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14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE EASTERN DISTRICT OF WASHINGTON**

16 CONRAD STOUGH,

17 Plaintiff,

18 v.

19 BENTON COUNTY, a political
20 subdivision of the STATE OF
21 WASHINGTON,

22 Defendants.

23 NO.

24 COMPLAINT AND DEMAND
25 FOR TRIAL BY JURY

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

Mr. Stough, by and through his attorneys, now alleges:

I. PARTIES AND JURISDICTION

1. Defendant, BENTON COUNTY, WASHINGTON (“Benton County” or, the “County”) is a political subdivision of the State of Washington.

1 2. Benton County is an employer, within the meaning of 38 U.S.C. §
2 4303(4).

3 3. Plaintiff, CONRAD STOUGH (“Mr. Stough”) is a resident of
4 Kennewick, Washington, and at all times relevant was employed by the County as
5 Corrections Officer. At all times relevant, Mr. Stough was a member of the
6 Washington Army National Guard (“National Guard”).
7

8 4. All acts complained of occurred within the Eastern District of
9 Washington.
10

11 5. The Federal Court for the Eastern District of Washington has personal
12 jurisdiction over the parties and subject matter jurisdiction for the claims in this
13 complaint pursuant to 38 U.S.C. § 4323(b) and 28 U.S.C. § 1331.
14

15 6. Venue is proper in the Eastern District of Washington under 38 U.S.C.
16 § 4323(c) and 28 U.S.C. § 1391(b) because the acts and omissions complained of
17 herein occurred in the District and Defendant is located in the District.
18

19 **II. INTRADISTRICT ASSIGNMENT**

20 7. This action arose in Benton County, Washington; therefore, pursuant
21 to local rules it should be assigned to the Richland Division of the Eastern District
22 of Washington.
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24
25

III. FACTS

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2 8. Mr. Stough began working for the Benton County Sheriff's Office
3 ("Sheriff's Office") in August 2016 as a Corrections Officer.

4
5 9. Mr. Stough was also a member of the Washington Army National
6 Guard in an inactive, non-drilling status.

7
8 10. In August 2017, Mr. Stough was called back to active National Guard
9 status and was required to report for military drill on a regular basis.

10
11 11. Almost immediately after returning to an active drilling status, Mr.
12 Stough was subjected to retaliatory and discriminatory actions by the County.

13
14 12. The Sheriff's Office squads normally rotated between day and night
15 shifts every eight weeks.

16
17 13. Once Mr. Stough began a regular drill schedule, however, he was
18 transferred to the night shift for twenty-four weeks straight because the County
19 claimed there were scheduling issues related to his National Guard duty.

20
21 14. Further retaliation occurred when Mr. Stough was injured during his
22 military service.

23
24 15. On November 4, 2017, Mr. Stough injured his ankle during a military
25 training exercise.

1 16. When he informed the County of his injury and requested to be placed
2 on light duty, his request was denied because the injury did not occur while he was
3 on duty with the Sheriff's Office.

4 17. Because of the County's refusal to place Mr. Stough on light duty, he
5 was forced to use the remainder of his sick leave, and eventually return to full duty
6 work against his doctors' recommendations.

7 18. Days later, Mr. Stough was fired from his position with Benton
8 County.

9 19. The reason given for Mr. Stough's termination was that he had
10 displayed a pattern of abusing sick leave by taking sick time in conjunction with
11 scheduled days off.

12 20. During the meeting in which Mr. Stough's employment was
13 terminated one of his supervisors, Commander Souza, looked at Mr. Stough and
14 said, with a quirky smile, "rest, or at ease, or whatever it is you guys do."

15 21. The terms "rest" and "at ease" are military drill commands.

16 22. During that meeting Mr. Stough told Commander Souza that his
17 military obligation would likely be ending in a few months to which Commander
18 Souza replied "Conrad, I didn't even put that on there." Commander Souza's
19 reference to "there" was the termination letter that he had just handed Mr. Stough.
20
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1 23. The County's justification was merely pretextual, as Mr. Stough's
2 attendance record was examined in September 2017, and no pattern of abuse was
3 discerned.

4 24. Further, after his termination, the Washington State Employment
5 Security Department determined that Mr. Stough did not show a pattern of repeated
6 and inexcusable absences, as reported by the County.

