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6 IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM

7 UNITED STATES OF AMERICA,
Plaintiff,

8 v.

9 UNITED STATES TERRITORY OF GUAM,
10 and,

11 THE GOVERNMENT OF GUAM
RETIREMENT FUND,
12 Defendants.

CIVIL CASE NUMBER 1:21-CV-0022

CIVIL COMPLAINT

13 Plaintiff United States of America (“United States”), by the undersigned attorneys, makes
14 the following averments:

15 1. This civil action is brought on behalf of the United States to enforce the
16 provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994, 38
17 U.S.C. §§ 4301-4333 (“USERRA”). As set forth below, Defendants, the Territory of Guam
18 (“Guam”) and the Government of Guam Retirement Fund (“GRF”) (collectively “Defendants”),
19 violated USERRA by refusing to credit Guam employees on active military duty with credited
20 service towards retirement for any time they were using donated leave from Guam while on
21 active duty military service. Defendants’ policy, which directly violates USERRA’s provision
22 that servicemembers are entitled to credited service towards retirement with their civilian
23 employer for time deployed, denied at least five – and potentially many more – servicemembers
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1 proper retirement and pension credit that, if not rectified, will slash their retirement benefits for
2 the rest of their lives.

3 **JURISDICTION AND VENUE**

4 2. This Court has jurisdiction over the subject matter of this action pursuant to
5 38 U.S.C. § 4323(b). Additionally, the Court has jurisdiction under 28 U.S.C. § 1391(b) because
6 events giving rise to this lawsuit occurred in this judicial district.

7 3. Venue is proper in this district under 38 U.S.C. § 4323(c)(1) because Guam and
8 the GRF are entities of the Territory of Guam, which are located in, and do business within, this
9 judicial district.

10 **DEFENDANTS**

11 4. Guam provides and manages government services for the Territory, such as law
12 enforcement; firefighting; education; and social services. Guam pays salary or wages for work
13 performed and has control over employment opportunities. As such, Guam is an “employer”
14 within the meaning of 38 U.S.C. § 4303(4)(A) and is subject to suit by the United States under
15 38 U.S.C. § 4323.

16 5. The GRF manages retirement plans for the Territory and is responsible for
17 payment of retirement annuities and other benefits to retired Guam employees and their families.
18 Because the GRF is obligated by Guam to provide pension benefits, it is an “employer” within
19 the meaning of 38 U.S.C. § 4303(4)(C) and is also subject to suit by the United States under
20 38 U.S.C. § 4323.

1 **FACTUAL ALLEGATIONS**

2 **GUAM PROVIDES ITS EMPLOYEES PENSION BENEFITS**

3 6. Guam offers and the GRF administers several retirement plans, including at least
4 two defined benefit retirement plans.

5 7. For employees of Guam who receive a pension benefit as part of their
6 employment, Guam makes pension contributions to the GRF on behalf of the employee.

7 8. Under GRF's defined benefit retirement plans, an employee contributes a portion
8 of their wages into the GRF and the contributing employer contributes money into the GRF on
9 behalf of the employee. A Guam employee's retirement pension benefit is based, in part, on
10 these amounts contributed by the employee and the employer.

11 9. A Guam employee's retirement pension benefit is also based, in part, on the
12 employee's age at retirement and credited service as an employee of Guam.

13 10. Credited service, or service credit, is the amount of time that counts toward an
14 employee's pension benefit.

15 11. The GRF calculates service credit based on a calendar year. To receive a year of
16 service credit, the employee must earn a minimum of nine months of creditable service in the
17 calendar year. Employees with less than nine months of creditable service in a calendar year
18 receive credit for the number of months earned.

19 **GUAM ADMINISTERS A LEAVE SHARING PROGRAM**

20 12. By statute, Guam provides a leave sharing program for its employees. 4 G.C.A.
21 § 4109.2, *et seq.*

22 13. The leave sharing program allows employees to voluntarily transfer a portion of
23 their sick or annual leave to a leave bank.
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1 14. Employees who have exhausted their sick leave, annual leave, and compensatory
2 time may draw donated leave from the leave bank to remain in paid-leave status rather than
3 leave-without-pay status, for up to 90 days per year. 4 G.C.A. § 4109.2(b)(4).

4 15. Guam and the GRF do not give employees credited service for those periods of
5 time employees use donated leave.

6 16. In some instances, Guam contributed to an employee’s retirement account and
7 withheld the employee’s contribution from the employee’s wages for periods the employee used
8 donated leave while performing military service. In those cases, the GRF refunded the
9 contributions (and discredited that service) when it learned of them.

10 GUAM’S ADMINISTRATION OF ITS LEAVE SHARING PROGRAM DENIES

11 SERVICEMEMBERS A PENSION BENEFIT GUARANTEED BY USERRA

12 17. In 2020, five current or former Guam employees filed USERRA complaints with
13 the United States Department of Labor’s Veterans’ Employment and Training Service (“VETS”),
14 alleging that Defendants’ application of their leave sharing program violated the employees’
15 USERRA rights.

