08717 7

**COMPLAINT & DEMAND FOR JURY  
TRIAL**

The Plaintiff, NERISSA DEL ROSARIO by and through MATTHEW Z. CROTTY, of  
CROTTY & SON LAW FIRM, PLLC complains of Defendants and alleges as follows:

**I. PARTIES, JURISDICTION, & VENUE**

1. Nerissa Del Rosario was employed by the above-captioned Defendants during the  
time-frame relevant to this lawsuit and worked in Pierce County, Washington, on behalf of  
Defendants.

2. Defendant Bates Technical College is an agency of the State of Washington and an  
employer as defined under the Uniformed Services Employment and Re-employment Rights Act

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1 (USERRA).

2 3. Defendant Ronald Langrell is an employer as defined under USERRA, 38 U.S.C. §  
3 4303(4) as he controlled Ms. Del Rosario's employment opportunities.

4 4. The Pierce County Superior Court has jurisdiction over this case.

5 5. Venue is proper in Pierce County because, *inter alia*, Defendants conduct business in  
6 Pierce County and the acts and omissions giving rise to Ms. Del Rosario's Complaint took place in  
7 Pierce County, Washington.

8 **II. FACTS**

9 6. Plaintiff incorporates the above facts as if pled verbatim herein.

10 7. On or about July 1, 1999, Bates Technical College ("Bates") hired Ms. Del Rosario  
11 into a tenure track instructor position.

12 8. At the time of her hire Ms. Del Rosario served in the US Air Force Reserve. Shortly  
13 after her hire Ms. Del Rosario's military obligations required that she conduct military duty  
14 approximately eight (8) total hours/day for one weekend each month and one two week training  
15 obligation in the summer. Ms. Del Rosario's military reserve obligations had little effect on her  
16 schedule at Bates.  
17

18 9. Ms. Del Rosario received tenure at the college in March 2003 as an instructor in  
19 the Information Technologies Specialist Program.

20 10. Following the events of September 11, 2001, Ms. Del Rosario's military absences  
21 increased.  
22

23 11. The Air Force Reserves mobilized Ms. Del Rosario from January 2004 through  
24 May 2006. That mobilization included a combat tour (September 2005 – January 2006) in Iraq.  
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While serving in Iraq Ms. Del Rosario served as the Logistics Chief coordinating the movement of military personnel in and out of Kirkuk AB. A significant portion of her duties included coordinating movement of human remains from the Air Base and return to the United States. Processing the remains and personal belongings of deceased U.S. service-members had a profound effect on Ms. Del Rosario's life and ultimately resulted in her being diagnosed with Post Traumatic Stress Disorder (PTSD).

12. In May 2006 Ms. Del Rosario returned to Bates. Bates re-employed Ms. Del Rosario as a Technology Center Instructor.

13. Before the January 2004 – May 2006 mobilization Ms. Del Rosario's job title was Tenured Web Design Instructor. Ms. Del Rosario worked a 214 day per year/7 hours per day schedule.

14. After the January 2004 – May 2006 mobilization Ms. Del Rosario's job title was Technology Center Instructor. Ms. Del Rosario worked a 214 day per year/7 hours per day schedule.

15. During the January 2004 – May 2006 timeframe Bates utilized Emmet Peterson to do the work that Ms. Del Rosario was doing while Ms. Del Rosario was away on military orders. The position that Bates re-employed Ms. Del Rosario into upon her return to work was of a lower status than the Tenured Web Design Instructor position. Bates' rationale for re-employing Ms. Del Rosario into the lower status job was that enrollment had declined during Ms. Del Rosario's absence thus necessitating the reduction of one of the two Tenured Web Design Instructor positions.

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1           16.     From September 2007 – December 2007 Ms. Del Rosario again deployed overseas  
2 with the Air Force Reserve.

3           17.     Before the September 2007 – December 2007 mobilization Ms. Del Rosario's job  
4 title was Technology Center Instructor. Ms. Del Rosario worked a 214 day per year/7 hours per  
5 day schedule.

6           18.     After the September 2007 – December 2007 mobilization Ms. Del Rosario's job  
7 title was Business and Management Training Center (BMTC) Instructor. Ms. Del Rosario worked  
8 a 214 day per year/7 hours per day schedule.

