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12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA
14 NORTHERN DIVISION

15 Sgt. Bryan James Strother

16 (California Army National Guard)

17 individually and on behalf of all other

18 Similarly Situated (Plaintiffs),

19 Plaintiff,

20 -V-

21 Adjunct General David S. Baldwin

22 (successor to Maj.Gen William H. Wade II)

23 of the State of California National Guard,

24 Mike McCord Pentagon Comptroller

25 (successor to Robert Hale)

26 United States Department of Defense,

27 Defense Finance and Accounting Service

28 (DFAS) both individually and

in their official capacities,

Defendants.

JUDGE:

NO:

PLAINTIFF F.R.C.P. 23

CLASS ACTION COMPLAINT

1 CLASS ACTION COMPLAINT

2 Now comes Plaintiff SGT. BRYAN JAMES STROTHER (California Army National
3 Guard), individually and on behalf of all others Similarly Situated Plaintiffs via (FRCP 23), by and
4 through his attorney Daniel C. Willman and asserts the following:

5
6 JURISDICTION AND VENUE

7 1. Defendant General David S. Baldwin is a resident of the State of California, Defendant Mike
8 McCord Pentagon Comptroller oversees the United States Department of Defense, Defense
9 Finance and Accounting Service DFAS and has sufficient minimal contacts within this Courts
10 jurisdiction, and has a branch office located in the State of California.

11 2. Plaintiff is a resident of the State of California.

12 3. This Court has Jurisdiction to hear this matter under 28 U.S.C. § 1331 (Federal Question)
13 via the 14th Amendment to the Constitution of the United States and Article VI, Sec 2 Supremacy
14 Clause. 28 U.S.C. § 2202 (Further relief) 28 U.S.C. § 1391 Venue generally, **28 U.S.C. § 1361**
15 **Compel, 28 U.S.C. § 1361**, Mandamus. F.R.C.P. 4(e) and California long-arm statute C.C.P. §
16 410.10 Jurisdiction Exercisable.

17 CLASS ACTION STATUS

18 4. This matter involves the illegal actions of the California Army National Guard and its
19 recoupment of retention and other bonuses paid to over 16,000 service personnel, said personnel
20 who acted in good-faith when entering into legal binding contracts with the California Army
21 National Guard, resulting in said members being retained in the California Army National Guard.

22 5. In most all cases the Statue of Limitations (California Code of Civil Procedure § 337¹) for
23 Contracts had long expired yet the California Army National Guard has knowingly engaged in
24 ignoring the applicable SOL, and has acted to recoup bonus monies.

25 _____

26 1

27 California Code of Civil Procedure § 337 Within four years: 1. An action upon any contract,
28 obligation or liability founded upon an instrument in writing.

1 6. Most actions for recoupment are from retention bonuses given in 2006-2007. The longest
2 applicable SOL statute in regard to these Contracts is 4 years.

3 7. Plaintiff Sgt. Byran James Strother signed his contract and received his bonus after being
4 ORDERED to go to a retention seminar (Exhibit #1), Plaintiff Sgt. Byran James Strother and other
5 Similarly Situated Plaintiffs were advised and counseled to accept the retention bonus monies.

6 8. Plaintiff Sgt. Byran James Strother acted in good-faith when given the retention bonus.

7
8 9. The class of Plaintiffs is so numerous that joinder is impracticable.

9 10. Common question/ issues of law and fact are common among the class.

10 11. The claims and defenses of Plaintiff Sgt. Byran James Strother are representative and typical
11 of the class.

12 13. The class is so vast that the risk of creating inconsistent or varying adjudications would
13 establish incomparable standards of review resulting in a severe burden and waste of judicial
14 resources on a National level, *infra*.

15
16 14. Plaintiff Sgt. Byran James Strother has maintained a file in this matter which fills two
17 binders.

18 15. In all probability Plaintiff Sgt. Byran James Strother has maintained more paper work in this
19 matter than most Similarly Situated Plaintiffs' in this class, and would be an excellent representative.

20 16. Plaintiff Sgt. Byran James Strother and his counsel have worked closely on this matter over
21 the course of 2 (two) years and the appointment of any other counsel would prejudice Plaintiff.

