

**IN THE DISTRICT COURT OF GUAM**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

V.

UNITED STATES TERRITORY OF GUAM  
and THE GOVERNMENT OF GUAM  
RETIREMENT FUND,

#### Defendants.

Case No. 1:21-cv-00022

## DECISION AND ORDER:

- (1) GRANTING UNITED STATES' MOTION TO SUPPLEMENT THE RECORD (ECF No. 88);
  - (2) GRANTING UNITED STATES' MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY (ECF No. 51);
  - (3) DENYING THE GOVERNMENT OF GUAM RETIREMENT FUND'S COUNTER-MOTION FOR SUMMARY JUDGMENT (ECF No. 52); and
  - (4) DISMISSING UNITED STATES TERRITORY OF GUAM'S MOTION FOR SUMMARY JUDGMENT AS TO CLAIMANT'S UNJUST ENRICHMENT (ECF No. 94).

This civil action arises under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, 38 U.S.C. § 4301, *et seq.* (“USERRA”). The United States filed this lawsuit on behalf of five service members as well as other potential service members pursuant to 38 U.S.C. § 4323(b), alleging that Defendants United States Territory of Guam (“GovGuam”) and the Government of Guam Retirement Fund (the “Fund”) violate USERRA when they treat service members who were away on active military duty and subsequently reemployed as having incurred a break in service under Guam’s Leave Sharing Program (“LSP”). In addition, the United States alleges GovGuam and the Fund violate USERRA when

1 they prohibit employer- and employee-side contributions towards the service members'  
2 retirement plans when they take leave under the LSP. Before the Court are three motions for  
3 summary judgment: (1) the United States' Motion for Summary Judgment as to liability (USA's  
4 MSJ, ECF No. 51),<sup>1</sup> (2) the Fund's Counter-Motion for Summary Judgment based on the  
5 equitable doctrine of quasi-estoppel (Fund's Counter-MSJ, ECF No. 52),<sup>2</sup> and (3) GovGuam's  
6 Motion for Summary Judgment as to the unjust enrichment of one claimant (GovGuam's MSJ,  
7 ECF No. 94).<sup>3</sup>

8 After a hearing was held on the United States' Motion for Summary Judgment and the  
9 Fund's Counter-Motion for Summary Judgment and both motions were taken under advisement  
10 (Mins., ECF No. 71), the United States filed a Motion for Leave to File Additional Documents  
11 to Supplement the Summary Judgment Record. (USA's Mot. Suppl. Record, ECF No. 88.)<sup>4</sup>

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17 <sup>1</sup> The United States' Motion for Summary Judgment is supported by a Brief (USA's MSJ Br., ECF No. 51-1),  
18 Concise Statement of Undisputed Material Facts (USA's CSUMF, ECF No. 51-2), and Exhibits (ECF No. 51-3).  
19 The Fund opposed the United States' Motion for Summary Judgment (ECF No. 52) with its Concise Statement of  
20 Material Facts, which includes declarations and exhibits. (Fund's CSMF, ECF No. 52-1.) GovGuam also opposed  
21 the United States' Motion (GovGuam's Opp'n to USA's MSJ, ECF No. 53) and joins in the Fund's Opposition and  
22 Counter-Motion. (GovGuam's Joinder, ECF No. 54.) The United States replied to both the Fund's and GovGuam's  
23 Oppositions. (ECF No. 56.)

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<sup>2</sup> The Fund's Counter-Motion is supported by its Concise Statement of Material Facts. (Fund's CSMF, ECF No.  
52-1.) The United States opposed the Fund's Counter-Motion (USA's Opp'n to Fund's Counter-MSJ, ECF No. 56),  
to which the Fund filed its reply (ECF No. 63). GovGuam also joined the Fund's reply. (GovGuam's Joinder to  
Fund's Reply, ECF No. 64.)

<sup>3</sup> GovGuam supports its Motion for Summary Judgment as to unjust enrichment with a Concise Statement of  
Undisputed Material Facts (GovGuam's CSUMF, ECF No. 95) and Exhibits (95-1-95-7). The United States  
opposes the Motion (USA's Opp'n to GovGuam MSJ, ECF No. 100) to which GovGuam replied (GovGuam's  
Reply in Support of MSJ, ECF No. 102). There was no hearing on GovGuam's Motion for Summary Judgment  
based on unjust enrichment. Subsequently, GovGuam filed a Notice of Errata, which fixed a typographical error in  
its Reply. (ECF No. 103.)

<sup>4</sup> The United States supports its Motion to Supplement the Record with a Brief in Support. (USA's Suppl. Br., ECF  
No. 88-1.) The Fund opposes the Motion to Supplement the Record (Fund's Opp'n to Mot. Suppl., ECF No. 98),  
which GovGuam joins (ECF No. 99). The Fund supports its Opposition with exhibits and declarations. (ECF Nos.  
98-1-98-3.) GovGuam supports its joinder with a summary report and claimant declarations. (ECF Nos. 99-1-99-  
6.) The United States replied (ECF No. 101) and attached an email exhibit (ECF No. 101-1).

1 Neither party sought a hearing for GovGuam's Motion for Summary Judgment and it was  
2 therefore submitted on the briefs.

3       The Court has reviewed and considered the parties' filings, the applicable law, and  
4 counsels' oral arguments. For the following reasons, the Court (1) GRANTS the United States'  
5 Motion to Supplement the Record; (2) GRANTS the United States' Motion for Summary  
6 Judgment as to Defendants' liability; (3) DENIES the Fund's Counter-Motion for Summary  
7 Judgment based on the equitable doctrine of quasi-estoppel; and (4) DISMISSES GovGuam's  
8 Motion for Summary Judgment as to the unjust enrichment of one claimant for lack of  
9 jurisdiction.

10      **I. BACKGROUND**

11      **A. Guam's Leave Sharing Program**

12       The Guam Fire Department ("GFD") and Guam's Department of Education ("GDOE")  
13 are agencies of GovGuam and individuals working there are GovGuam employees. (USA's  
14 CSUMF ¶¶ 2-3; Fund's CSMF ¶¶ 2-3.) Beginning in 1993, GovGuam offered its employees a  
15 choice of retirement plans, including: Defined Benefit Plan, Defined Contribution Retirement  
16 System 401(a) Plan, Defined Benefit 1.75 Retirement System Plan, and Deferred Compensation  
17 System (457) Plan. (USA's CSUMF ¶ 4; Fund's CSMF ¶ 4.)

18       The Department of Administration ("DOA") is also a GovGuam agency. (USA's  
19 CSUMF ¶¶ 5, 7; Fund's CSMF ¶¶ 5, 7.) DOA and GDOE are responsible for payroll actions for  
20 GovGuam employees, and through these payroll actions, the agencies make employer-side  
21 contributions to GovGuam employees' retirement pension funds. (USA's CSUMF ¶¶ 5, 7;  
22 Fund's CSMF ¶¶ 5, 7.) The DOA and GDOE do not make employer-side pension contributions  
23 for the time that employees use donated leave from the LSP for military service. (USA's CSUMF  
24 ¶¶ 5, 7; Fund's CSMF ¶¶ 5, 7.)

1 ¶¶ 6, 8; Fund's CSMF ¶¶ 6, 8.)

2       The Fund administers the pension fund for GovGuam employees and is responsible for  
3 collecting pension contributions. (USA's CSUMF ¶ 9; Fund's CSMF ¶ 9.) The Fund blocks all  
4 contributions made by employees for the time an employee used donated leave for military  
5 service and instead returns the funds. (USA's CSUMF ¶ 10; Fund's CSMF ¶ 10 (partially  
6 disputed by the parties).)<sup>5</sup> The Fund is also responsible for calculating and verifying service  
7 credit towards retirement. (USA's CSUMF ¶ 11; Fund's CSMF ¶ 11.) However, the Fund does  
8 not recognize any service credit for the time an employee uses donated leave for military service.  
9 (USA's CSUMF ¶ 12; Fund's CSMF ¶ 12.)