9           19.     During the September 2007 – December 2007 timeframe Bates closed down the  
10 Technology Center while Ms. Del Rosario was away on military orders.

11           20.     Bates transferred Ms. Del Rosario the BMTC at the direction of then President  
12 David Borofsky, to "make things right" regarding the way the decision to close down the  
13 Technology Center was made. Bates kept Ms. Del Rosario at the 214 day per year/7 hours per  
14 day schedule and claimed that the budget would not allow Ms. Del Rosario to get the standard  
15 day schedule and claimed that the budget would not allow Ms. Del Rosario to get the standard  
16 225 day per year/8 hours per day that all of Ms. Del Rosario's peers were receiving.

17           21.     Bates' then-President David Borofsky told Ms. Del Rosario, on or about August  
18 2009, that there was a movement to get rid of Ms. Del Rosario given her numerous military  
19 obligations. Mr. Borofsky encouraged Ms. Del Rosario to return to military service so as to save  
20 her job.  
21

22           22.     From August 2009 to April 2010 Ms. Del Rosario was again mobilized with the  
23 Air Force Reserve.  
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1 23. Before the August 2009 to April 2010 mobilization Ms. Del Rosario's job title was  
2 Instructor, BMTC. Ms. Del Rosario worked a 214 day per year/7 hours per day schedule.

3 24. After the August 2009 to April 2010 mobilization Ms. Del Rosario's job title was  
4 Instructor, Job Readiness Training Center ("JRTC"). Ms. Del Rosario worked a 214 day per  
5 year/7 hours per day schedule. The JRTC position was not a tenured position.

6 25. Bates' stated reason for placing Ms. Del Rosario as an Instructor in the JRTC was  
7 "budget issues."

8 26. On or about January 26, 2012 Bates (consistent with Mr. Borofsky's warning)  
9 indicated that Ms. Del Rosario needed to move from the JRTC to Bates' Administrative Office  
10 Assistant to serve as an Instructor. Bates' move had the effect of placing Ms. Del Rosario at the  
11 top of Bates' RIF list and reduced her seniority from twelve years to zero.  
12

13 27. On February 10, 2012, Ms. Del Rosario filed a USERRA claim with the US  
14 Department of Labor/VETS alleging, in part, that Bates violated Ms. Del Rosario's USERRA  
15 rights by failing to properly re-employ her upon her return to work after the above-referenced  
16 mobilizations.  
17

18 28. On or about February 13, 2012 Ms. Del Rosario went on military orders. Those  
19 military orders lasted until September 30, 2015.

20 29. While Ms. Del Rosario was on military orders Bates, on April 10, 2012, agreed to  
21 place Ms. Del Rosario back into BMTC on an 8 hour/day 225day/year schedule rather than the  
22 Administrative Office Assistant Instructor position. Before Ms. Del Rosario filed her DOL/VETS  
23 USERRA complaint she worked a 214 day per year/7 hours per day. Bates' decision to move Ms.  
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1 Del Rosario to the 8 hour/day 225 day/year was an admission that Bates had been violating Ms.  
2 Del Rosario's USERRA rights from, at least, December 2009.

3 30. Yet at the same time Bates agreed to place Ms. Del Rosario on the proper 8 hour/day  
4 225 day/year schedule, it, for the first time in Ms. Del Rosario's career told Ms. Del Rosario that  
5 "[w]hen you return [from military leave] you should meet with your supervisor, Dave  
6 Montgomery, to write a Performance Management Plan for the rest of the 2012-2013 school  
7 year."

8 31. Bates has no written rule, policy, or procedure that expressly mentions a  
9 "Performance Management Plan."  
10

11 32. On or about April 11, 2012, the DOL/VETs closed is file on Ms. Del Rosario's  
12 January 2012 USERRA complaint.