16 18. Jesse Cruz (“Cruz”) joined the Guam Fire Department in October 1992 and the
17 Guam Air National Guard Reserves in May 2001.

18 19. Cruz is a member of the GRF’s defined benefit plan.

19 20. For parts of 2010 and 2012, Cruz was deployed on active military duty with the
20 National Guard. Following each deployment, Cruz was honorably discharged by the military
21 and reemployed by Guam.

22 21. Cruz used donated leave from Guam’s leave sharing program while deployed on
23 active military duty on several occasions, including at least between February and June 2012.

1 22. In December 2020, Cruz retired from the Guam Fire Department.

2 23. Defendants did not give Cruz four months' and 15 days' credited service towards
3 his retirement while he was on active military duty and using donated leave in 2012. Guam did
4 not contribute toward Cruz's GRF retirement account for this period.

5 24. Cruz used donated leave for other periods of active military service. Although he
6 and Guam contributed to his retirement account for these other periods, upon Cruz's retirement,
7 the GRF discredited this time (and refunded Cruz's contributions), per the GRF's policy.

8 25. Defendants' treatment of the periods Cruz used donated leave as uncredited time
9 essentially resulted in breaks-in-service with the employer. As a result of Defendants' not
10 crediting Cruz for the time he used donated leave while on military duty and disqualification of
11 other credited service upon his retirement, Cruz accumulated less credited service time, has a
12 reduced retirement account, and will draw a lower pension annuity for the rest of his life.

13 26. Raymond San Nicolas ("San Nicolas") joined the Guam Fire Department in May
14 1992 and retired in August 2018.

15 27. San Nicolas is a member of the GRF's defined benefit plan.

16 28. San Nicolas joined the National Guard in April 1994, and between May 2002 and
17 November 2012, San Nicolas was deployed on active military duty numerous times. After each
18 deployment, San Nicolas was honorably discharged by the military and reemployed by Guam.

19 29. For portions of his active military service, San Nicolas used donated leave from
20 Guam's leave sharing program.

21 30. Defendants did not give San Nicolas credited service for the time he used donated
22 leave while on active military duty. Guam did not contribute to San Nicolas' GRF retirement

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1 account for these periods. Defendants' treatment of those periods that San Nicolas used donated
2 leave as uncredited time essentially resulted in breaks-in-service with the employer.

3 31. As a result of Defendants' not crediting San Nicolas for the time he used donated
4 leave while on active military duty, San Nicolas accumulated less credited service time, has a
5 reduced retirement account, and will draw a lower pension annuity for the rest of his life. When
6 San Nicolas prepared to retire in 2018, Defendants informed San Nicolas that he must continue
7 to work for an additional period of time to qualify for full retirement benefits.

8 32. Alan Torre ("Torre") joined the Guam Fire Department in October 1992 and
9 retired in September 2020.

10 33. Torre is a member of the GRF's defined benefit plan.

11 34. Torre was a member of the National Guard from June 2000 to September 2009,
12 and he was deployed on active military duty several times during his career with Guam,
13 including, as relevant to this complaint, from January 2007 to September 2008. After each
14 deployment, Torre was honorably discharged by the military and reemployed by Guam.

15 35. While on active military duty from around March 17, 2007 through December 8,
16 2007, Torre used donated leave from Guam's leave sharing program.

17 36. Defendants did not give Torre credited service for the time in 2007 he used
18 donated leave while on active military duty. Guam did not contribute to Torre's GRF retirement
19 fund for this period. Defendants' treatment of the period that Torre used donated leave as
20 uncredited time essentially resulted in a break-in-service with the employer.

21 37. As a result of Defendants' not crediting Torre for the time he used donated leave
22 while on active military duty, Torre accumulated less credited service time, has a reduced
23 retirement fund, and will draw a lower pension annuity for the rest of his life.

1 38. Andy Quinata (“Quinata”) joined the Guam Fire Department in October 1992 and
2 the National Guard in September 1998.

3 39. Quinata is a member of the GRF’s defined benefit plan.

4 40. Between May 2002 and December 2016, Quinata was deployed on active military
5 duty numerous times. Following each deployment, Quinata was honorably discharged by the
6 military and reemployed by Guam.

7 41. For portions of his active military service, Quinata used donated leave from
8 Guam’s leave sharing program.

9 42. Defendants did not give Quinata credited service for the time he used donated
10 leave while on active military duty. Guam did not contribute to Quinata’s GRF retirement fund
11 for these periods. Defendants’ treatment of the periods Quinata used donated leave as uncredited
12 time essentially resulted in breaks-in-service with the employer.

13 43. As a result of Defendants’ not crediting Quinata for the time he used donated
14 leave while on active military duty, Quinata will accumulate less credited service time, has a
15 reduced retirement account, and will draw a lower pension annuity for the rest of his life.
16 Defendants informed Quinata that he must continue to work approximately two additional years
17 to qualify for full retirement benefits.