10      The LSP is an employee benefit that provides assistance to employees who need to take  
11 extended periods of absence from their employments for personal reasons. (USA's CSUMF ¶  
12 13; Fund's CSMF ¶ 13.) The employees can use donated leave from a leave donor to remain in  
13 a paid leave status. (USA's CSUMF ¶ 13; Fund's CSMF ¶ 13 (disputed as the Fund asserts that  
14 there is not a leave bank for donated leave and each application for donated leave is specific to  
15 a leave donor and leave recipient).)<sup>6</sup> Military service is an accepted personal reason for  
16 employees to use donated leave from the LSP. (USA's CSUMF ¶ 14; Fund's CSMF ¶ 15.)

17      Employees' time spent on donated leave from the LSP may not count towards retirement  
18 service credit for any GovGuam employee, including service members. (USA's CSUMF ¶ 15;  
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24      <sup>5</sup> The Fund asserts that this fact is disputed as the Fund "does not block all contributions made for the time an  
25 employee used donated leave for military service." (Fund's CSMF ¶ 10 (citing ECF No. 51-3 at 17, 26, 32; USA's  
CSUMF ¶¶ 6, 8.) The Court finds that the Fund's cited exhibits do not dispute the fact asserted by the United States.  
Therefore, the Court considers this fact undisputed. *See Fed. R. Civ. Proc. 56(e)(2).*

26      <sup>6</sup> The Fund disputes this fact citing to the Declarations of Gilbert F. Galang and Kathryn M. C. Diaz. (ECF No. 52-  
27 1 at 15-18, 34-37, 59-61). Both Declarations support the Fund's assertion. (*Id.* at 16, 35 ("The government of  
Guam's Leave Sharing program does not maintain a leave bank for donated leave.").) Based on the express language  
28 of Guam law, the Court finds the LSP is a voluntary program that requires a voluntary leave donor to transfer leave  
to a specific recipient, not to a leave bank. 4 G.C.A. § 4109.2(b)(1). Furthermore, nowhere in the Leave Sharing  
Procedure at Appendix G is there a reference to a leave bank. However, this fact is not material.

1 Fund's CSMF ¶ 15.) Any pension contributions made while an employee is using donated leave  
2 for military service will be returned to the employer or employee (USA's CSUMF ¶ 16; Fund's  
3 CSMF ¶ 16.)

4           **B. The Claimants (LSP Participants)**

5           Alan Torre was employed as a firefighter for GFD from 1992 until 2020 and was an  
6 active participant in the Defined Benefit Plan. (USA's CSUMF ¶ 17; Fund's CSMF ¶ 17.) Torre  
7 is a former Army National Guardsman who utilized GovGuam's LSP for active duty from March  
8 17, 2007 until December 8, 2007; he received honorable discharge and GFD reemployed him  
9 after deployment, and he did not receive service credit or pension benefits for a period of time  
10 after GFD reemployed him. (USA's CSUMF ¶ 18; Fund's CSMF ¶ 18 (partially disputed for the  
11 amount of pay periods he received donated paid leave and for which years).)<sup>7</sup> In his deposition  
12 for this case, Torre testified that the only information he knew about shared leave was what the  
13 payroll clerk told him or his supervisor. (USA's Suppl. Br. 14-15.) Torre testified that two weeks  
14 before his retirement, "Retirement told me I was not able to retire." (*Id.* at 21.) He thereafter  
15 inquired why after two years of being told he could retire in 2019, he was told that he had to  
16 work longer. (*Id.*) The Fund informed Torre that his participation in the LSP impacted his  
17 retirement service credit. (*Id.* at 22.) Torre had to work an extra five months before he became  
18 eligible to retire. (*Id.* at 22-23.) He wants the Fund to give him the nine months of retirement  
19 service credit that he claims to be entitled to. (*Id.* at 28.) When asked if Torre read the personnel  
20 rules and regulations about leave sharing, he said that he could not find any online despite  
21 searching. (*Id.* at 24.) Torre also testified that both he and his employer contributed to the Fund  
22 for his retirement plan while on the LSP, but that prior to retiring, a clerk gave him a check for  
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28           <sup>7</sup> The Fund disputes this fact stating that Torre received donated paid leave for 36 pay periods. (Fund's CSMF ¶  
18.) The Court does not find this to be a material fact when resolving the issue of liability only.

1 the contributions he made. (*Id.* at 28.) When the Fund returned his employee contributions, Torre  
2 testified that he told the clerk to keep the check and requested his time in service credit, but the  
3 Fund informed him that could not be done. (*Id.* at 29-30.) Ultimately, he cashed the check before  
4 he lost it. (*Id.* at 30.)

5           Andrew Quinata has been employed as a firefighter for GFD since 1992 to the present  
6 and is an active participant in the Defined Benefits Plan. (USA's CSUMF ¶ 19; Fund's CSMF ¶  
7 19.) Quinata is a former Air National Guardsman who utilized GovGuam's LSP for active duty  
8 during 2007 to 2009, 2012, and 2016. (USA's CSUMF ¶ 20; Fund's CSMF ¶ 20.) Quinata did  
9 not receive retirement service credit or pension benefits for those periods. (USA's CSUMF ¶ 20;  
10 Fund's CSMF ¶ 20.) Quinata was unaware that participation in the LSP would forfeit his  
11 USERRA benefits. (USA's CSUMF ¶ 21; Fund's CSMF ¶ 21 (disputed by the parties).)<sup>8</sup> In his  
12 deposition for this case, Quinata was asked if he had ever seen the LSP statute, to which he  
13 responded no. (USA's Suppl. Br. 36.) He also stated that no one had ever gone over the LSP  
14 with him. (*Id.* at 37.) Quinata testified that the payroll clerk informed him about shared leave.  
15 (*Id.* at 38-39.) The payroll clerk would inform Quinata that he was running out of leave and  
16 would provide a leave sharing document for him to fill out after which the payroll clerk said he  
17 would take care of the rest. (*Id.* at 39, 41.) When Quinata inquired at the Fund about his time in  
18 service, he was informed that he was short about two and a half years in service because he had  
19 used the LSP. (*Id.* at 44-46.) Quinata was informed that because the Fund is not crediting him  
20 for the time that he used donated leave while on active military duty, he will draw a lower pension  
21 annuity for the rest of his life. (*Id.* at 45-46.)

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<sup>8</sup> The Fund disputes this on the basis of the Declaration by Diaz. (Fund's CSMF ¶ 21.) As addressed in greater detail  
28 below, the Court finds that Diaz's Declaration does not sufficiently dispute Quinata's unawareness that participation  
in LSP would forfeit his USERRA benefits.

1            Jesse Cruz has been employed as a firefighter for GFD since 1992 to the present and is  
2 an active participant in the Defined Benefits Plan. (USA's CSUMF ¶ 22; Fund's CSMF ¶ 22.)  
3 Cruz is an Air National Guardsman who utilized GovGuam's LSP for active duty during 2012,  
4 and he did not receive retirement service credit or pension benefits for that period of time.  
5 (USA's CSUMF ¶ 23; Fund's CSMF ¶ 23.) Cruz was unaware that participation in the LSP  
6 would forfeit his USERRA benefits. (USA's CSUMF ¶ 24; Fund's CSMF ¶ 24 (disputed by the  
7 parties).)<sup>9</sup> In his deposition testimony for this case, Cruz testified that he did not look at the  
8 personnel rules and regulations regarding LSP. (USA's Suppl. Br. 86.) He did not know the  
9 details about the LSP because his payroll clerk "took care of all of that." (*Id.* at 87.)  
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11            Raymond San Nicolas was employed as a firefighter for GFD from 1992 until 2018 and  
12 is a former Air National Guardsman who utilized GovGuam's LSP for active duty during 2005,  
13 2006-2007, 2008, and 2012. (USA's CSUMF ¶¶ 25-26; Fund's CSMF ¶¶ 25-26.) Cruz did not  
14 receive retirement service credit or pension benefits for those periods. (USA's CSUMF ¶ 26;  
15 Fund's CSMF ¶ 26.) In his deposition for this case, San Nicolas testified that he applied for leave  
16 under the LSP through his payroll office. (USA's Suppl. Br. 98.) His contributions to the Fund  
17 were taken out of his pay while on military orders and leave sharing. (*Id.* at 101.) However, the  
18 Fund refunded those contributions. (*Id.* at 101-02.) An agent at the Fund initially informed San  
19 Nicolas in 2015 about the pay he would receive and his years of credited service, which included  
20 credit for years of service during his leave sharing. (*Id.* at 102.) Years later in 2018, he received  
21 contrary information. (*Id.* at 102-03.)