13 33. On or about June 9, 2015, Bates (while Ms. Del Rosario was still on military orders)  
14 emailed Ms. Del Rosario and told her that Bates wanted to re-employ Ms. Del Rosario as a HR  
15 Generalist. The HR Generalist position differed from the position that Ms. Del Rosario occupied  
16 before the orders that commenced during the February 2012 timeframe. In conveying this "re-  
17 employment" offer Bates did not tell Ms. Del Rosario that the acceptance of that offer may  
18 constitute a waiver of her USERRA re-employment rights. For in order for a waiver of USERRA  
19 re-employment rights to be enforceable it must comply with the provisions of 38 U.S.C. §  
20 4316(B)(2), and Bates' communication regarding Ms. Del Rosario's re-employment position into  
21 the HR Generalist provision provided no such notice.  
22

23 34. On or about August 2015 Ms. Del Rosario returned to work (part time) following  
24 the February 2012 – September 2015 mobilization. Ms. Del Rosario returned to the HR Generalist  
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1 position with the understanding that she could and would return to the tenured faculty position.  
2 Ms. Del Rosario's understanding was based on a verbal commitment from Bates' former HR  
3 Director, Geoff Kaufman. This verbal commitment occurred on or about June 2015.

4 35. Although Bates told the DOL/VETS that Ms. Del Rosario would return to work on  
5 an 8/hour day 225/day year schedule, it did not keep its word.

6 36. Instead Bates brought Ms. Del Rosario back to work at an 8/hour day 260/day year  
7 schedule but at the salary for the 7/hour day 214/day year schedule she had been paid before her  
8 DOL complaint. The effect of this was that Bates paid Ms. Del Rosario the same amount of money  
9 but required her to work more hours to obtain those earnings. Using Ms. Del Rosario's last salary  
10 of \$93,394/year as an example, her working 260 days equaled a \$44.90 per hour rate whereas her  
11 working 225 days at that salary equaled \$51.88 per hour. This has resulted in Ms. Del Rosario  
12 being financially harmed in a manner in which she has not been fully compensated.  
13

14 37. On or about November 2016 Mr. Kaufman resigned from his position at Bates to  
15 be effective March 2017. Before Mr. Kaufman departed Bates' employment Ms. Del Rosario  
16 requested that he (Kaufman) memorialize, in writing, the above-referenced verbal undertaking.  
17 On or about February 10, 2016, Mr. Kaufman responded to Ms. Del Rosario's request whereupon  
18 he (Kaufman) denied making the above-referenced June 2015 promise.  
19

20 38. On or about March 2016 Mr. Kaufman's replacement, Gary Nilsson, began serving  
21 as Bates' HR Director.

22 39. Approximately one month after Mr. Nilsson took over as Bates' HR Director (April  
23 2016) Ms. Del Rosario approached Mr. Nilsson, showed Mr. Nilsson her January 2012  
24 DOL/VETS complaint, a copy of USERRA's relevant statutory provisions, and a document (from  
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1 Bates) that inaccurately stated that Ms. Del Rosario had only 11 years of service. Ms. Del Rosario  
2 requested that Mr. Nilsson have Bates honor her USERRA rights by returning her to a tenured  
3 position and honor the commitment it made to DOL/VETS regarding the 8 hour/day and 225/day  
4 year schedule.

5 40. On or about August 10, 2016, Mr. Nilsson became extremely angry during a  
6 meeting being chaired by Ms. Del Rosario and significantly raised his voice at several people in  
7 the meeting, berating them for things being discussed. The meeting was so disturbing to members  
8 of the committee that a few left the meeting early, several quit the committee as a result of that  
9 meeting, and a few met with Mr. Nilsson later in the week to discuss their feelings and demand  
10 apologies. As the committee chair, Ms. Del Rosario felt obligated to discuss the inappropriate  
11 behavior of her director with him in private. During that meeting he not only continued to yell  
12 about the meeting he eventually concluded that while he may have made a mistake in his tone  
13 and the things he was saying, people on the committee just needed to accept that it was his way  
14 of talking and to get over being upset about it. Ms. Del Rosario also expressed at that time, that  
15 she was extremely uncomfortable being in a position of having to have this kind of conversation  
16 with her own supervisor about his behavior, Mr. Nilsson reassured her that he did not harbor a  
17 grudge for it. Nevertheless, after that incident, Ms. Del Rosario began to feel an increase in  
18 hostility from Mr. Nilsson such as having to sign in and out whenever leaving for more than 10  
19 minutes, interruptions of meetings she was having behind closed doors, condescending tone in  
20 communications, accusations of not informing him of work she was doing, undermining and  
21 overturning HR decisions she made (even after he approved them), and discussing with another  
22 HR generalist negative comments about Ms. Del Rosario.  
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1           41.     During the November – December 2016 timeframe Ms. Del Rosario attended a  
2 series of medical appointments regarding her stress-related health issues that included, severe  
3 neck and shoulder pain, frequent migraine headaches, debilitating back pain, heart palpitations,  
4 and chest pain.

