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13 Attorneys for Plaintiff

14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
16 **FRESNO DIVISION**

17 \_\_\_\_\_ )  
18 )  
19 POROTESANO FAAPOULI, )  
20 )  
21 Plaintiff, ) Civil No. 1:09-at-00392  
22 )  
23 v. )  
24 ) **DEMAND FOR JURY TRIAL**  
25 COUNTY OF FRESNO, )  
26 )  
27 Defendant. )  
28 \_\_\_\_\_ )

29 **COMPLAINT**

30 Plaintiff Porotesano Faapouli (“Faapouli”), by the undersigned attorneys, makes the  
31 following averments:

1 Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 - 4335 (“USERRA”).

2 **JURISDICTION AND VENUE**

3 2. This Court has jurisdiction over the subject matter of this action pursuant to 38  
4 U.S.C. § 4323(b).

5 3. Venue is proper in this district under 38 U.S.C. § 4323(c)(2) because defendant  
6 County of Fresno (“Fresno” or “the County”) maintains a place of business within this judicial  
7 district. Venue is proper in this district under 28 U.S.C. § 1391(b) because the events giving rise  
8 to this lawsuit occurred in this judicial district.

9 **PARTIES**

10 4. Faapouli resides at 438 North Phillip Street, Fresno, California, which is within the  
11 jurisdiction of this Court.

12 5. Fresno is a corporate governmental body and political subdivision of the State of  
13 California, and an employer within the meaning of 38 U.S.C. § 4303(4)(A).

14 **CLAIMS FOR RELIEF**

15 6. Faapouli commenced his employment with Fresno on or about April 12, 1999. By  
16 June 2004, Faapouli held the title of a Senior Juvenile Correctional Officer (“Senior JCO”) in the  
17 County’s Probation Department, where he earned \$26.75 per hour, representing the top of the  
18 Senior JCO pay scale.

19 7. As a Senior JCO, Faapouli’s responsibilities included assigning, reviewing, and  
20 training a team of two to four junior JCOs. In turn, JCOs were responsible for monitoring  
21 juvenile offenders at the County’s detention facility or in the community, maintaining detention  
22 facility security, and transporting minors, among other duties.

1 8. Faapouli has been a member of the United States Naval Reserve since 1990.

2 9. On June 9, 2004, the Navy called Faapouli to active duty. Faapouli gave timely  
3 notice of his activation to County Personnel Analyst Nancy Aragon.

4 10. In January 2005, while on active duty, Faapouli was seriously injured during a  
5 military training exercise. He underwent several surgeries and an extensive recuperation period.

6 11. When the Navy extended Faapouli's deployment in order to accommodate his  
7 surgeries and recuperation, Faapouli notified County Personnel Officer Tina Young of his  
8 extension and injuries. As a result of Faapouli's service-related injuries, Faapouli had difficulty  
9 walking, could not stand or sit for more than thirty minutes, and had limited shoulder movement.

10 12. The Navy released Faapouli from active duty on September 18, 2007.

11 13. Faapouli notified Fresno of his impending military discharge on August 30, 2007,  
12 and returned to Fresno seeking to be reemployed on September 21, 2007. At that time, Faapouli  
13 provided Young medical documentation regarding his physical limitations.

14 14. Fresno did not reemploy Faapouli on September 21, 2007. Instead, Young told  
15 Faapouli that his physician must submit an "ADA/FEHA Accommodation Information" form  
16 ("Accommodation Form"). Young also informed Faapouli that she had no forms available, and  
17 that she would have to send him one. Fresno also required Faapouli to sign a "Request for  
18 Unpaid Leave of Absence" form, which purported to cover the period between September 17,  
19 2007, and December 17, 2007. Faapouli signed the form without reading or understanding it,  
20 believing he could return to work as soon as he submitted the Accommodation Form.

21 15. Fresno did not send Faapouli the Accommodation Form for several weeks. When  
22 he finally received the Accommodation Form, Faapouli had his physician complete the form and

1 submit it directly to the County. When Faapouli contacted the County in November 2007 to  
2 ascertain the status of his request for reemployment, the County denied receiving the  
3 Accommodation Form from his physician, so Faapouli had to submit a second form to the  
4 County.

5 16. After Faapouli re-submitted the County-mandated Accommodation Form,  
6 Faapouli made several attempts to meet with the County to discuss his reemployment. In  
7 response, the County repeatedly put off meeting with Faapouli, allegedly due to holiday  
8 schedules and management's need to consult "risk management."

9 17. When persons representing Fresno finally met with Faapouli on February 12,  
10 2008, Fresno made no effort to accommodate Faapouli's disability. Instead, County Probation  
11 Department Personnel Manager Vicki Passmore told Faapouli his restrictions demonstrated that  
12 he was no longer qualified for his former Senior JCO position and suggested that his doctor  
13 complete another Accommodation Form to make him qualified. Accordingly, Faapouli's  
14 physician completed and submitted another Accommodation Form; however, it indicated the  
15 same limitations.