22            Frederick Guzman has been employed by GDOE since 1996 to the present and is an  
23 active participant in the Defined Benefit 1.75 Plan. (USA's CSUMF ¶ 27; Fund's CSMF ¶ 27.)  
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27           <sup>9</sup> The Fund disputes this on the basis of the Declaration by Diaz. (Fund's CSMF ¶ 24.) As addressed in greater detail  
28 below, the Court finds that Diaz's Declaration does not sufficiently dispute Cruz's unawareness that participation  
in LSP would forfeit his USERRA benefits.

1 Guzman is an Air National Guardsman who utilized GovGuam's LSP for active duty during  
2 2012 and 2018. (USA's CSUMF ¶ 28; Fund's CSMF ¶ 28; GovGuam CSUMF ¶ I.B (GovGuam  
3 asserts the period of time is to August 2023, which is not disputed.) Guzman's leave transfer  
4 request was approved. (GovGuam CSUMF ¶ III.B.) Guzman did not receive service credit or  
5 pension benefits for those periods. (USA's CSUMF ¶ 28; Fund's CSMF ¶ 28; GovGuam  
6 CSUMF ¶ III.A.) The cash benefit of Guzman's leave under the LSP is \$42,993.73. (GovGuam  
7 CSUMF ¶ IV.A (undisputed).) Guzman refuses to return the LSP cash benefits. (*Id.* ¶ V.) In his  
8 deposition for this case, Guzman testified that he never read the GovGuam personnel rules and  
9 regulations. (USA's Suppl. Br. 59.) He further stated that when he turned in his leave request  
10 form for the very first time, he turned it in to the secretary of the school that employed him, who  
11 then called payroll. (*Id.* at 62.) He learned about shared leave from the secretary. (*Id.* at 64.)  
12 When the Defined Benefit 1.75 program was launched, Guzman learned from a person at the  
13 Fund that his credit years is not the same as the period from when he started working in 1996.  
14 (*Id.* at 66.) A person from the Fund informed Guzman that he was short on retirement credits  
15 and suggested possible reasons but did not pinpoint the specific reason. (*Id.*) He subsequently  
16 asked someone from payroll why he is short on years and was told maybe it is because he went  
17 on military leave. (*Id.* at 67.) He still did not understand why he would be short if he went on  
18 military leave. (*Id.*)

## 22 II. LEGAL STANDARDS

### 23 A. Supplemental Briefing

24 Pursuant to CVLR 7(h), no supplemental briefing shall be filed without leave of the  
25 Court. Federal Rule of Civil Procedure 56(e)(1) dictates that if a party fails to properly support  
26 an assertion of fact or address another party's assertion of fact, the court may "give an  
27 opportunity to properly support or address the fact."

1                   **B. Summary Judgment Pursuant to Federal Rule of Civil Procedure 56**

2                   A principal purpose of the summary judgment procedure is to identify and dispose of  
3                   factually unsupported claims. *Celotex Corp. v. Cattret*, 477 U.S. 317, 323-24 (1986). Summary  
4                   judgment is proper when the “pleadings, depositions, answers to interrogatories, and admissions  
5                   on file, together with the affidavits, if any, show that there is no genuine issue as to any material  
6                   fact and that the moving party is entitled to judgment as a matter of law.” *Id.* at 322.

7                   A party who moves for summary judgment who bears the burden of proof at trial must  
8                   produce evidence that would entitle him to a directed verdict if the evidence went uncontested  
9                   at trial. *C.A.R. Transp. Brokerage Co., Inc. v. Darden*, 213 F.3d 474, 480 (9th Cir. 2000). Once  
10                  the moving party meets its initial burden, the non-moving party must go beyond the pleadings  
11                  and by its own evidence “set forth specific facts showing that there is a genuine issue for trial.”  
12                  *Id.* at 480. In order to make this showing, the non-moving party must “identify with reasonable  
13                  particularity the evidence that precludes summary judgment.” *Keenan v. Allan*, 91 F.3d 1275,  
14                  1279 (9th Cir. 1996) (quoting *Richards v. Combined Ins. Co.*, 55 F.3d 247, 251 (7th Cir. 1995)).  
15                  If the non-moving party fails to make this showing, the moving party is entitled to judgment as  
16                  a matter of law. *Celotex*, 477 U.S. at 323.

17                  A party moving for summary judgment who does not have the ultimate burden of  
18                  persuasion at trial must produce evidence which either negates an essential element of the non-  
19                  moving party’s claims or show that the non-moving party does not have enough evidence of an  
20                  essential element to carry its ultimate burden of persuasion at trial. *Nissan Fire & Marine Ins.*  
21                  *Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000).

22                   “[W]hen parties submit cross-motions for summary judgment, each motion must be  
23                  considered on its own merits.” *Fair Hous. Council of Riverside Cty., Inc. v. Riverside Two*, 249  
24                  F.3d 1132, 1136 (9th Cir. 2001) (citations omitted). “If a genuine dispute of material fact exists,  
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1 a court must deny both motions.” *Fed. Trade Comm’n v. Am. eVoice, Ltd.*, 242 F. Supp. 3d 1119,  
2 1121 (D. Mont. 2017) (citation omitted). However, if there is no dispute of material fact and only  
3 one party is entitled to judgment as a matter of law, a court may grant summary judgment as to  
4 that party only. *E.g., Johnson v. Diaz*, 339 F. Supp. 60, 65 (C.D. Cal. 1971) (granting one party’s  
5 motion for summary judgment and denying other party’s motion).

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7 At the summary judgment stage, “[a] plaintiff moving for summary judgment is not  
8 obligated to negate affirmative defenses, but an affirmative defense will negate summary  
9 judgment where each element of the affirmative defense is supported by summary judgment  
10 evidence.” *McCollough v. Johnson, Rodenberg & Lauinger*, 587 F. Supp. 2d 1170, 1176 (D.  
11 Mont. 2008) (citing *Garza v. Gonzales*, No. 13-05-200-CV, 2006 WL 3317732, at \*4 (Tex. App.  
12 Nov. 16, 2006)).  
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14 If the moving party seeks summary adjudication with respect to a claim or  
15 defense upon which it bears the burden of proof at trial, it must satisfy its burden  
16 with affirmative, admissible evidence. By contrast, when the non-moving party  
17 bears the burden of proving the claim or defense, the moving party can meet its  
burden by pointing out the absence of evidence submitted by the non-moving  
party. The moving party need not disprove the other party’s case.

18 See *Forum Ins. Co. v. Devere Ltd.*, 151 F. Supp. 2d 1145, 1147 (C.D. Cal. 2001) (citing *Celotex*,  
19 477 U.S. at 325).