5           42.     On or about January 17, 2017, Ms. Del Rosario made a written request to return to  
6 tenured faculty status. At no time did Bates respond to that written request. At no time did Bates  
7 return Ms. Del Rosario to faculty status. Ms. Del Rosario made that request “due to health issues  
8 with my disabilities that have been exacerbated by stress.” At this time she was placed on FMLA  
9 due to the health issues that she had been experiencing

10           43.     On or about February 3, 2017, Bates noticed that it should have placed Ms. Del  
11 Rosario on intermittent FMLA leave when she returned from vacation. This non-compliance with  
12 the FMLA was not noted until Ms. Del Rosario’s supervisor told her she was “still taking too  
13 much time off” of work for appointments.  
14

15           44.     During February 2017 Ms. Del Rosario told Mr. Kaufman that she wanted to  
16 exercise her USERRA rights and return to a tenured position to which Mr. Kaufman responded  
17 that Ms. Del Rosario was doing a “great job” in her current position and that Bates had done all  
18 it was required to do under USERRA.  
19

20           45.     Ms. Del Rosario requested intermittent FMLA leave due to continuing health  
21 treatments that began in November 2016. Ultimately it was suggested that the chest pains were  
22 caused by anxiety and stress that Ms. Del Rosario was experiencing at work. Both Ms. Del  
23 Rosario’s primary health care provider and her VA counselor recommended that Ms. Del Rosario  
24 leave her HR Generalist position due to the stress that she was experiencing.  
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1 46. On or about March 7, 2017, Ms. Del Rosario's health care provider informed Bates,  
2 in writing, that Ms. Del Rosario was "experiencing extreme stress reactions, and relates this to  
3 her current work environment." Ms. Del Rosario's health care provider requested that Bates  
4 accommodate Ms. Del Rosario's PTSD disability by moving her to a less stressful environment.

5 47. On March 29, 2017, Mr. Nilsson authored a document that acknowledged that Ms.  
6 Del Rosario had a "documented medical issue" and requested that Ms. Del Rosario be moved  
7 from HR "[a]s soon as possible." Mr. Nilsson transmitted this request to Ron Langrell, Bates'  
8 President, and Holly Woodmansee, Bates' VP of Administrative Services.

9 48. On or about April 3, 2017, Ms. Del Rosario again requested that Bates  
10 accommodate her PTSD disability by moving her out of the HR department to the teaching  
11 faculty.  
12

13 49. Between April 3, 2017 and May 5, 2017, Ms. Del Rosario's health care provider  
14 timely responded to Bates' request for information regarding the basis for Ms. Del Rosario's  
15 accommodation request. Ms. Del Rosario's health care provider's May 5, 2017, letter provided,  
16 in part, that Mr. Nilsson's "hostile tones, angry tension, aggressive stance and occasional yelling"  
17 exacerbated Ms. Del Rosario's PTSD.  
18

19 50. It was not until May 2017 that Bates finally paid Ms. Del Rosario back wages in  
20 accordance with the above-referenced 8/hour day and 225/day salary schedule.

21 51. On or about May 9, 2017, Mr. Nilsson stated, to Ms. Del Rosario, that she had been  
22 "taking a lot of time off." It is true that Ms. Del Rosario had been taking a lot of "time off" but  
23 that "time off" was approved FMLA leave and was occasioned by Mr. Nilsson's conduct that  
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would                                      aggravate                                      Ms.                                      Del  
1                                      Rosario's PTSD.

