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NORTHERN DISTRICT OF CALIFORNIA

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12  
13 IN THE UNITED STATES DISTRICT COURT  
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 MIGUEL OROZCO GARDUÑO,  
16 Plaintiff,  
17 v.  
18 TITAN LABORATORIES, INC. and  
19 HARVEY BERGER,  
20 Defendants.

CV 10 5281  
CIVIL No

COMPLAINT  
JURY TRIAL DEMANDED

21 COMPLAINT

22 Plaintiff Miguel Orozco Garduño ("Orozco"), by the undersigned attorneys, makes the  
23 following averments:

24 1. This civil action is brought pursuant to the Uniformed Services Employment and  
25 Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 - 4335 ("USERRA").

26 JURISDICTION AND VENUE

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

COMPLAINT AND DEMAND FOR JURY TRIAL

1 3. Venue is proper in this district under 38 U.S.C. § 4323(c)(2) because defendant  
2 Titan Laboratories, Inc. ("Titan") maintains a place of business within this judicial district and  
3 defendant Harvey Berger ("Berger") resides within this judicial district. Venue is proper in this  
4 district under 28 U.S.C. § 1391(b) because the events giving rise to this lawsuit occurred in this  
5 judicial district.

#### 6 INTRADISTRICT ASSIGNMENT

7 4. The events giving rise to plaintiff's claim occurred in substantial part in Santa  
8 Clara County.

#### 9 PARTIES

10 5. During his employment with Titan, Orozco resided in Mountain View, California,  
11 in Santa Clara County, within the jurisdiction of this Court.

12 6. Titan maintains a place of business at 1071 Wright Avenue, Mountain View,  
13 California, in Santa Clara County, within the jurisdiction of this Court, and is an employer within  
14 the meaning of 38 U.S.C. § 4303(4)(A).

15 7. Berger, Titan's president and owner, resides in or near Mountain View,  
16 California, in Santa Clara County, within the jurisdiction of this Court, and is an employer within  
17 the meaning of 38 U.S.C. § 4303(4)(A).

#### 18 CLAIMS FOR RELIEF

19 8. Orozco commenced his employment with Titan on or about May 7, 2001. He held  
20 the title of warehouse manager/warehouseman.

21 9. As a warehouse manager/warehouseman, Orozco was responsible for all  
22 incoming supplies and inventory; filling containers on an assembly line; packing and shipping  
23 orders; and operating and maintaining a forklift.

24 10. Orozco was a reliable employee and was never disciplined during his employment  
25 with Titan.

26 11. Orozco is a member of the United States Army Reserve ("Army Reserve"). He  
27 served on active duty from January 21, 2003, until October 21, 2004, attending basic training and  
28 then serving honorably in Kuwait in support of Operation Enduring Freedom as a Unit Supply

1 Specialist. Orozco also was called upon numerous times during his employment with Titan to  
2 attend weekend drills and multi-week training sessions.

3 12. On August 18, 2009, Orozco gave verbal notice to Berger and Titan (collectively  
4 "defendants") that he had been ordered to report for a 45-day active duty period, commencing on  
5 August 24, 2009.

6 13. On October 25, 2009, Orozco's 45-day service was extended for an additional six  
7 days. Upon his return to work, defendants released Orozco's replacement and reemployed  
8 Orozco.

9 14. On or about November 5, 2009, Orozco informed defendants that he had again  
10 been called upon for a 45-day training and that his unit was supposed to be deployed for a 400-  
11 day period at the conclusion of the training. Orozco returned to active military duty on  
12 November 6, 2009.

13 15. On November 16, 2009, on a break from military training, Orozco went to Titan  
14 to pick up his paycheck. In the same envelope as his paycheck, Orozco received a letter from  
15 defendants informing him that his employment had been terminated, effective November 5,  
16 2009. The letter stated that Orozco's "obligations" were "keeping him from working at Titan,"  
17 and that he had "many other obligations, and [could not] commit to a full time position here any  
18 longer." Orozco had no obligations that interfered with his work at Titan other than his Army  
19 Reserve obligations.

20 16. On or about March 3, 2010, Orozco informed defendants that he had fulfilled his  
21 military obligation and would be available for reemployment on March 5, 2010. Defendants  
22 informed Orozco that his position no longer existed and that he would not be reemployed.  
23 Defendants continued to employ Orozco's replacement, however, as warehouse  
24 manager/warehouseman.

25 17. On March 12, 2010, Orozco filed a complaint with the Veterans Employment and  
26 Training Service ("VETS") of the United States Department of Labor.

27 18. In their response to VETS, dated April 2, 2010, defendants stated that they could not  
28 reemploy Orozco upon his return from active duty service because there was no open job for

1 him, and that Orozco's "sudden change in orders created a dilemma [because] Titan had hired a  
2 replacement with the assurance that [the replacement] would be permanent."

3 19. Defendants' conduct, as set forth above, violated Sections 4311, 4312 and 4313 of  
4 USERRA because defendants: (i) terminated Orozco's employment because of his obligation to  
5 perform service in the Armed Forces; and (ii) failed to reemploy Orozco in the position of  
6 employment in which he would have been employed if Orozco's continuous employment with  
7 Titan had not been interrupted by military service.

8 20. Defendants' violations of USERRA were willful within the meaning of 38 U.S.C.  
9 § 4323(d)(1)(C).

10 21. Orozco has suffered a substantial loss of earnings and other benefits as a result of  
11 defendants' willful violations of USERRA.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Orozco prays that the Court enter judgment against defendants, as follows:

14 (1) Declare that defendants' termination of Orozco's employment and failure to  
15 reemploy Orozco were unlawful and in violation of USERRA;

16 (2) Order defendants to comply fully with the provisions of USERRA by reinstating  
17 Orozco in the same position of employment he would have held were Orozco's continuous  
18 employment with Titan not interrupted by military service;

19 (3) Order defendants to comply fully with the provisions of USERRA by paying  
20 Orozco all amounts due to him for loss of wages and benefits caused by defendants' violations of  
21 USERRA;

22 (4) Declare that defendants' violations of USERRA were willful;

23 (5) Award Orozco liquidated damages in an amount equal to the amount of lost wages  
24 and other benefits suffered by reason of defendants' willful violations of USERRA, pursuant to  
25 38 U.S.C. § 4323(d)(1)(C);

26 (6) Award Orozco prejudgment interest on the amount of lost compensation found due;

27 (7) Enjoin defendants from taking any action against Orozco that fails to comply with  
28 the provisions of USERRA; and

1 (8) Grant such other and further relief as may be just and proper.

2 **DEMAND FOR JURY TRIAL**

3 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiff demands a trial by  
4 jury.

5 Respectfully submitted,

6 Date:

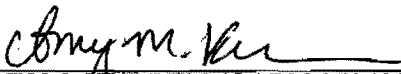
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