20 **III. DISCUSSION**

21 The Court addresses each motion starting with the United States’ Motion to Supplement  
22 the Record. The Court grants the United States’ Motion to Supplement the Record because the  
23 United States was diligent, and the additional evidence of the claimants’ depositions was not at  
24 its request. The Court also accepts the Defendants’ supplemental records as well. Next, the Court  
25 grants the United States’ Motion for Summary Judgment and finds that GovGuam’s LSP  
26 prohibition does not limit the service members’ USERRA benefits because the LSP prohibition  
27 is preempted. Defendants did not sufficiently support their affirmative defense of waiver, and  
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1 the service members are entitled to their USERRA benefits. Next, the Court finds that the Fund  
2 is not entitled to summary judgment based on quasi-estoppel because the United States or  
3 claimants are not receiving an unconscionable advantage nor is the Fund or GovGuam receiving  
4 an unconscionable disadvantage. Finally, the Court dismisses GovGuam's Motion for Summary  
5 Judgment for unjust enrichment as to Guzman because it does not have jurisdiction.  
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7 **A. United States' Motion to Supplement the Record**

8 As an initial matter, the Court grants the United States' Motion for Leave to Supplement  
9 the Record. The Fund opposes the United States' Motion to Supplement the Record and asserts  
10 that if the Court were to grant the Motion that the Fund should also be able to submit additional  
11 documents to complete the record as well. (Fund's Opp'n to Mot. Suppl. 6.) GovGuam noticed  
12 depositions of the five claimants about a month before the close of discovery and *after* briefing  
13 closed on both the United States' Motion for Summary Judgment and GovGuam's Motion  
14 (USA's Suppl. Br. 3; Third Am. Scheduling Order 2, ECF No. 73 ("All discovery must be  
15 scheduled so as to be completed by January 4, 2024").)  
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17 Federal Rule of Civil Procedure 56(e)(1) dictates that if a party fails to properly support  
18 an assertion of fact or address another party's assertion of fact, the court may "give an  
19 opportunity to properly support or address the fact." The Ninth Circuit has affirmed a district  
20 court's denial of a motion to supplement the summary judgment record based on a lack of  
21 diligence from the moving party. *Stucky v. Dep't of Educ.*, 337 Fed. Appx. 611, 613 (9th Cir.  
22 2009). Thereafter, Ninth Circuit district courts have analyzed the diligence of the moving party  
23 when determining whether to grant or deny a motion to supplement. See, e.g., *Dentists Ins. Co.*  
24 v. *Yousefian*, Case No. C20-1076RSL, 2023 WL 4106220, at \*7 (citing *Stucky*, 337 Fed. Appx.  
25 at 613)).  
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1        In this instance, the United States was diligent. The depositions were not at its own  
2 request but became available upon the Defendants' requests. Because the depositions properly  
3 address material issues of fact about the claimants' waiver, or lack of a waiver, the Court grants  
4 the United States' Motion to Supplement the Record. In addition, the Court accepts the Fund's  
5 and GovGuam's supplement of the record as well. All parties have had ample time to brief the  
6 legal issues and argue before the Court, and because the Court accepts the supplemental record  
7 from all parties, any additional legal arguments submitted with the supplemental briefs are  
8 accepted for consideration. The Court now turns to the pending substantive motions.

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10      **B. United States' Motion for Summary Judgment**

11      The United States argues that the Court should grant its motion for summary judgment  
12 on liability because Defendants violated USERRA in three ways: (1) Defendants failed to make  
13 employer-side contributions to pension accounts for reemployed service member-employees  
14 utilizing the LSP for military service; (2) the Fund rejected service members' employee-side  
15 contributions to pension accounts when service members utilized the LSP for military service;  
16 and (3) the Fund failed to provide retirement service credit time to reemployed service members  
17 that utilized the LSP for military service. (USA's MSJ Br. 9-10.) Defendants' sole justification  
18 for their actions is their unequivocal reliance on Guam's territorial statute at 4 G.C.A. §  
19 4109.2(b)(3), the LSP's prohibition against the recipient employee using the paid leave for credit  
20 towards retirement. (*Id.* at 10.)

21      The United States contends USERRA supersedes the LSP's prohibition against crediting  
22 retirement service benefits to service members who are transferred leave. Although the LSP  
23 confers paid leave benefits to the service members, the United States still contends that as a  
24 matter of law, USERRA preempts that portion of Guam's statute that deprives service members  
25 of the three minimal rights under USERRA. (*Id.* at 15.) Further, as a matter of fact, the United  
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1 States maintains that there has been no waiver by the service members of their minimal USERRA  
2 rights. (*Id.* at 19.)

3       The Fund argues the United States' Motion should be denied because there exist genuine  
4 disputes of material facts. Specifically, the Fund contends that the critical inquiry at issue is  
5 "whether the rights to service credits under USERRA (and their value) are more or less beneficial  
6 than the value of rights to service credits and other benefits under Guam law." (Fund's Counter-  
7 MSJ 17.) The Fund further argues that the Court must consider not just the application of Guam's  
8 LSP, but also the application of its alternative as set out in Guam law at 4 G.C.A. § 8137.2. (*Id.*)  
9 Lastly, the Fund contends "[p]reemption requires a determination of the beneficial value of the  
10 rights conferred by federal vs. Guam laws." (*Id.* at 22.) GovGuam joins the Fund's Opposition.  
11 (GovGuam's Joinder Reply 1.) The Court rejects the Fund's contention that the Court must  
12 consider alternative Guam law on retirement benefits for service members, such as the  
13 employees on the active duty provision at 4 G.C.A. § 8137.2, in determining whether the LSP's  
14 prohibition against credit towards retirement violates USERRA because the LSP operates on its  
15 own in providing both a benefit and a deprivation of retirement rights.  
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17       **1. Service Members' Rights Under USERRA**

18       Congress enacted USERRA for the purpose of encouraging service in the uniformed  
19 services by eliminating or minimizing disadvantages to civilian careers and employment  
20 resulting from such service; minimizing disruption to service members' lives, employers, fellow  
21 employees, and their communities; and prohibiting discrimination against service members. 38  
22 U.S.C. § 4301(a). "USERRA establishes a floor, not a ceiling, for the employment and  
23 reemployment rights and benefits of those it protects. In other words, an employer may provide  
24 greater rights and benefits than USERRA requires, but no employer can refuse to provide any  
25 right or benefit guaranteed by USERRA." 20 C.F.R. § 1002.7(a). "If an employer provides a  
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1 benefit that exceeds USERRA's requirements in one area, it cannot reduce or limit other rights  
2 or benefits provided by USERRA." *Id.* § 1002.7(c). "If the employer provides additional benefits  
3 such as full or partial pay when the employee performs service, the employer is not excused from  
4 providing other rights and benefits to which the employee is entitled under [USERRA]." *Id.* §  
5 1002.151.  
6

7 USERRA defines a "benefit" or "rights and benefits" as: "the terms, conditions, or  
8 privileges of employment, including any advantage, profit, privilege, gain, status, account, or  
9 interest (including wages or salary for work performed) that accrues by reason of an  
10 employment contract or agreement or an employer policy, plan or practice and includes rights  
11 and benefits under a pension plan . . ." 38 U.S.C. § 4303(2).

12 USERRA contains a supremacy clause at 38 U.S.C. § 4302(b) that addresses rights and  
13 benefits conferred under the chapter:  
14

15 This chapter supersedes any State law (including any local law or ordinance),  
16 contract, agreement, policy, plan, practice, or other matter that reduces, limits,  
17 or eliminates in any manner any right or benefit provided by this chapter,  
including the establishment of additional prerequisites to the exercise of any  
such right or the receipt of any such benefit.

18 Section 4302(a) of USERRA is a limitation on the scope of federal preemption  
19 established by § 4302(b). Section 4302(a) states:  
20

21 Nothing in this chapter shall supersede, nullify or diminish any Federal or  
22 State law (including any local law or ordinance), contract, agreement, policy,  
23 plan, practice, or other matter *that establishes a right or benefit that is more  
beneficial to, or is in addition to*, a right or benefit provided for such person.  
24

*Id.* § 4302(a) (emphasis added).

25 Section 4318 covers service members' reemployment rights arising under employee  
26 pension benefit plans. *Id.* § 4318(a)(1)(A). For a right provided under an employee pension  
27 benefit plan or a right provided by federal or state law governing pension benefits for government  
28

1 employees, “the right to pension benefits of a person reemployed under [chapter 38] shall be  
2 determined under [§ 4318].” 38 U.S.C. § 4318(a)(1)(A).