22 17. Based upon the 11th Amendment and supporting case law this is not a typical class action
23 against a corporation that will end with Plaintiffs getting a cash settlement.

24
25 18. Plaintiff has also brought State claims that could result in a cash settlement but such claims
26 are brought here now to preserve any possible rights and not to waste time and resources in seeking
27 at a later date leave to amend to bring such claims.

1 19. The relief sought is declaratory in nature, seeking a complete stop of the recoupment of
2 bonus monies and the repayment of bonus monies illegally taking from all Plaintiffs.

3 20. The basic thrust of Plaintiffs Complaint is 42 U.S.C. 1983 Failure to Train.
4

5 **DFAS**
6 **HISTORY OF INTENTIONAL**
7 **SIGNIFICANT INSTITUTIONAL DEFICIENCIES**
8 **INCLUDING BUT NOT LIMITED TO FALSE DOCUMENTATION**

9 21. Via a 1990 federal law every department of the United States Government is to be held
10 accountable for all expenses annually.

11 22. Since 1996 (the first year it was to be audited) the United States Department of Defense has
12 not accounted for \$8.5 trillion in spending.

13 23. The DFAS . . . ran, and still runs, on COBOL, a computer language that dates to 1959. Most
14 of the COBOL code the Pentagon uses for payroll and accounting was written in the 1960s,
15 according to 2006 congressional testimony by Zack Gaddy, director of DFAS from May 2004 to
16 September 2008 . . . "seven million lines of COBOL code that hasn't been updated" in more than
17 a dozen years. (Source see footnote #3)

18 24. The DFAS has scores of archaic accounting systems leading to a report by the "Defense
19 Department inspector general [which] found "significant deficiencies" in DFAS's own internal
20 auditing organization . . . failure to "exercise sufficient professional judgment," ineffective quality-
21 control monitoring and failure to comply with required accounting standards.

22 25. The secretary of defense's office and the heads of the military and DFAS have for years
23 knowingly signed off on false entries. "I don't think they're lying and cheating and stealing
24 necessarily, but it's not the right thing to do," [former] Pentagon Comptroller Robert Hale. ²
25

26
27 ² Unaccountable "The high cost of the Pentagons's bad bookkeeping. Part 2. Faking It Behind the
28 Pentagon's ledgers a running tally of epic waste Scot J. Paltrow November 18, 2013;

1 26. When retired four-star general Peter Schoomaker returned to active duty after the United
2 States invaded Iraq the DFAS, stopped his retirement checks, he did not get paid for months, DFAS
3 sent a letter to his wife offering condolences, and the letter spelled his name three (3) different ways.
4 Source footnote #2 infra...

5 27. All of the above led General Shoomaker to state: **"If the Chief of Staff of the Army is**
6 **treated that way," "you can imagine how a private is treated."**³

7
8 28. The DFAS cannot account for \$8.5 trillion in military spending since 1996 except for one
9 class of items, enlistment bonuses, bonuses given to some 100,000 military personnel including over
10 16,000 in the California National Guard, bonuses that do not come close to the cost of the failed and
11 abandoned \$1 billion accounting system once heralded by the DFAS.⁴

12 29. DFAS did sanctimoniously and without impunity, burdened⁵ service personnel for some \$300.

13
14 <http://www.reuters.com/investigates/pentagon/#article/part2>

15
16 ³Unaccountable "The high cost of the Pentagon's bad bookkeeping. Part 1. Number Crunch July
17 2, 2013 How the Pentagon's payroll quagmire traps America's soldiers By Scot J. Paltrow and Kelly
18 Carr <http://www.reuters.com/investigates/pentagon/#article/part1>

19
20
21 ⁴ The Defense Integrated Military Human Resources System, or DIMHRS (pronounced DIME-
22 ers), a decade long failed attempt to implement a new integrated accounting system. Source see
23 footnote 4-Paltrow, Carr.

24
25 ⁵ Unaccountable "The high cost of the Pentagon's bad bookkeeping.
26 Part 1. Number Crunch July 2, 2013
27 How the Pentagon's payroll quagmire traps America's soldiers By
28 Scot J. Paltrow and Kelly Carr

1 million it alleges it can trace with undeniable accuracy.