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3                                      52.                                      On May 24, 2017, Bates moved Ms. Del Rosario's work station from the HR office  
4 to a windowless office across the hall. The office move did not effectively limit Ms. Del Rosario's  
5 contact with Mr. Nilsson. Ms. Del Rosario's "new" office lacked the same computer equipment  
6 that her peers possessed. Part-time employees of Bates were given offices with windows whereas  
7 Ms. Del Rosario was not. Ms. Del Rosario objected to the move and told Executive Vice  
8 President, Alfred Griswold that she believed that the move was in retaliation for her having made  
9 her prior USERRA complaints and requests for accommodation.  
10

11                                      53.                                      On or about May 17<sup>th</sup>, Bates told Ms. Del Rosario that her (Del Rosario's) health  
12 care provider filed a "hostile work environment" complaint on Ms. Del Rosario's behalf. This  
13 was not true because Ms. Del Rosario's health care provider never filed such a complaint.

14                                      54.                                      Bates responded to Ms. Del Rosario's health care providers' alleged claim by  
15 retaining Charles Sims, a "Human Resources Consultant" and ostensible "impartial" investigator.  
16 Mr. Sims was far from impartial. For example, on May 31, 2017, Mr. Sims, in a meeting with  
17 Ms. Del Rosario, stated that he (Sims) did not believe that Mr. Nilsson (a person that Sims claimed  
18 to know) was "capable" of the alleged behavior. Mr. Sims' report which, not surprisingly, found  
19 that no hostile work environment existed, concluded with the subtle recommendation that Bates  
20  
21 *fire* Ms. Del Rosario. To wit:

22                                      From the perspective of an impartial observer, with a risk management context,  
23 it raises the question of "why the college would continue to expose itself to  
24 possible allegations, by Ms. Del Rosario, of adverse health outcomes by  
25 requiring her to remain in and report to a work assignment where she is  
contributing little or no performance value for the college?"

1           55.     The report concluded with Mr. Sims recommending that Bates place Ms. Del  
2 Rosario on administrative leave which, in turn, is customarily a pre-condition to firing an  
3 employee. Clearly, the hostile work environment “complaint” and “investigation” was a sham  
4 designed by Bates to provide cover for its retaliatory and illegal behavior.

5  
6           56.     On June 23, 2017, Ms. Del Rosario contacted the Employer Support for Guard and  
7 Reserve (ESGR) in order to complain of Bates’ continued USERRA violation by not placing her  
8 in the tenured teacher position.

9           57.     On July 10, 2017, at 8 AM ESGR (after leaving two voicemail messages with Mr.  
10 Griswold to which he did not respond) contacted Mr. Griswold. The ESGR representative relayed  
11 Ms. Del Rosario’s USERRA complaint and request to move from HR to a tenured faculty teaching  
12 position. The ESGR representative further relayed Ms. Del Rosario’s USERRA complaint to Mr.  
13 Griswold on July 12, 2017.

14  
15           58.     On August 10, 2017, Ms. Del Rosario (again) asked Mr. Nilsson to transfer her out  
16 of the HR Department. Mr. Nilsson responded by elevating his voice and making inappropriate  
17 comments about Ms. Del Rosario’s medical appointments.

18           59.     On August 23, 2017, Ms. Del Rosario sent Mr. Griswold a detailed written  
19 summary that outlined her varied USERRA and accommodation requests. Ms. Del Rosario  
20 further accused Bates of violating her FMLA rights as well as retaliating against her in other  
21 regards.

22  
23           60.     On August 24, 2017, Mr. Griswold told Ms. Del Rosario that her April 2017  
24 accommodation request (requesting transfer out of HR) had been denied. At no time did Bates

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1 fully complete the interactive process as it relates to Ms. Del Rosario's accommodation requests.  
2 Unquestionably, Bates' denial of the accommodation request was in retaliation for her August 23,  
3 2017, complaint in which Ms. Del Rosario (again) asserted her FMLA and USERRA rights.

4 61. In September 2017 Ms. Del Rosario resigned her position at Bates to take a lower  
5 paying job that requires Ms. Del Rosario to commute two hours, each direction, because she  
6 feared that Bates was retaliating for her complaints about the situation she was in and that they  
7 (Bates) was developing cause to fire her.