3       “A person reemployed under [chapter 38] shall be treated as not having incurred a break  
4 in service with the employer or employers maintaining the [employee pension benefit] plan by  
5 reason of such person’s period or periods of service in the uniformed services.” *Id.* §  
6 4318(a)(2)(A). Not only does USERRA prohibit the treatment of reemployed service members  
7 as having incurred a break in service, but it also requires employers reemploying service  
8 members to maintain the employee’s pension plan in the same manner and extent as to other  
9 employees during the period of service. *Id.* § 4318(b)(1). USERRA expressly states:  
10

11           Each period served by a person in the uniformed services shall, upon  
12 reemployment under this chapter, be deemed to constitute service with the  
13 employer or employers maintaining the plan for the purpose of determining  
14 the nonforfeitability of the person’s accrued benefits and for the purpose of  
determining the accrual of benefits under the plan.

15 *Id.* § 4318(a)(2)(B). Finally, USERRA allows an employee to make employee-side contributions  
16 at the amount the service member would have been permitted to make if not for their service:

17           A person reemployed under this chapter shall be entitled to accrued benefits  
18 pursuant to subsection (a) that are contingent on the making of, or derived  
19 from, employee contributions or elective deferrals . . . only to the extent the  
20 person makes payment to the plan with respect to such contributions or  
21 deferrals. No such payment may exceed the amount the person would have  
22 been permitted or required to contribute had the person remained  
23 continuously employed by the employer throughout the period of service  
described in subsection (a)(2)(B). Any payment to the plan described in this  
24 paragraph shall be made during the period beginning with the date of  
reemployment and whose duration is three times the period of the person’s  
service in the uniformed services, such payment period not to exceed five  
years.

25           Therefore, under USERRA, reemployed service members explicitly have rights that  
26 include: (1) the period of time during which they served will not be treated as a break in service  
with the employers maintaining their pension benefit plan; (2) employer contributions to their  
27 employee pension benefit plan shall be in the amount of “any employer contribution for the  
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1 person in the same manner and to the same extent the allocation occurs for other employees  
2 during the period of service[;]" and (3) employee contributions upon reemployment in the  
3 amount permitted but for their service. *See* 38 U.S.C. § 4318(b)(1).

4                   **2. Service Members' Rights Under Guam Law**

5                   Guam law provides multiple benefits to employees and service members pertaining to  
6 leave. All government of Guam employees who are also in the military reserves or are National  
7 Guard members are entitled to fifteen days of military *paid leave* within a fiscal year when they  
8 are called on for active military duty. 4 G.C.A. § 4119(a)-(b). The provisions of § 4119 are  
9 retroactive to October 1, 2012. Section 4119 does not affirmatively deprive a service member of  
10 any retirement benefit. Therefore, 4 G.C.A. § 4119(a)-(b) establishes a right or benefit that is  
11 more beneficial to, or is in addition to, a right or benefit provided for such person under  
12 USERRA. Section 4119 does not take away from service members' pension rights when it  
13 provides leave with pay for military service, which is not mandated under USERRA.  
14

15                   After exhaustion of this fifteen-day military paid leave, service members must elect  
16 annual leave, compensatory-time accrued, or unpaid leave when called on for active military  
17 duty. *Id.* § 4119(b).

18                   Under § 8137.2, GovGuam funds both employer- and employee-side retirement  
19 contributions for military service member employees who take *unpaid leave* while on active  
20 duty. *Id.* § 8137.2. Specifically, Guam law provides as follows:

21                   **Employees on Active Duty.** The government shall pay the *employer's and*  
22 *employee's shares for Retirement Fund contributions, group health insurance*  
23 *premiums, and group life insurance premiums* for all officers and other  
24 employees of the government of Guam who are *on leave without pay and on*  
25 *active duty* with the Guam National Guard or the reserve components of any  
26 of the Armed Services of the United States. All agencies and departments of  
27 the government of Guam shall fund, from their respective annual budgets, the  
28 contributions for *retirement, health insurance, and life insurance* authorized  
by this section.

1       *Id.* (emphasis added). Military service members are also given retirement credit for their period  
2 of active military service if discharged under conditions other than dishonorable and reemployed  
3 by Guam. *Id.* § 8108(b). Therefore under §§ 8108(b) and 8137.2, service members who elect to  
4 take unpaid leave receive both retirement credit and employer-side contributions as they are  
5 entitled to under USERRA, and the additional benefits of GovGuam-funded employee  
6 contributions, group health insurance premiums, and group life insurance premiums during their  
7 period of military service. Again, because §§ 8108(b) and 8137.2 do not take away any of the  
8 minimum rights guaranteed to service members by USERRA and only add the benefits  
9 identified, these Guam statutory provisions establish a right or benefit that is more beneficial  
10 than, or is in addition to, a right or benefit provided for such person under USERRA.  
11

12              Finally, through GovGuam’s LSP, a GovGuam employee may voluntarily use donated  
13 leave generally of up to ninety days instead of taking unpaid leave. *Id.* § 4109.2(b)(4). During  
14 this period, the recipient of donated leave—in this case, the service member—receives pay based  
15 on either the recipient or donor’s rate, whichever is lower. *Id.* § 4109.2(b)(1). By using donated  
16 leave under the LSP, the recipients are not permitted to use the period of donated leave as credit  
17 towards retirement. *Id.* § 4109.2(b)(3). “Leave may not be transferred to another employee if as  
18 a recipient that employee intends to use it for credit towards retirement,” and “[i]n no event shall  
19 transferred leave be converted to cash or retirement credit by the person to whom it is  
20 transferred.” 4 G.C.A. § 4109.2(b)(3). Therefore, under Guam’s LSP statute, service members  
21 receive the benefit of leave *with pay*, which is not a USERRA benefit. However, in exchange for  
22 receiving paid leave under the same law, GovGuam does not make employer-side contributions,  
23 permit employee-side contributions, nor count the service member’s leave as credit towards  
24 retirement—the three benefits protected under USERRA when a service member is on unpaid  
25 leave.  
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### **3. *USERRA Supremacy Provision and Waiver of USERRA Rights***

The United States contends that USERRA supersedes Guam's LSP, and Defendants contend that Guam's LSP is more beneficial and therefore not preempted. Furthermore, the United States argues that none of the claimants waived their rights when they accepted the benefits under the LSP, while Defendants argue that through this acceptance of the LSP paid leave, they waived their USERRA rights to retirement benefits. The Court has not found and the parties have not identified any Ninth Circuit binding cases that address the issues of USERRA supremacy and waiver. Therefore, the Court turns to out of circuit decisions and finds that the Sixth Circuit decisions discussed herein regarding waiver of USERRA rights and supremacy are persuasive.