2 30. The DFAS has a long history of using fake number “Plugging” (plugs) to justify accounting
3 actions. In 2011 then Secretary of Defense Robert Gates described the Pentagon's business
4 operations as "an amalgam of fiefdoms with out centralized mechanisms to allocate resources, track
5 expenditures, and measure results Which is true today. ⁶⁻⁷

6
7 **COUNT I**
8 **VIOLATION**
9 **42 U.S.C. 1983 FAILURE TO TRAIN**

10 32. Plaintiff incorporates by reference all preceding and following paragraphs.

11 33. Acting under Color of Law the California Army National Guard offered retention bonuses to
12 thousands of it's members and now seeks to recoup those monies even though the applicable statute
13 of limitations has long since passed.

14
15

<http://www.reuters.com/investigates/pentagon/#article/part1>

16 ⁶Scot J. Paltrow : November 18, 2103 Part 2 supra

- 17
18 a) The Pentagon has lost track of over half a trillion dollars in unaudited vendors contracts.
19 b) The Army has lost track of billions in supplies.
20 c) They still use COBOL and old mainframes from the 1970's to track accounting
21

22
23
24 ⁷ The Center for Strategic and International Studies said that while the Defense
25 Department was spending “in excess of \$10 billion per year on business systems modernization and
26 maintenance, (o)verall the result is close to business as usual.” Paltrow Part 2 Supra.
27
28

1 34. The California Army National Guard members (that were not recruiters, those splitting
2 bounties or officers) that received retention bonus monies did so in good-faith.

3
4 35. Plaintiff Sgt. Byran James Strother joined the California Army National Guard in 2001.

5 36. In March 2006 Plaintiff Sgt. Byran James Strother and other California Army National Guard
6 members were by Order of the Adjunct General ordered to go to a retention seminar (Exhibit # 1).

7
8 37. At the above mentioned retention seminar California Army National Guard members were put
9 into an assembly line where they signed contracts to stay in the California Army National Guard.

10 38. Acting "Under Color of Law" California Army National Guard members were given advice
11 and counsel by superiors to extend their time in the guard (AR 135-parg 5-1.41(b)(2) Exhibit #5, pg
12 1). California Army National Guard members then signed the contracts acting in good-faith in
13 reliance from California Army National Guard superiors in attendance.

14
15 39. The California Army National Guard contract signed by Plaintiff Sgt. Byran James Strother
16 required him to remain in the same MOS (job) for 3 (three) years.

17
18 40. Plaintiff Sgt. Byran James Strother at the time held a MOS of a 25C and still is a 25C
19 (Exhibit#2).

20 41. As the 20 plus pages in Exhibit #2 clearly and unmistakably show Plaintiff Sgt. Byran James
21 Strother has been a Radio operator for decades. Starting in 1986 Plaintiff had a MOS of 31C, 31C
22 then became a 35C, 35C became 25C. Other pages in Exhibit #2 show Plaintiff was a 25C20, 25C30
23 etc... the 20 or 30 following the C indicate a change in Rank such as going from a E4 to a E5, the
24 MOS is still the same.

25
26 42. The California Army National Guard and The Department of Defense, Defense Finance and
27 Accounting Service herein (DFAS) falsely contends Plaintiff Sgt. Byran James Strother , violated AR
28 135-parg 5-1.41(b)(2), DODI 1205.21 Sec E5.1.1.7/Pre 20081003, DODI 1205.21 Sec E8.1.1.3, NGR

1 600-7 para 5-7 (a), Title 37 USC 16301/NDAA05 (Exhibit #4.pg 2).

2
3 43. The California Army National Guard and The Department of Defense, Defense Finance and
4 Accounting Service (DFAS) falsely contends that Plaintiff Sgt. Byran James Strother switched his
5 MOS within the 3 (three) year period, In violation of ,Title 37 USC Sec § 331.

6 44. Plaintiff Sgt. Byran James Strother has never switched his MOS or sought to switch his MOS
7 as cited supra and is still a 25C.