8 62. At times when Ms. Del Rosario spoke with Mr. Nilsson and/or Mr. Griswold  
9 regarding her USERRA rights and disability accommodation requests both individuals, in  
10 declining to grant Ms. Del Rosario her USERRA rights and/or accommodation requests, said  
11 words to the effect of "we're just doing Langrell's bidding." The "Langrell" meant Bates' then-  
12 President Ronald Langrell.  
13

14 63. Bates' acts and omissions constitute violation of the Uniformed Services  
15 Employment and Re-employment Rights Act, the Family Medical Leave Act, and the Washington  
16 Law Against Discrimination. Bates' actions and omissions led to Ms. Del Rosario's constructive  
17 discharge from Bates' employment.  
18

19 64. During the entirety of Ms. Del Rosario's employment Bates maintained a posted  
20 notice where employers customarily place notices for employees as required by 38 U.S.C. § 4334,  
21 informing managers and employees of rights under USERRA.

22 65. Upon information and belief, Bates is the recipient of various money from the  
23 federal government and, as a condition of receiving said money, Bates agrees to comply with the  
24 Vietnam Era Veterans' Readjustment Act (VEVRAA).  
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**III. CAUSES OF ACTION**

1  
2 66. Plaintiff incorporates the above paragraphs as if pled verbatim herein.

3 **(Count One – Violation of the Uniformed Services Employment and Re-employment Rights**  
4 **Act – 38 U.S.C. 4301 et seq – Failure to Re-Employ under § 4312-4313 & Retaliation under §**  
5 **4311)**

6 67. Plaintiff incorporates the above paragraphs.

7 68. In order to enjoy USERRA's re-employment protections, a plaintiff must: (a) be a  
8 member of the Armed Forces of the United States; (b) give notice to his employer of the plaintiff's  
9 military obligations; (c) serve honorably during the military service period; (d) give timely  
10 notification, to the employer, of plaintiff's intent to return to work; and, (e) serve less than five  
11 years with the military (absent varied exceptions). 38 U.S.C. § 4312.

12 69. Ms. Del Rosario was a member of the Air Force Reserves as all times relevant to  
13 this lawsuit.

14 70. Ms. Del Rosario gave timely advance notice of her (a) January 2004 – May 2006  
15 military mobilization (b) September 2007 – December 2007 military mobilization (c) August 2009  
16 – April 2010 military mobilization and (d) February 2012 – September 2015 military mobilization.

17 71. Ms. Del Rosario served honorably during the above-referenced military  
18 mobilizations and during the entirety of her military career.

19 72. Ms. Del Rosario timely returned to work following completion of the (a) January  
20 2004 – May 2006 military mobilization (b) September 2007 – December 2007 military  
21 mobilization (c) August 2009 – April 2010 military mobilization and (d) February 2012 –  
22 September 2015 military mobilization.  
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1 73. Upon returning to work Defendants were obligated to re-employ Ms. Del Rosario  
2 in the following "order of priority": (1) the position that the employee would have attained with  
3 reasonable certainty if not for the employee's absence due to military service ("the escalator  
4 position"); (2) the position that the employee was employed on the date that the period of service  
5 began ("the pre-service position"); or (3) if the employee is not qualified for (1) or (2) above, any  
6 other position that is the nearest approximation first to (1) and then to (2) ("the nearest-  
7 approximation position"). 38 U.S.C. § 4313(a)(1)(A)-(B) & (a)(4); 20 C.F.R. § 1002.191; 20  
8 C.F.R. § 1002.196(a)-(c).

9  
10 74. The USERRA also required Defendants to re-employ Ms. Del Rosario into a  
11 position that had the same "seniority, status, and pay" she had before the above-referenced military  
12 mobilizations.