In *Wysocki v. International Business Machine Corporation*, 607 F.3d 1102 (6th Cir. 2010), the Sixth Circuit analyzed when the USERRA supremacy clause under § 4302(b) is limited by the express non-supremacy clause in § 4302(a), and what constitutes waiver of the protected USERRA rights for a more beneficial right. *Id.* at 1107-08. In *Wysocki*, the service member plaintiff returned from military service and his company reemployed him. *Id.* at 1103. The service member alleged that his company refused to reintegrate him and terminated him in violation of USERRA. *Id.* The same day the company terminated the service member, he signed a release. *Id.* at 1104. The release stated, the service member waived “all claims, demands, actions or liabilities [he] m[ight] have against [the company] of whatever kind,” and included within its scope “any other federal, state or local law dealing with discrimination in employment including, but not limited to, discrimination based on . . . veteran status . . . .” *Id.* The release also advised the service member that he should consult an attorney and provided a period of time to consider the release before the signing deadline, in addition to a period of time for the service member to revoke his acceptance after signing. *Id.*

1           The Sixth Circuit began its analysis by noting that the rights and benefits listed in §  
2 4303(2) of USERRA are substantive rights. *Id.* at 1106. Where a service member's substantive  
3 rights are involved, § 4302 of USERRA is "squarely" implicated. *Id.* at 1107. However, just  
4 because § 4302 applies, USERRA does not automatically supersede any law, plan, or agreement.  
5  
6 *Id.* To determine if the release was exempt from the USERRA supremacy clause by § 4302(a),  
7 the Sixth Circuit examined whether the rights provided to the service member were more  
8 beneficial than the rights he waived. *Id.* It reasoned that USERRA "clearly envisioned that  
9 veterans would be able to waive their individual USERRA rights by *clear and unambiguous*  
10 *action.*" *Id.* at 1108 (citing H.R. Rep. No. 103-65, at 20 (1993) (emphasis added)). The Sixth  
11 Circuit concluded, and the Fund agrees, that the release signed by the service member who  
12 waived "all claims, demands, actions or liabilities" regarding "discrimination based on . . .  
13 veteran status" against his employer was a valid release because he received financial  
14 compensation in exchange for it, was instructed to consult with an attorney before signing the  
15 release, and the release used clear and unambiguous language. *Id.* at 1104, 1108.

16  
17           More recently, the Sixth Circuit addressed the issue of whether a settlement agreement  
18 was effective in releasing a service member's claim under USERRA. *Ward v. Shelby County,*  
19 *Tennessee*, 98 F.4th 688, 690 (6th Cir. 2024).<sup>10</sup> The Sixth Circuit specifically discusses the  
20 requirements of waiver under § 4302. *Id.* at 692-93. "[Section] 4302 does not make the courts  
21 guardians of servicemembers who choose to settle their USERRA claims. To the contrary, [the  
22 Sixth Circuit] said in *Wysocki*, servicemembers can 'waive their USERRA rights without  
23 unnecessary court interference, *if they believe* that the consideration they will receive . . . is more  
24 beneficial than pursuing their rights through the courts[.]'" *Id.* at 692 (quoting *Wysocki*, 607 F.3d  
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27  
28 <sup>10</sup> The Sixth Circuit issued *Ward* after briefing closed for the parties' motions. However, the *Ward* Court discusses  
*Wysocki*, which the parties cited.

1 at 1108). “An individual servicemember knows better than the courts do whether the certainty  
2 of a lump-sum payment up front, for example, is ‘more beneficial’ to him than the possibility of  
3 a larger recovery later.” *Id.* *Ward* clarified that there are no special words that will release a right  
4 in a waiver. *See id.* at 692. In these decisions, the Sixth Circuit outlined a subjective standard in  
5 which the Court relies on service members’ determination as to whether the benefits they accept  
6 are more beneficial than the USERRA rights they waived.  
7

8 As identified in *Wysocki*, the Court here finds that the supremacy provision in § 4302 of  
9 USERRA is “squarely” implicated by the LSP’s prohibition against giving service members  
10 credit towards retirement at 4 G.C.A. § 4109.2(b)(3) because the rights at issue are substantive  
11 rights that fall under § 4303(2) of USERRA. In order for the waiver of supremacy in § 4302(a)  
12 to apply to Guam’s LSP as being more beneficial than USERRA benefits and limit the supremacy  
13 clause of USERRA under § 4302(b), the service members must clearly and unambiguously  
14 recognize that accepting this LSP benefit is in exchange for a waiver of both their Guam and  
15 USERRA rights to credit towards retirement. *See Wysocki*, 607 F.3d at 1108; *Ward*, 98 F.4th at  
16 692.  
17

18 Here, the Fund provides the Court with four of the five claimants’ records showing the  
19 benefits they received when they took unpaid leave under Guam law for military service. (ECF  
20 No. 98-2 at 3; ECF No. 98-3 at 2.) Through these submissions, the Fund contends that the Court  
21 should consider these benefits in determining whether the limitation of USERRA’s supremacy  
22 clause applies. However, neither the *Wysocki* nor *Ward* Courts engaged in such an analysis as  
23 “[a]n individual servicemember knows better than the courts do whether the certainty of a lump-  
24 sum payment up front, for example, is ‘more beneficial’ to him than the possibility of a larger  
25 recovery later.” *Ward*, 98 F.4th at 692. Therefore, the Court rejects the Fund’s suggestion to  
26 apply an objective test in which the Court would conduct a financial cost-benefit analysis to  
27 apply an objective test in which the Court would conduct a financial cost-benefit analysis to  
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1 determine what is more beneficial for the service members. Instead, the Court adopts a subjective  
2 standard applied at the time the service member elects to receive the LSP paid leave benefit in  
3 exchange for giving up the USERRA benefits. Here, the undisputed evidence received is that  
4 claimants Torre and San Nicolas, together with their employer, paid their contributions to the  
5 Fund whenever they used shared leave. This evidence supports the conclusion that these service  
6 members accepted the LSP benefit, and contributed their portions consistent with USERRA.  
7

8 The Fund also argues that under *Wysocki*, a service member may impliedly waive their  
9 USERRA rights. (Fund’s Opp’n to Mot. Suppl.17.) In support of this argument, the Fund cites  
10 to *Wysocki* “noting that USERRA rights may be waived, ‘either explicitly or impliedly, through  
11 conduct’ (citing S. Rep. 103-1058, at 41 [sic]. . . ).” (*See id.* (citing *Wysocki*, 607 F.3d at 1108).)  
12 However, the Sixth Circuit actually noted that “the legislative history clearly envisioned that  
13 veterans would be able to waive their individual USERRA rights by clear and unambiguous  
14 action.” *Wysocki*, 607 F.3d at 1108. In fact, the *Wysocki* Court applied the clear and unambiguous  
15 standard.  
16

17 As to the affirmative defense of waiver, the Fund relies on the declaration of Kathryn M.  
18 C. Diaz, Employee Management Relations Office II/Supervisor for the Employee Management  
19 Relations (“EMR”) Branch under the GovGuam DOA in the Human Resources Division. She  
20 declares that “EMR staff informs all employees that the donated leave may not be transferred if  
21 the Leave Recipient intends to use it for credit towards retirement or accumulated leave.” (Fund’s  
22 CSMF 36.) She further declares that “[t]o my knowledge and recollection, the EMR staff  
23 informed Andrew Quinata, Alan Torre, Jesse Cruz, Raymond San Nicolas, and Frederick  
24 Guzman that donated leave cannot be used for credit toward retirement, according to 4 G.C.A.  
25 § 4109.2.” (*Id.*)  
26  
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1 Pursuant to Rule 56(c)(4), “[a]n affidavit or declaration used to support or oppose a  
2 motion must be made on personal knowledge, set out facts that would be admissible in evidence,  
3 and show that the affiant or declarant is competent to testify on the matters stated.” “Personal  
4 knowledge can be inferred from an affiant’s position.” *Self-Realization Fellowship Church v.*  
5 *Amanda Church of Self-Realization*, 206 F.3d 1322, 1330 (9th Cir. 2000) (citing *Sheet Metal*  
6 *Workers’ Int’l Ass’n Local Union No. 359 v. Madison Ind., Inc.*, 84 F.3d 1186, 1193 (9th Cir.  
7 1996); *Barthelemy v. Air Lines Pilots Ass’n*, 897 F.2d 999, 1018 (9th Cir. 1990)). Diaz’s personal  
8 knowledge of procedures at the GovGuam DOA under the Human Resources Division may be  
9 presumed from her role. *See id.* Therefore, the Court accepts as a fact that EMR staff informs all  
10 employees that donated leave may not be transferred if the leave recipient intends to use it for  
11 credit towards retirement or accumulated leave. However, this personal knowledge is not enough  
12 to establish that EMR staff informed the recipients of donated leave—the claimants in this action.  
13 Diaz has no personal knowledge of informing the claimants, nor does she name the EMR staff  
14 that informed the claimants. Therefore, Diaz’s claim that EMR staff informed the claimants is  
15 inadmissible. Even if the Court were to accept that EMR staff informed the claimants, the  
16 evidence does not demonstrate a sufficient waiver of USERRA rights as waiver must be clear  
17 and unambiguous. Additionally, even if the service members were informed that donated leave  
18 may not be transferred if the leave recipient intends to use it for credit towards retirement, the  
19 LSP is not the sole basis by which service members can receive retirement credit; they are  
20 entitled to retirement credit under USERRA. If GovGuam wanted service members to waive  
21 such USERRA rights in exchange for LSP benefits under Guam law, merely informing them that  
22 the LSP does not allow that time to be used towards retirement credit is insufficient to constitute  
23 a USERRA waiver.  
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1           The claimants' depositions reveal that when the service members requested leave under  
2 the LSP, they shared the required documents with their supervisors or payroll clerk. (USA's  
3 Suppl. Br. 14-15, 36-38, 62, 98.) Some claimants were informed that they had less service credit  
4 towards retirement than believed and that this was because they used the LSP, but this notice  
5 was given after they already had used shared leave. (*Id.* at 22, 44-45.) Therefore, the only  
6 admissible evidence of service members being "informed" by anyone about the limitations under  
7 the LSP was after they had already elected to use the LSP. Waiver of USERRA rights cannot  
8 retroactively occur in this manner but must be made at the time the service members elected to  
9 use the LSP.  
10