8
9 45. Plaintiff did go to a school to receive additional training (11B) but upon completion he still
10 held a MOS of 25C (see Exhibit #2. Pg 7). The 11B training was a school offered to many, but not
11 for the purpose to obtain a new MOS, the school was offered as additional training to help troops
12 prepare to handle other duties in the field of combat.

13 46. California Army National Guard via The Department of Defense, Defense Finance and
14 Accounting Service (DFAS) also has contended that Plaintiff Sgt. Byran James Strother was a 21n
15 but there is zero proof to even show he went to school to be a 21n (Exhibit #4, 13).

16
17 47. The California Army National Guard The Department of Defense, Defense Finance and
18 Accounting Service (DFAS) has alternatively asserted Plaintiff Sgt. Byran James Strother held a MOS
19 of 25C Radio Operator in March 2007, then switched to MOS 11B Infantry and a 13E Echo (Field
20 Artilleryman) also in March 2007.

21
22 48. With in months of signing the retention bonus, Plaintiff Sgt. Byran James Strother was sent
23 to Iraq as were other Similarly Situated Plaintiffs.

24 49. Orders calling Plaintiff Sgt. Byran James Strother to active duty dated May 15, 2007 clearly
25 show he was a 25C. (Exhibit #2. Pg 9, 11).

26
27 50. February 25. 2006, DA FORM 1059 box 5. shows Plaintiff Sgt. Byran James Strother had
28 a SPECIALTY/ MOSC of 25C20. Box 6. COURSE TITLE 11B10 MOSQ Basic Infantry Course

1 #06004. Box 3. (Exhibit #2, pg 7).

2
3 51. In NCO EVALUATION REPORT form DA Form 2166-8, Part I box e. shows Plaintiff Sgt
4 .Byran James Strother PMOS (the P is for Primary) as 25C30. Part III box .b of the same form shows
5 Duty Mos 13B30 (Exhibit #2, pg 12).

6 52. Plaintiff Sgt. Byran James Strother DD 214 discharge from active duty paper, show that he was
7 in active service June 6, 2007 to June 6, 2008. Box 11. clearly indicates Primary Specialty of
8 Plaintiff Sgt. Byran James Strother 25C30 Radio Oper/Maint- 21 Yrs 7 MOS.

9
10 53. In 2012 the California Army National Guard sent notice to Plaintiff Sgt. Byran James Strother,
11 that the California Army National Guard deemed his bonus to be in error that the bonus must be
12 recouped.

13 54. The California Army National Guard has starting recouping bonus monies from Plaintiff Sgt
14 .Byran James Strother and other Similarly Situated Plaintiffs.

15
16 55. The California Army National Guard did allow Plaintiff to contest the matter internally. It is
17 the contention of the California Army National Guard that Plaintiff Sgt. Byran James Strother did not
18 keep the same (MOS), contrary to - Title 37 Pay and Allowances § 331. General bonus authority for
19 enlisted members (Exhibit #4 pg 22-25).

20
21 56. Plaintiff Sgt. Byran James Strother has given the California Army National Guard and The
22 Department of Defense, Defense Finance and Accounting Service (DFAS) the proper documentation
23 several times but they refuse to admit/acknowledge that Plaintiff never change his MOS.

24 57. The refusal to acknowledge Plaintiff Sgt. Byran James Strother did not change his MOS is
25 either intentional or shows a complete lack of understanding (Training) by The Department of
26 Defense, Defense Finance and Accounting Service (DFAS) of how to track the MOS of a California
27 Army National Guard member.

1 58. The failure of The Department of Defense, Defense Finance and Accounting Service (DFAS)
2 to keep proper records and in fact plug in to documents whatever they wish is well established and
3 documented .

4
5 59. The collection/recoupment is well beyond the Statute of Limitations (SOL) and Plaintiff Sgt.
6 Byran James Strother and other Similarly Situated Plaintiffs, do not owe any monies to the California
7 Army National Guard because the running of the SOL makes the matter moot as a matter of law.

8 60. There has been wide spread corruption in the California Army National Guard in regard to
9 recruiting.

10
11 61. The Corruption has ranged from, recruiters collecting bonus bounties⁸ for recruits they did not
12 sign up, to other recruiters processing thousands of claims, including handing out bonuses to the very
13 Top Brass of the California Army National Guard, a General who was forced into retirement.