7 25. Thus, the motivating factor for terminating Mr. Stough's employment
8 with Benson County was his National Guard obligation.

9 26. At all times relevant hereto, Benton County had a duty to act in
10 compliance with the Uniformed Services Employment and Reemployment Rights
11 Act ("USERRA") and ensure its agencies and employees follow USERRA.

12 27. The above-referenced actions by the County, and its agents, breached
13 that duty.

14 28. Mr. Stough suffered economic injury, as well as other harms and losses
15 as a direct and proximate result of the County's discrimination and retaliation.

16 29. Benton County's actions are the direct and proximate cause of Mr.
17 Stough's damages.

18 30. As a direct and proximate result of the County's unlawful conduct in
19 violation of USERRA, Mr. Stough has suffered a loss of earnings and other benefits
20 of employment in an amount to be proved at trial.

1 31. As a result of the County's unlawful conduct in violation of USERRA
2 and the necessity of this action to seek a remedy, Mr. Stough fears further retaliation
3 against his employment rights by Benton County or its agencies or employees. As
4 such, the employment relationship that Mr. Stough may have enjoyed with the
5 County prior to the filing of this action is irreparably damaged through no fault of
6 Mr. Stough.
7

8 32. To the extent that the County alleges application of any agreement that
9 constitutes any limitation on Mr. Stough'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 **IV. CAUSES OF ACTION**

13 **(CAUSE OF ACTION NO. 1 – VIOLATION OF 38 U.S.C. §**
14 **4311(c)(1) - DISCRIMINATION)**

15 33. Under 38 U.S.C. § 4311(c)(1) an employee's military obligation
16 cannot serve as a motivating factor for an employer's decision that is adverse to that
17 employee.
18

19 34. Mr. Stough's required attendance at National Guard drill is a military
20 obligation.
21

22 35. Mr. Stough's military service was a motivating factor in the Sheriff's
23 Office's decision to place Mr. Stough on 24 straight weeks of night shift duty and
24 to, thereafter, terminate his employment.
25

1 36. Benson County's termination of Mr. Stough's employment has caused
2 him damages in an amount to be proven at trial.

3 **(CAUSE OF ACTION NO. 2 - VIOLATION OF 38 U.S.C. §**
4 **4311(c)(2) - RETALIATION)**

5 37. Under 38 U.S.C. § 4311(c)(2) an employee's exercise of a USERRA
6 right, such as the right to take military leave to attend drill and/or the right to be
7 properly re-employed following a military related injury, cannot serve as a
8 motivating factor for an employer's decision that is adverse to that employee.
9

10 38. Benton County violated Mr. Stough's USERRA-guaranteed protection
11 from military related retaliation by assigning Mr. Stough to the night shift for
12 twenty-four consecutive weeks and wrongfully terminating Mr. Stough's
13 employment with the Sheriff's Office.
14

15 39. Benton County's violations of the USERRA have caused Mr. Stough
16 damage in an amount to be proven at trial.
17

18 **(CAUSE OF ACTION NO. 3 - VIOLATION OF 38 U.S.C. § 4316(d))**

19 40. USERRA provides, in part, that an employer cannot require an
20 employee to use his or her sick time while on military leave.
21

22 41. On or about November 4, 2017, Mr. Stough's supervisor, Corporal
23 Werst, required Mr. Stough to utilize approximately 36 hours of accrued sick leave
24 to cover the time associated with Mr. Stough's November 2017 military drill period.
25

1 42. Defendant's actions caused Mr. Stough to lose the value associated
2 with 36 hours of sick leave.

3 **V. PRAYER FOR RELIEF**

4 Plaintiff respectfully prays for:

5
6 A. Compensation for all injury and damages suffered by Mr. Stough including,
7 but not limited to, both economic and non-economic damages, in the amount to be
8 proven at trial including back pay, front pay, pre and post judgment interest, lost
9 benefits of employment, adverse tax consequences of any award for economic
10 damages pursuant to USERRA as well as liquidated damages under federal and law
11 for willful violations of USERRA.
12

13 B. Plaintiff's reasonable attorneys, expert fees, and costs, pursuant to 38 U.S.C.
14 § 4323.
15

16 C. For such other and further relief as this Court deems just and equitable.

17 Respectfully submitted this 19th day of July 2018.
18

19 /s Matthew Crotty
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