11           In the form for requesting leave and accompanying instructions for completing the form  
12 (Fund's CSMF 48-49), there is no language about the USERRA rights a person receiving the  
13 donated leave will forgo in exchange for the paid leave. The service member recipient does sign  
14 that they have secured "permission from my agency to use donated leave pursuant to the leave  
15 sharing procedures." (*Id.*) The LSP procedures state that "[i]t is the responsibility of the  
16 employee requesting for donated leave to obtain proper leave authorization from his supervisor  
17 and the department/agency head." (ECF No. 51-3 at 53.) This language is not enough to  
18 constitute a waiver of USERRA rights because it is not clear and unambiguous language of such  
19 release or waiver of USERRA rights. *See Wysocki*, 607 F.3d 1108. If GovGuam were to include  
20 clear and unambiguous language regarding USERRA waiver in its leave form and a service  
21 member acknowledged the consequence of accepting the donated leave on their rights, the Court  
22 would not need to analyze whether the benefits go beyond a service members' USERRA rights.  
23 That is, whether the benefit of receiving leave with pay under the LSP is more beneficial than  
24 the USERRA benefits the service members would forgo—credit towards retirement and  
25 employer-side contributions towards retirement—is determined by the service member and is  
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1 manifested unequivocally in writing by the signing of an express waiver of USERRA benefits in  
2 exchange for this paid leave consideration.

3       Because the Fund and GovGuam do not provide sufficient evidence permitting judgment  
4 on their affirmative defense of waiver, the Court finds that there is no genuine dispute of material  
5 fact and that Defendants have not defeated the United States' Motion for Summary Judgment on  
6 this basis. *See Forum Ins. Co.* 151 F. Supp. 2d at 1147 (citing *Celotex*, 477 U.S. at 325). The  
7 Court therefore grants the United States' Motion for Summary Judgment and finds that the LSP  
8 as applied to service members on active duty leave violates USERRA because GovGuam never  
9 obtained a valid waiver.

10                   **C. The Fund's Counter-Motion for Summary Judgment for Quasi-Estoppel**

11       The Court finds that the Fund is not entitled to summary judgment based on quasi-  
12 estoppel. The Fund asserts that claimants accepted monetary benefits under Guam's LSP, and  
13 the service members now challenge the validity of that same statute. (Fund Counter-MSJ 24.)  
14 The United States argues that as the sole party plaintiff, it has never sought to enforce any other  
15 right than that required under USERRA. (USA's Opp'n to Fund's Counter-MSJ 12.)

16       "Quasi-estoppel prevents a party from reaping an unconscionable advantage, or from  
17 imposing an unconscionable disadvantage upon another, by changing positions." *Short v. Singer*  
18 *Asset Fin. Co. LLC*, 107 Fed. Appx. 738, 739 (9th Cir. 2004) (citation omitted). In this instance,  
19 Guam's LSP is a voluntary leave program that gives its employees the option to avoid taking  
20 leave without pay in times of need and when they have already exhausted the leave that they  
21 have earned and accrued. 4 G.C.A. § 4109.2(a), (b)(1), (b)(3). Both service members and non-  
22 service members may use the LSP. This program is made possible "[t]hrough the generosity of  
23 the other employees." *Id.* § 4109.2(a). The voluntary nature is conditioned on a donor employee  
24 being willing to transfer a number of hours of earned sick leave or annual leave to another  
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1 employee—the recipient employee. Leave transferred shall be used as leave by the recipient  
2 employee, and “if it is not used in its entirety, it may be re-transferred to the person who  
3 originally earned it.” *Id.* § 4109.2(b)(3). Also, under the LSP,

4 [I]leave transferred from donors whose hourly rates of pay or salaries are *lower*  
5 than the recipient shall be paid at the hourly rate or salary of the donor. Leave  
6 transferred from donors whose hourly rates of pay or salaries are *higher* than  
the recipient, shall be paid at the hourly rate or salary of the recipient.

7 4 G.C.A. § 4109.2(b)(1) (emphasis added). If a service member had not received the donated  
8 leave under the LSP, GovGuam would still owe the donor the sum of money for their earned  
9 leave at the same or higher rate than what would have been provided to the service member under  
10 the LSP, and would be required to permit employer- and employee-side contributions, as well as  
11 provide credit towards retirement for the period of time the earned leave is used by the employee  
12 who originally earned it. Therefore, the Court cannot say that allowing the LSP payments to  
13 service members while protecting their USERRA rights would impose an unconscionable  
14 disadvantage upon GovGuam.

15 Also under the LSP, “[I]leave transferred from donors whose hourly rates of pay or  
16 salaries are *lower* than the recipient shall be paid at the hourly rate of salary of the donor. Leave  
17 transferred from donors whose hourly rates of pay or salaries are *higher* than the recipient, shall  
18 be paid at the hourly rate or salary of the recipient.” 4 G.C.A. § 4109.2(b)(1) (emphasis added).

19 Finally, a service member accepting “benefits” under the LSP does not automatically  
20 surrender his rights under USERRA. This is evident because USERRA “clearly envisioned that  
21 veterans would be able to waive their individual USERRA rights by *clear and unambiguous*  
22 *action*,” which the Court has found that the service members in this case have not done. *See*  
23 *Wysocki*, 607 F.3d at 1108 (emphasis added). If the service members had waived their rights  
24 under USERRA at the time they accepted the LSP donated leave, then they would be estopped  
25 from now asserting violations of USERRA—but this is not what the service members did.