14 62. The wide spread recruiting fraud of the California Army National Guard was due to a complete
15 failure to train, failure to oversee and actual participation and illegal scheming by recruiters and Top
16 Brass, including Adjunct General in charge of the Guard includes Generals, Majors, Captains,⁹ some
17 receiving in excess of \$100,000 .

18
19
20 ⁸Recruiter pleaded guilty wire fraud..Source attorneys Office Eastern District of California.

21 <http://www.justice.gov/usao-edca/pr/california-army-national-guard-member-pleads-guiltycharges->
22 [recruiting-fraud-0 http://www.justice.gov/usao-edca/file/771176/download](http://www.justice.gov/usao-edca/file/771176/download)

23 ⁹Guard audits found that at least 115 service members – **most of them officers** – **committed**
24 **fraud** or acted improperly. Following are some of key players who benefitted from or led the
25 problem program.

26
27 <http://www.sacbee.com/news/investigations/article2580420.html>

28 By Charles Piller - cpiller@sacbee.com

1 63. The failure to train is not isolated to a few instances but instead was part of a series of
2 intentional acts of, greed, illegal activity, gross systematic incompetence indifference and fraud,
3 ,reaching to all corners of the United States National Guard, from North¹⁰ to South¹¹ from East¹² to
4 West.¹³

5 64. As noted by USA TODAY Pentagon correspondent Tom Vanden Brook, February 3rd, 2014:

6 The Army National Guard launched the Recruiting Assistance Program in 2005 to
7 bolster its ranks, which had thinned during the wars. It was later expanded to the Army
8 Reserve and active-duty Army. In essence, it paid soldiers for referrals of recruits. After audits
9 turned up evidence of potential fraud, the program was canceled in 2012. . . .

10 An Army audit found that 1,200 recruiters had received payments that were potentially
11 fraudulent, and another 2,000 recruiting assistants had received questionable payments. More

12
13
14 ¹⁰Minnesota 2-12-14 [http://www.military.com/daily-news/2014/02/13/recruiting-scandal-hits-](http://www.military.com/daily-news/2014/02/13/recruiting-scandal-hits-minnesota-national-guard.htm)
15 [minnesota-national-guard.htm](http://www.military.com/daily-news/2014/02/13/recruiting-scandal-hits-minnesota-national-guard.htm)
16 <http://www.startribune.com/recruiting-scandal-hits-minnesota-national-guard/245202901>
17

18 ¹¹Texas 11-9-12
19
20 [http://www.justice.gov/opa/pr/army-national-guard-recruiter-admits-crimes-](http://www.justice.gov/opa/pr/army-national-guard-recruiter-admits-crimes-fraudulent-recruiting-referral-bonus-scheme)
21 [fraudulent-recruiting-referral-bonus-scheme](http://www.justice.gov/opa/pr/army-national-guard-recruiter-admits-crimes-fraudulent-recruiting-referral-bonus-scheme)
22

23 ¹²New York
24 [https://www.fbi.gov/washingtondc/press-releases/2014/five-army-national-guard-officials-and-one-](https://www.fbi.gov/washingtondc/press-releases/2014/five-army-national-guard-officials-and-one-civilian-charged-with-bribery)
25 [civilian-charged-with-bribery](https://www.fbi.gov/washingtondc/press-releases/2014/five-army-national-guard-officials-and-one-civilian-charged-with-bribery)
26

27 ¹³California. Supra, Infra.
28 [http://www.usatoday.com/story/news/nation/2014/02/03/army-national-guard-bogus-](http://www.usatoday.com/story/news/nation/2014/02/03/army-national-guard-bogus-bonus-payments-iraq-afghanistan/5182717/)
[bonus-payments-iraq-afghanistan/5182717/](http://www.usatoday.com/story/news/nation/2014/02/03/army-national-guard-bogus-bonus-payments-iraq-afghanistan/5182717/)

1 the 200 officers remain under investigation. In all, the Guard paid more than \$300 million
2 Nationally for more than 130,000 enlistments.¹⁴

3 65. In 2011 Maj. Gen. William H. Wade II, who led the California Army National Guard
4 from 2005-2011 was forced to retire from the Army National Guard due to his intentional
5 personal active involvement in taking/raiding unjustified and illegally some \$155,000¹⁵ in
6 California Army National Guard Funds.