13 75. Defendants violated USERRA's re-employment statute by, *inter alia*, (a) re-  
14 employing Ms. Del Rosario in lower status position of "Technology Center Instructor" following  
15 her return to work following the January 2004 – May 2006 mobilization (b) re-employing Ms. Del  
16 Rosario at in a 214/day per year (7/hour per day) schedule following her return to work after the  
17 September 2007 – December 2007 mobilization - - - which was of a lower status and pay than her  
18 similarly situated peers who were given more work days per year (225) and more hours per day  
19 (8) to work - - - (c) re-employing Ms. Del Rosario into lower status non-tenured JRTC Instruction  
20 position following her August 2009 – April 2010 mobilization, (d) re-employing Ms. Del Rosario  
21 in a lower status, non-union protected exempt status position as a HR Generalist following her  
22 February 2012 – September 2015 mobilization, and (e) following Ms. Del Rosario's DOL/VETs  
23 complaint of 2012 (which related to Bates' failure to re-employ her in 2007), requiring Ms. Del  
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1 Rosario to work more days (260 days per year at 8 hours a day) but paying Ms. Del Rosario at a  
2 214 day per year (7 hours per day) rate.

3 76. Defendants also violated USERRA by failing to re-employ Ms. Del Rosario into a  
4 tenured teaching position (as opposed to the non-tenured HR Generalist position) as the statute  
5 and its governing regulations required Bates to, *inter alia*, accommodate Ms. Del Rosario's  
6 service-connected disability. *See* 20 C.F.R. § 1002.225 – 226. In this instance Ms. Del Rosario's  
7 service-connected disability was PTSD. Ms. Del Rosario's PTSD was aggravated by Ms. Del  
8 Rosario's supervisor, Mr. Nilsson. Ms. Del Rosario was serving in the HR Generalist position  
9 when her PTSD was being exacerbated by Mr. Nilsson. As such, USERRA required Bates to, in  
10 addition to the reasons set out above, re-employ Ms. Del Rosario into the tenured teaching position  
11 that would keep Ms. Del Rosario out of Mr. Nilsson's supervisory umbrella.  
12

13 77. Defendants' failure to properly re-employ Ms. Del Rosario has caused her damages  
14 in an amount to be proven at trial.

15 78. USERRA, 38 U.S.C. § 4311(b), also contains an anti-retaliation provision insofar  
16 as an employer cannot retaliate against a person who, *inter alia*, "(1) has taken an action to enforce  
17 a protection afforded any person under this chapter, (2) has testified or otherwise made a statement  
18 in or in connection with any proceeding under this chapter, (3) has assisted or otherwise  
19 participated in an investigation under this chapter, or (4) has exercised a right provided for in this  
20 chapter."  
21

22 79. Ms. Del Rosario's USERRA protected activity includes, but is not limited to, her  
23 (a) DOL/VETS complaint of 2012 (b) her June 2015 and April 2016 requests to return to her  
24 tenured position (c) her January 2017 request to return to her tenured position (d) her February  
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1 2017 request to return to her tenured position (e) her March 2017, April 2017, and June 2017  
2 requests to return to her tenured position in order to alleviate the affects her current work  
3 environment was having on her PTSD, (f) her June - July 2017 ESGR complaints, and (g) her  
4 August 23, 2017 communication to Mr. Griswold regarding her USERRA rights.

5 80. Defendants retaliated against Ms. Del Rosario by, *inter alia*, (a) ignoring her  
6 requests to return to her tenured position from the June 2015 – August 23, 2017 timeframe but  
7 then emphatically denying the request to return to the tenured position the day after her August 23,  
8 2017 USERRA complaint to Mr. Griswold, (b) paying Ms. Del Rosario at a lower pay rate (c)  
9 moving Ms. Del Rosario’s work station, and (d) misrepresenting that Ms. Del Rosario’s health  
10 care provider made a hostile work environment claim on Ms. Del Rosario’s behalf and then using  
11 that as a pretext to conduct a sham investigation through an “impartial” investigator (Mr. Simms).  
12

13 81. Defendants’ violation of USERRA’s anti-retaliation statute has caused her damages  
14 in an amount to be proven at trial.

15 **(Count Two – Violation of Washington Law Against Discrimination – RCW 49.60.180 &**  
16 **RCW 49.60.210 & RCW 49.60.220)**

17 82. Plaintiff incorporates the above paragraphs.