1 Service members' acceptance of "benefits" under a state statute—in this instance, paid leave  
2 instead of being on unpaid leave—is not preempted by § 4302(b) because it is more beneficial  
3 than the protected USERRA benefits; however, this acceptance does not equate to waiver of a  
4 service members' rights under USERRA, which must be done clearly and unambiguously.  
5

6 The LSP may prohibit any recipient employee from using their donated leave as the basis  
7 to earn credit towards retirement. For non-service member GovGuam recipient employees, that  
8 is a consequence of accepting the LSP paid leave benefit. However, as to service member  
9 employees, their basis to assert a right to retirement credits is not limited to the LSP; they may  
10 do so under USERRA. For these reasons, the doctrine of quasi-estoppel does not preclude the  
11 United States, the actual party in this action, or more particularly the claimants as the Fund argues  
12 from reaping the benefits of paid leave under the LSP. If GovGuam intends to preclude the  
13 service members from reaping the benefits of USERRA while on paid leave under the LSP, then  
14 it needs to give clear and unambiguous notice to them about this consequence to their USERRA  
15 rights. Accordingly, the Fund is not entitled to summary judgment on the basis of quasi-estoppel.  
16

17 **D. GovGuam's Motion for Summary Judgment for Unjust Enrichment as to  
18 Claimant Guzman**

19 GovGuam also moves for summary judgment pursuant to Federal Rule of Civil  
20 Procedure 56 asserting that claimant Guzman was unjustly enriched in the amount of \$42,993.73.  
21 (GovGuam's MSJ 3-4.) This Motion, although as to claimant Guzman's unjust enrichment, is  
22 still made against the United States. GovGuam argues that Guzman's donors through the LSP  
23 were not authorized to transfer leave to him pursuant to 4 G.C.A. § 4109.2(b)(3) despite the  
24 transfers being approved by the DOA Directors. (*Id.* at 6-8.) The United States argues that  
25 Guzman is not a party to this matter, and therefore, the Court does not have subject matter  
26 jurisdiction over claimant Guzman. (USA's Opp'n to GovGuam's MSJ 4.) The United States, in  
27 a footnote in its Opposition, introduces that the Ninth Circuit has identified "nominal defendants"  
28

1 in the securities law context in which the Court does not need to obtain subject matter jurisdiction  
2 over the nominal defendant. (*Id.* at 3-4 n.1.) Further, the United States argues that GovGuam  
3 cannot claim unjust enrichment without first admitting that GovGuam is liable to Guzman for  
4 service credits. (*Id.* at 6.) Lastly, the United States argues that GovGuam’s assertion of unjust  
5 enrichment is preempted by USERRA. (*Id.* at 8.) In GovGuam’s Reply, it asserts that Guzman  
6 is a nominal defendant, and thus, the Court does have jurisdiction. (GovGuam’s Reply in Support  
7 of MSJ 2-3.)

8 As an initial matter, Claimant Guzman is not a named party pursuant to Federal Rule of  
9 Civil Procedure 10. Fed. R. Civ. Proc. 10(a) (“The title of the complaint must name all the  
10 parties.”). The Ninth Circuit and district courts have defined a non-party or nominal defendant  
11 in securities and non-securities cases in which courts have subject matter jurisdiction over a  
12 claim. In *Securities Exchange Commission v. Cross Financial Services, Inc.*, cited by GovGuam,  
13 a Ninth Circuit district court looked to the Seventh Circuit for guidance on nominal or non-party  
14 defendants. 908 F. Supp. 718, 730-31 (C.D. Cal.1995). “A court can obtain equitable relief from  
15 a non-party against whom no wrongdoing is alleged if it is established that the non-party  
16 possesses illegally obtained profits but has no legitimate claim to them. Courts have jurisdiction  
17 to decide the legitimacy of ownership claims made by non-parties to assets alleged to be proceeds  
18 from securities laws violations.” *Id.* A nominal defendant is a person holding the subject matter  
19 of the litigation in a subordinate or possessory capacity as to which there is no dispute. *Sec. &*  
20 *Exch. Comm’n v. Colello*, 139 F.3d 674, 676 (9th Cir. 1998). Here, GovGuam does allege  
21 wrongdoing by claimant Guzman. (GovGuam’s Reply in Support of MSJ 4.) GovGuam states,  
22 “Guzman . . . obtained LSP cash by willfully violating Guam’s LSP provision and procuring  
23 others’ wrongful conduct.” (*Id.*) GovGuam’s own arguments that claimant Guzman committed  
24 wrongdoing is incongruous to the securities cases GovGuam cites in attempting to assert that  
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1 claimant Guzman is a nominal defendant. The Court finds that the securities law cases GovGuam  
2 cites to do not support the position that claimant Guzman is a nominal defendant because  
3 GovGuam alleges wrongdoing.

4 Further, in the non-securities law setting, GovGuam does not provide any case law to  
5 support the contention that claimant Guzman is a nominal defendant. The Court analyzes *Perez*  
6 *v. Wells Fargo Bank, N.A.*, 929 F. Supp. 2d 988 (N.D. Cal. 2013), to determine if Guzman may  
7 be considered a nominal defendant in the non-securities law context. In *Perez*, the plaintiffs  
8 asserted that a named defendant was actually a nominal defendant and therefore the Ninth Circuit  
9 district court should not consider the named defendant's citizenship when determining whether  
10 diversity jurisdiction existed. *Id.* at 991, 995. The district court found that the plaintiffs did not  
11 demonstrate that the named defendant was a nominal defendant. *Id.* at 1005. "A nominal party  
12 is one 'who has no interest in the action' and is merely joined to 'perform a ministerial act.'" *Perez*,  
13 929 F. Supp. 2d at 1002 (quoting *Prudential Real Estate Affiliates, Inc. v. PPR Realty, Inc.*, 204 F.3d 867, 873 (9th Cir. 2000)).

14 The paradigmatic nominal defendant is "a trustee, agent or depositary . . .  
15 [who is] joined purely as a means of facilitating collection." As the nominal  
16 defendant has no legitimate claim to the disputed property, he is not a real  
17 party in interest. Accordingly, "there is no claim against him and it is  
18 unnecessary to obtain subject matter jurisdiction over him once jurisdiction  
19 of the defendant is established."

20 *Sec. & Exch. Comm'n*, 139 F.3d at 676 (internal citations omitted).

21 In this case, GovGuam is attempting to characterize the unnamed claimant Guzman as a  
22 nominal defendant. (GovGuam's Reply in Support of MSJ 3.) The Court has not found any case  
23 law in which a named defendant asserts a claim against a nominal defendant in the securities or  
24 non-securities law contexts, nor any other case law that supports GovGuam's arguments.  
25 Although the facts in *Perez* are not congruous with those in this case, even applying the nominal  
26 defendant definition articulated by the *Perez* court, claimant Guzman does not qualify as a  
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1 nominal defendant. Determining whether Guzman was unjustly enriched is not a ministerial act.  
2 Nor can he properly be categorized as akin to a trustee, agent, or depositary joined purely as a  
3 means of facilitating collection. Therefore, based on the case law in both the securities and non-  
4 securities law contexts, the Court finds that claimant Guzman is not a nominal defendant and  
5 thus, the Court does not have jurisdiction over GovGuam's Motion for Summary Judgment for  
6 Unjust Enrichment as to Claimant Guzman.

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8 In addition, the Court has found that the Fund and GovGuam violated USERRA when  
9 they treated leave under the LSP as a break in service regarding retirement contributions because  
10 they did not obtain a waiver from the service members. The disputed property is not the money  
11 that service members received as paid leave through the LSP, but rather their substantive  
12 entitlement under USERRA while on leave through the LSP. For these reasons, the Court finds  
13 that Guzman is not a named party nor a nominal defendant and therefore dismisses GovGuam's  
14 Motion for Summary Judgment for lack of jurisdiction.

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#### IV. CONCLUSION

16  
17 Guam law provides some benefits to GovGuam employees when they take leave from  
18 work to serve in the Armed Forces, with most of them clearly more beneficial than the benefits  
19 conferred on the service members under USERRA. However, one Guam law—the LSP as  
20 applied to service members—is the source of the dispute in this case. For the foregoing reasons,  
21 the Court finds that USERRA supersedes the LSP's prohibition against giving service members  
22 credit towards retirement and the related benefits. In particular, the Fund and GovGuam's  
23 treatment of each service member's leave under GovGuam's LSP as a break in service violates  
24 their rights under USERRA but for a waiver, and there has been no waiver in this case.  
25 Accordingly, the Court hereby GRANTS the United States' Motion for Leave to Supplement its  
26 Motion for Summary Judgment, GRANTS the United States' Motion for Summary Judgment as  
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1 to liability against both Defendants, DENIES the Fund's Counter-Motion for Summary  
2 Judgment, and DISMISSES GovGuam's Motion for Summary Judgment for Unjust Enrichment.  
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4 IT IS SO ORDERED this 4<sup>th</sup> day of September 2025.

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6 RAMONA V. MANGLONA  
7 District Judge

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