7 66. Maj. Gen. William H. Wade II was only ordered to pay back funds some \$80,000 for
8 his last 22 months of service because of the Statute of Limitations.

9 67. The sum sought to be collected from Plaintiff Sgt. Byran James Strother and other
10 Similarly Situated Plaintiffs has seen the applicable Statute of Limitations run. Additionally
11 all Plaintiffs relied in good-faith on the counsel and advice they were given at retention
12 seminars they were ORDERED to attend supra.

13 68. In 2011 General David S. Baldwin was appointed by Gov. Jerry Brown to lead the
14 California Army National Guard .

15 69. In regard to the California Army National Guard Gen. Baldwin has described the
16 problems as "monumental," and the solution as cultural change for an organization that had
17 "lost its way, ethically and morally."¹⁶⁻¹⁷⁻¹⁸

18
19
20 ¹⁴[http://www.usatoday.com/story/news/nation/2014/02/03/army-national-guard-bogus-](http://www.usatoday.com/story/news/nation/2014/02/03/army-national-guard-bogus-bonuspayments-iraq-afghanistan/5182717/)
21 [bonuspayments-iraq-afghanistan/5182717/](http://www.usatoday.com/story/news/nation/2014/02/03/army-national-guard-bogus-bonuspayments-iraq-afghanistan/5182717/)

22
23
24 ¹⁵ At the time General Wade had not paid back one cent and was stationed in Italy working for
25 NATO, as to why his pay was not garnished and how he was with NATO is truly disturbing and
26 distressful to all the Honest enlisted personnel being humiliated to date.

27 ¹⁶<http://www.sacbee.com/news/investigations/article2573399.html>

28 ¹⁷<http://www.pbs.org/wnet/need-to-know/the-daily-need/investigating-corruption-in-the->

1 70. Plaintiff Sgt. Byran James Strother and other Similarly Situated Plaintiffs are not
2 “grifters” and thieves as whistle blower Capt. Clark cited but are in fact victims of one the
3 most egregious mass frauds in U.S. Military history.¹⁹

4 71. Plaintiff Sgt. Byran James Strother has always served and acted with honor including
5 his greatest honor of serving as a honor guard at funerals for deceased U.S. Military personnel
6 (Plaintiff Sgt. Byran James Strother was in fact on the cover of the Grizzly National Guard
7 Magazine (Exhibit #3)²⁰ in regard to this solemn duty he considers his greatest honor).²¹

8 72. How can any enlisted personnel or recruit ever have any trust/faith in any bonus

9
10 californianational-guard/7624/

11 ¹⁸ <http://www.kcra.com/news/ca-national-guard-bonus-scandal-leads-to-guilty-pleas/29870728>

12
13 ¹⁹I was shocked. I did everything I thought right. I signed the contract. I've held up every end of
14 my end of the deal," said Mosley. <http://abc7.com/archive/9273851/>

15
16
17
18 ²⁰[http://www.calguard.ca.gov/PA/Documents/GrizzlyMarch2013.pdf#search=march%202013%20i](http://www.calguard.ca.gov/PA/Documents/GrizzlyMarch2013.pdf#search=march%202013%20issue)
19 [ssue](http://www.calguard.ca.gov/PA/Documents/GrizzlyMarch2013.pdf#search=march%202013%20issue)

20
21 ²¹Plaintiff takes great issue with anyone who lumps Plaintiffs into the small group of thieves
22 noted supra and infra.

23
24 In October 10 2010 Article Whistle blower-Capt. Ronald S. Clark, a federal auditor stated in part'
25 He called it "war profiteering." . . . "I don't like grifters," . . . who steal taxpayer funds or
26 protect thieves." . . . [and that] . . . Most student loan repayments, those documents show, were
27 drawn from money designated for combat vets. Yet a large portion of those funds went to Guard
28 members who hadn't served a day at war.

By Charles Piller - cpiller@sacbee.com October 10, 2010 **Plaintiff was sent to Iraq within months.** This article also documents the shredding of documents etc...