18 44. Frederick Guzman (“Guzman”) has been employed by the Guam Department of
19 Education since August 1996 and has been a member of the National Guard since December
20 2000.

21 45. Guzman is a member of the GRF’s defined benefit plan.

1 46. Between October 2001 and December 2020, Guzman was deployed on active
2 military duty numerous times. Following each deployment, Guzman was honorably discharged
3 by the military and reemployed by Guam.

4 47. For portions of his active military service, Guzman used donated leave from
5 Guam's leave sharing program.

6 48. Defendants did not give Guzman credited service for the time he used donated
7 leave while on active military duty. Guam did not contribute to Guzman's GRF retirement fund
8 for these periods. Defendants' treatment of the times that Guzman used donated leave as
9 uncredited time essentially resulted in breaks-in-service with the employer.

10 49. As a result of Defendants' not crediting Guzman for the time he used donated
11 leave while on active military duty, Guzman will accumulate less credited service time, will have
12 a reduced retirement account, and will draw a lower pension annuity for the rest of his life.

13 50. Upon information and belief, there are other current or former Guam employees
14 who will use (or have used) donated leave while deployed on military duty, who will not receive
15 (or have not received) credited service for those periods, who will not receive (or have not
16 received) contributions by Guam into their GRF retirement, who will be treated (or were treated)
17 as having breaks-in-service with the employer, and who will suffer (or are suffering) reduced
18 pension annuities as a result.

19 51. Upon information and belief, Guam will continue to refuse to make contributions
20 to the GRF for individuals who use donated leave while on active duty in the military.

21 52. Upon information and belief, Guam and the GRF will continue to deny service
22 credit for individuals who use donated leave while on active duty in the military, and will
23 continue to treat these employees as having breaks-in-service with the employer.

1 political subdivisions thereof). *See* 20 C.F.R. § 1002.5(m).

2 58. Defendants violated USERRA Section 4318 by treating employees using donated
3 leave while on active military duty as having breaks-in-service, and by failing to properly treat
4 employees' periods of military leave while using donated leave as "service" with the employer
5 for purposes of determining service credit and determining pension benefits.

6 59. Guam violated USERRA Section 4318(b)(1) when it failed or refused to make its
7 employer contributions to the GRF on behalf of employees while serving in the military and
8 using donated leave.

9 60. Defendants' violations have caused and will continue to cause these employees to
10 suffer reduced pension annuities that, left unchecked, will negatively impact them for the rest of
11 their lives.

12 61. Defendants' reliance on its statute creating the leave sharing program is
13 unavailing. That statute is superseded by USERRA because it effectively reduces a right or
14 benefit of USERRA by illegally disqualifying service with the employer.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, the United States prays that the Court enter judgment against Guam and
17 the GRF and, further, that the Court:

18 A. declare that Guam and the GRF violated USERRA Section 4318(a)(2)(B) by
19 failing to properly treat servicemembers' periods of military leave while using donated leave as
20 "service" with the employer for purposes of the accrual of retirement benefits;

21 B. declare that Guam violated USERRA Section 4318(b)(1) to the extent it failed to
22 make contributions to the GRF on behalf of employees serving in the military while using
23 donated leave;

1 C. declare that the GRF violated USERRA Section 4318(b)(1) when it refunded
2 pension contributions made by Guam and employees for periods the employees were serving in
3 the military while using donated leave;

4 D. require that Guam and the GRF comply with the provisions of USERRA by
5 retroactively crediting all employees and retirees who used donated leave while serving in the
6 military with service with Guam for purposes of the accrual of benefits;

7 E. require that Guam comply with the provisions of USERRA by retroactively
8 making contributions, including all make-up contributions, to the GRF on behalf of employees
9 and retirees who used donated leave while serving in the military for the relevant periods of
10 service;

11 F. require Defendants to give affected employees obligated to make employee-side
12 contributions to their pensions appropriate time to make those contributions consistent with
13 USERRA;

14 G. require that Guam and the GRF comply with the provisions of USERRA by
15 retroactively re-calculating retirees' credited service and retirement benefits based on the
16 abovementioned retroactively credited service and payment of contributions;

17 H. require that Guam and the GRF give notice to current and former employees and
18 retirees of the resolution of this suit and the retroactive recalculation of credited service and
19 retirement benefits;

20 I. enjoin Guam and the GRF from taking any action against Cruz, Guzman, Quinata,
21 San Nicolas, Torre, or any other current or former employee, retiree, or servicemember that fails
22 to comply with the provisions of USERRA;

1 J. enjoin Guam and the GRF from refusing to properly treat servicemembers'
2 periods of military leave while on leave bank leave as "service" with the employer for purposes
3 of the accrual of benefits;

4 K. enjoin Guam from refusing to make contributions to the GRF on behalf of
5 employees serving in the military; and,

6 L. grant such other and further relief as may be just and proper.

7 Respectfully submitted, this 31st day of August 2021.

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10 KAREN D. WOODARD
11 Chief

12 By:

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