18 83. The Washington Law Against Discrimination (WLAD) makes it illegal for an  
19 employer to discriminate against an employee on account of her actual or perceived disability, fail  
20 to accommodate an employee’s disability, and retaliate against that employee on account of, *inter*  
21 *alia*, the employee’s request for an accommodation and/or the employee’s opposition to any of his  
22 or her employer’s discriminatory acts.  
23

24 84. Defendants failed to accommodate Ms. Del Rosario’s disability by, *inter alia*, turning  
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1 a blind eye to the means by which Mr. Nilsson, and others, were exacerbating her pre-existing service  
2 connected disabilities.

3 85. Defendants discriminated on account of Ms. Del Rosario's actual or perceived  
4 disability by using a made up reason (Ms. Del Rosario's health care provider's fictitious filing of a  
5 complaint) to hire a biased investigator (Simms) to come up with a reason (Ms. Del Rosario's  
6 "adverse health outcomes") to not transfer Ms. Del Rosario out of the HR Generalist position.

7 86. Defendants violated the WLAD's anti-retaliation statute for the same reasons that the  
8 Defendant violated USERRA's anti-retaliation statute.

9 87. Defendant Langrell violated the WLAD by, *inter alia*, aiding and abetting Bates'  
10 violations of the law by instructing Mr. Nilsson and/or Mr. Griswold to not action Ms. Del Rosario's  
11 requests and/or by encouraging said Defendants to violate the law.

12 88. Defendants' violations of the WLAD entitle Ms. Del Rosario to damages in an  
13 amount to be proven at trial.

14  
15 **(Count Three – Violation of the Family Medical Leave Act – 29 U.S.C. 2615 – Interference**  
16 **and discrimination/retaliation)**

17 89. In order to state an FMLA interference claim, an employee must establish that (1) she  
18 was eligible for the FMLA's protections, (2) her employer was covered by the FMLA, (3) she was  
19 entitled to leave under the FMLA, (4) she provided sufficient notice of her intent to take leave, and  
20 (5) her employer denied her FMLA benefits to which she was entitled.

21  
22 90. Ms. Del Rosario was eligible for FMLA protections, Bates was covered by the  
23 FMLA, Ms. Del Rosario was entitled to take FMLA leave, and Ms. Del Rosario provided Bates with  
24 her intent to take that leave on or about January 17, 2017.

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1 91. Ms. Del Rosario took full (non-intermittent) FMLA from January 17, 2017 through  
2 February 3, 2017 whereupon she returned to work, at Bates, in a fulltime capacity.

3 92. Bates interfered with Ms. Del Rosario's rights by failing to inform her of her right to  
4 take intermittent FMLA post- February 2017 even though Ms. Del Rosario informed Bates that she  
5 would need intermittent FMLA after her February 2017 return to work in a fulltime capacity.

6 93. Bates also discriminated/retaliated against Ms. Del Rosario for taking FMLA by,  
7 *inter alia*, attempting to deny the request for FMLA that Ms. Del Rosario made on May 1, 2017,  
8 telling Ms. Del Rosario that she had been taking "too much time off" for medical appointments even  
9 though the FMLA allowed such intermittent leave, by failing to inform Mr. Simms (Bates'  
10 investigator) that Ms. Del Rosario was eligible for intermittent FMLA but instead sanctioning (and  
11 then failing to correct) an investigative report from Mr. Simms that pejoratively noted Ms. Del  
12 Rosario's "high absentee" rate, and by denying Ms. Del Rosario's request to transfer to a tenured  
13 position the day after her August 23, 2017, complaint regarding Bates' violation of her FMLA rights.  
14

15 94. Bates' actions caused Ms. Del Rosario damages in an amount to be proven at trial.  
16

17 **IV. PRAYER FOR RELIEF**

18 Plaintiff respectfully seeks:

19 A. All damages allowed under the law including front pay, back pay, liquidated  
20 damages, pre-judgment interest, adverse tax consequences, and general damages including,  
21 without limitation, emotional distress damages.

22 B. Attorneys' fees, costs, and litigation expenses.

23 C. A declaration that Defendant violated USERRA, the WLAD, and the FMLA.


24 D. All other relief that is just and equitable.  
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DATED this June 1<sup>ST</sup>, 2018.

CROTTY & SON LAW FIRM, PLLC

By:   
Matthew Z. Crotty, WSBA No. 39284

Attorneys for Plaintiff