1 to pay back bonus monies.

2 80. Alternatively and in addition to, the MOS allegations the California Army National
3 Guard claims that many MOS (jobs) were not eligible for bonuses

4 81. In Order to inflate their ranks, meet quotas and line their pockets the California
5 Army National guard conned Plaintiff and others into re-enlisting, this deceit revolves around
6 the fact that the Army National Guard knew plaintiffs would re-enlist and that the California
7 Army National Guard would recoup all monies, a classic bait and switch.

8
9 82. This wilful act of deceit was not related to one incident or even a few, this act of
10 malice was repeated systemically and intentionally over 16,000 times in California alone.²²

11 83. In 2005 Reserve Ranks were 20% below the recoupment goal, 20,000 below its
12 overall target, causing the Guard leader to call it a “hollow force”. USA TODAY Pentagon
13 correspondent Tom Vanden Brook, February 3rd, 2014, supra..

14 84. All of the fraud in the California Army National Guard and the National Guard in
15 other States of the Union essentially revolves around several hundred people consisting of,
16 recruiters and their Superior Officers, committing an unprecedented mass fraud upon regular
17 enlisted personnel all of whom enlisted or re-enlisted in the California Army National Guard
18 and the National Guard during a time of War.

19
20 Wherefore, Plaintiff respectfully request the declaratory relief requested,
21 adjoining completely The California Army National Guard, The United States Department of
22 Defense, Defense Finance and Accounting Service (DFAS) or any other entity from
23 attempting to recoup monies paid as retention/re-enlistment, or enlistment bonus (or any other
24 name given) and that any monies recouped to date should be returned to Plaintiffs. And award
25 such damages as are reasonable, just and necessary.

26 ²²General Wade was given an Award in 2008 for adding members to the California Guard.

27 <http://www.ausa.org/meetings/NationalAwardsAUSA/Pages/2008MajGenWilliamHWadeII.aspx>

1 **COUNT III**
2 **INTENTIONAL MISREPRESENTATION**

3 85. Plaintiff incorporates by reference all preceding and following paragraphs.

4 86. Defendant made intentional misrepresentations of material fact to Plaintiff,
5 Defendant represented to Plaintiff the he was eligible for re-enlistment bonuses.

6 87. Defendants representations were false and/or Defendant made numerous
7 misrepresentations with knowledge of its falsity.

8 88. Defendant made the misrepresentations with the intent to induce Plaintiff to rely
9 on the misrepresentations.

10 89. Defendant knew that their representations were false when they made them, or they
11 made the representations recklessly and without regard for the truth.

12 90. Plaintiff relied on the misrepresentations.

13 91. Plaintiff was harmed by the misrepresentations and has suffered damages as a
14 result.

15 Wherefore, Plaintiff respectfully request the declaratory relief requested,
16 adjoining completely The California Army National Guard, The United States Department of
17 Defense, Defense Finance and Accounting Service (DFAS) or any other entity from
18 attempting to recoup monies paid as retention/re-enlistment, or enlistment bonus (or any other
19 name given) and that any monies recouped to date should be returned to Plaintiffs. And award
20 such damages as are reasonable, just and necessary.

21 **COUNT VI**
22 **DECEIT OR INTENTIONAL FRAUD**

23 92. Plaintiff incorporates by reference all preceding and following paragraphs.

24 93. Defendant's intentionally took false actions, made false statements,
25 misrepresentations, false representations, engaged in concealment, and/or non-disclosure

26 94. Defendant had knowledge of the falsity of their actions and statements or lack
27 thereof, and acted with scienter.
28

1 95. Defendant's actions were intended to defraud, i.e., and to induce reliance by
2 Plaintiff

3 96. Plaintiffs reliance was justifiable reliance.

4 97. Plaintiff has suffered damages.

5 Wherefore, Plaintiff respectfully request the declaratory relief requested, adjoining
6 completely The California National Guard, the Department of Defense DFAS or any other
7 entity from attempting to recoup monies paid as retention/re-enlistment bonuses (or any other
8 name give) and that any monies recouped to date should be returned to Plaintiffs. And award
9 such damages as are reasonable, just and necessary.