16 18. On March 6, 2008, Faapouli met with Passmore, Young, Aragon, and a risk  
17 management representative to discuss his request for reemployment. At that meeting, Passmore  
18 offered Faapouli a Probation Technician I position, which is an entry-level post with no  
19 supervisory authority, and an hourly wage that is approximately \$10 per hour less than the  
20 Senior JCO position. When Faapouli turned down the offer, Fresno asked Faapouli to submit yet  
21 another Accommodation Form and suggested he take two years of "terminal leave" to  
22 recuperate.

1           19. Fresno did not arrange to meet with Faapouli again until May 15, 2008. At that  
2 meeting, attended by Faapouli, Passmore, Aragon, a risk management representative, a job  
3 analyst, and a union representative, Passmore again offered Faapouli a Probation Technician I  
4 position, and Faapouli again declined. Fresno then suggested Faapouli might be qualified for a  
5 Defense Investigator I post, which was closer in pay to the Senior JCO position than was the  
6 Probation Technician I position. However, Fresno required Faapouli to competitively interview  
7 for the Defense Investigator I position and following the interview Faapouli was not selected.  
8 The County made no effort to qualify Faapouli for the Defense Investigator I position, or for any  
9 other position of similar seniority, status, and pay to his former Senior JCO position. The  
10 County also made no effort to qualify Faapouli for a Senior JCO position.

11           20. The County met again with Faapouli on May 30, 2008, and the parties discussed  
12 several other vacancies for which Faapouli might be qualified, including Job Specialist I, another  
13 lower-paying, entry-level position with no supervisory responsibility. Fresno rejected Faapouli's  
14 request that he be considered for Job Specialist II or Job Specialist III vacancies, which were  
15 closer in salary to the Senior JCO position. At this meeting, Fresno also asked Faapouli to sign  
16 another request for unpaid leave form, backdated to December 17, 2007. Faapouli did not sign  
17 the form.

18           21. As with the Defense Investigator I position, the County told Faapouli that he must  
19 interview and compete for the Job Specialist I position. Desperate to return to work, on June 20,  
20 2008, Faapouli interviewed for the Job Specialist I position. He was selected for the opening and  
21 began working on June 30, 2008. His hourly wage as a Job Specialist I was only \$21.53 per  
22 hour. Had he been reemployed as a Senior JCO, he would have been earning \$28.93 per hour.

1 22. Upon Faapouli's acceptance of the Job Specialist I position, Fresno again asked  
2 Faapouli to sign and backdate an unpaid leave request form to cover the period from December  
3 17, 2007, until his June 30, 2008, start date. Faapouli did not sign the form.

4 23. On March 18, 2008, Faapouli filed a complaint against Fresno under USERRA  
5 with the Veterans' Employment and Training Services ("VETS") of the United States  
6 Department of Labor. VETS found the complaint meritorious.

7 24. Fresno's conduct, as set forth above, violated Sections 4312 and 4313 of USERRA  
8 because the County (i) failed to promptly reemploy Faapouli; and (ii) failed to properly reemploy  
9 Faapouli in the appropriate "escalator" position, *i.e.*, in the same position or a position of similar  
10 seniority, status and pay to the position that Faapouli would have held had he remained  
11 continuously employed, with an appropriate accommodation for Faapouli's disability.

12 25. Fresno's violations of USERRA were willful under 38 U.S.C. § 4323(d)(1)(C).

13 26. Faapouli has suffered a substantial loss of earnings and other benefits as a result of  
14 Fresno's willful violations of USERRA.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Faapouli prays that the Court enter judgment against Fresno, its officers,  
17 agents, employees, successors, and all persons in active concert or participation with it, as  
18 follows:

19 A. Declare that Fresno's failure to promptly reemploy Faapouli in an appropriate  
20 position was unlawful and in violation of USERRA;

21 B. Order Fresno to comply fully with the provisions of USERRA by placing Faapouli  
22 in the same position or a position of similar seniority, status, and pay to the position Faapouli

1 would have attained had he remained employed continuously with Fresno, with an appropriate  
2 accommodation for his disability;

3 C. Order Fresno to comply fully with the provisions of USERRA by paying Faapouli  
4 all amounts due to him for loss of wages and benefits caused by Fresno's violation of USERRA;

5 D. Declare that Fresno's violations of USERRA were willful;

6 E. Award Faapouli liquidated damages in an amount equal to the amount of lost  
7 wages and other benefits suffered by reason of Fresno's willful violation of USERRA, pursuant  
8 to 38 U.S.C. § 4323(d)(1)(C);

9 F. Award Faapouli prejudgment interest on the amount of lost compensation found  
10 due;


11 G. Enjoin Fresno from taking any action against Faapouli that fails to comply with the  
12 provisions of USERRA; and

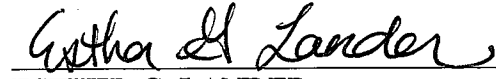
13 H. Grant such other and further relief as may be just and proper.

1 Date: May 22, 2009

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4 BY:

  
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