10
11 **COUNT V**
12 **CONCEALMENT FRAUD**

13 98. Plaintiff incorporates by reference all preceding and following paragraphs.

14 99. Defendant concealed or suppressed a material fact,

15 100. Defendant had a fiduciary duty to disclose the true facts to Plaintiff.

16 101. Defendant intentionally concealed or suppressed the true facts with the absolute
17 intent to defraud Plaintiff.

18 102. Plaintiff was unaware of the true facts and would not have acted as he did if he had
19 known of the concealed or suppressed facts (the intent along was to recoup).

20 103. As a result of the concealment or suppression of facts, Plaintiff sustained damage.

21 Wherefore, Plaintiff respectfully request the declaratory relief requested, adjoining
22 completely The California National Guard, the Department of Defense DFAS or any other
23 entity from attempting to recoup monies paid as retention/re-enlistment bonuses (or any other
24 name give) and that any monies recouped to date should be returned to Plaintiffs. And award
25 such damages as are reasonable, just and necessary.
26
27
28

1 **REQUEST FOR RELIEF**

2 Defendant DFAS wrote to Plaintiff (Exhibit #4, pg7) :

3
4 Generally, persons who receive a payment from the Government acquire no
5 right to the money. They are bound in equity and good conscience to make
6 restitution.

7 As Lord Coke Could stated “It is better, saith the law, to suffer a mischief that is
8 peculiar to one, than an inconvenience that may prejudice many. Section 97b.”

9 In the case at hand Defendant²³ is (the one) not suffering a mischief and cannot in
10 “good conscience” claim any moral high ground for the sake of equity. This is a matter of
11 intentional, systematic fraud perpetrated on masses of enlisted personnel who have not been
12 inconvenienced but who have suffered a great inequity.

13 This Nations Equity would best be served by granting the declaratory relief sought,
14 enlisted personnel should be able to have faith in the system and there superiors, otherwise the
15 chain of command is truly a hollow source of comfort, guidance and trust.

16 For all the reasoning cited supra all the Plaintiff’s of this action deserve the requested
17 relief.

18 Wherefore, Plaintiff respectfully request the declaratory relief requested, adjoining completely
19 The California Army National Guard or THE DFAS or any other entity from attempting to recoup
20 monies paid as retention/re-enlistment, or enlistment bonus (or any other name given) and that any
21 monies recouped to date should be returned to Plaintiffs. And award such damages as are
22 reasonable, just and necessary.

23 Plaintiff further request the Court issue a Writ of Mandamus ordering General David S.
24 Baldwin (or any successor of his) of The State of California National Guard and Mike McCord
25 Pentagon Comptroller (or any successor of his) at the United States Department of Defense, Defense
26 Finance and Accounting Service (DFAS), adjoining completely The California Army National Guard
27

28 ²³Defendant as used here applies to both Defendants.

1 or THE DFAS or any other entity from attempting to recoup monies paid as retention/re-enlistment,
2 or enlistment bonus (or any other name given) and that any monies recouped to date should be
3 returned to Plaintiffs. And award any other damages as are reasonable, just and necessary.

4 **REQUEST FOR COST AND ATTORNEY FEES**

5 Plaintiff requests that this Court award reasonable cost and attorney fees as allowed by either
6 Federal and/or State law.

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12 Dated: 2-9-2016

Dated: 2-9-2016

1
2 **CERTIFICATE OF SERVICE**

3 I hereby certify that I electronically filed the foregoing paper, plus attachments with the court
4 using the ECF system which will send notification of such filing to the following and/or I hereby
5 certify that I have given notice of said filing by personal service of process or by mail using the United
6 States Postal Service and will do so until the proper ECF respondent for each defendant is identified.
7

8 Adjunct General David S. Baldwin
9 California Army National Guard Headquarters
10 9800 Goethe Rd. Sacramento, CA. 95827

11 AND

12 Mike McCord
13 Pentagon Comptroller
14 United States Department of Defense
15 Defense Finance and Accounting Service (DFAS)

16 SAMUEL M. LASSER CA(252754)
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S/Samuel M. Lasser
Dated: 2-9-2016

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S/Daniel C. Willman
Dated: 2-9-2016