

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LUCAS CALIXTO, *et al.*,

Plaintiffs,

vs.

DEPARTMENT OF THE ARMY, *et al.*,

Defendants.

Civil Action No. 18-1551 (ESH)

DEFENDANTS' STATUS REPORT

Defendants respectfully submit the accompanying declaration of Mr. Lin St. Clair (“St. Clair Dec.”) to inform the Court of the results of the Army’s inquiry into the matter that Defendants reported in their status report filed on July 3, 2019 (ECF No. 108), *i.e.*, the issuance of a second MSSR waiver memorandum to Plaintiff Lucas Calixto. As explained in Mr. St. Clair’s declaration, Plaintiff Calixto’s recruiter sent him the waiver memorandum on July 2, 2019 after receiving an erroneous report from his recruiting battalion headquarters. St. Clair Dec. ¶¶ 5-6. The recruiting battalion has confirmed that subsequent reports will not contain guidance to issue the waiver memorandum. *Id.* ¶ 8 (incorrectly numbered ¶ 6 on page 3 of the declaration).

Additional information on this matter is provided in Mr. St. Clair’s declaration.

Dated: July 11, 2019

Respectfully submitted,

JESSIE K. LIU, D.C. Bar # 472845
United States Attorney

DANIEL F. VAN HORN, D.C. Bar # 924092
Chief, Civil Division

BY: /s/Roberto C. Martens, Jr.
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that on this 11th day of July 2019, I served the foregoing Defendants' Status Report with accompanying declaration upon counsel for Plaintiffs by filing said document using the Court's Electronic Case Filing System.

Dated: July 11, 2019

/s/ Roberto C. Martens, Jr.
ROBERTO C. MARTENS, JR.
Special Assistant United States Attorney

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LUCAS CALIXTO, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:18-cv-01551
)	The Honorable Ellen Segal Huvelle
UNITED STATES DEPARTMENT OF)	
THE ARMY, et al.,)	
)	
Defendants.)	
)	
)	

DECLARATION OF LIN H. ST. CLAIR

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I make this declaration to provide the Court with the results of an inquiry into the July 3rd report of waiver memorandums being forwarded without proper authorization. The Army was made aware on July 3, 2019, that Lucas Calixto, a named Plaintiff, received a second unauthorized Voluntary Waiver of Notification of Adverse MSSR memorandum.

2. I am currently the Assistant Deputy for Recruiting, Office of the Assistant Secretary of the Army (Manpower & Reserve Affairs). In this capacity, I am responsible for serving as the Senior Advisor on all matters relating to military accessions and retention for the Assistant Secretary of the Army for Manpower and Reserve Affairs, the Principal Deputy, and the Deputy Assistant Secretary of the Army for Military Personnel. I have oversight responsibilities for the Army’s officer and enlisted accessions and retention programs across all components. In this capacity, I serve as the action officer oversight for non-citizen recruiting (MAVNI and Lawful Permanent Residents). I have previously submitted declarations in this case. *See* ECF No. 22-1; ECF No. 24-1; ECF No. 48; ECF No. 103-1.

3. On June 17, 2019, the Army informed the Court that copies of an unauthorized version of the “Voluntary Waiver of Notification of Adverse MSSR” were distributed by one recruiter to 13 recruits, including named plaintiff Lucas Calixto, between on or about May 21, 2019 and on or about May 31, 2019. On May 31, 2019, USAREC Headquarters informed all Recruiting Battalions that use of the Waiver Memo was not authorized. *See* ECF No. 103. The Army has not authorized the distribution of any Voluntary Waiver of Notification of Adverse MSSR Memos since providing the status report on June 17, 2019.

4. On June 18, 2019, the Army issued an adverse MSSR notification to Plaintiff Calixto.

5. On June 26, 2019, a Soldier assigned to Headquarters, US Army New England Recruiting Battalion (“Battalion”), prepared the monthly Down Report (“DOWNREP”)¹ to send to the New England Recruiting Stations. In preparing the DOWNREP, the Soldier cut and pasted the information contained in the prior DOWNREP from May 2019; in so doing, he unintentionally neglected to remove the prior month’s references to issuing MAVNI Soldiers the Voluntary Waiver of Notification of Adverse MSSR memoranda prior to receiving MSSR notifications. Moreover, the DOWNREP was not properly edited prior to release. The DOWNREP, as well as another copy of the same unsigned Voluntary Waiver of Notification of Adverse MSSR memorandum sent in May 2019 (but dated 27 June 2019), was emailed from the Battalion on June 27, 2019, and received by Plaintiff Calixto’s recruiter that same day.

6. The recruiter assumed that the Voluntary Waiver of Notification of Adverse MSSR memorandum attached to the DOWNREP was a newer authorized version of the prior month’s memorandum. Believing that he was acting on his battalion headquarters’ instructions,

¹ A DOWNREP is a written document that Battalions periodically send out (usually monthly) as a way to disseminate information from the Battalion to its Recruiting Stations.

the recruiter e-mailed the Voluntary Waiver of Notification of Adverse MSSR memorandum to Plaintiff Calixto on July 2, 2019. Plaintiff Calixto acknowledged receipt of the memorandum via e-mail on July 3, 2019.

7. The Voluntary Waiver of Notification of Adverse MSSR memorandum was distributed as a result of human oversight within the Battalion, not as part of any attempt to circumvent the court order or to coerce Plaintiff Calixto to waive his rights. Indeed, the Battalion was aware that they were to send no further memoranda—on June 3, 2019, the Battalion acknowledged the Army’s directive prohibiting further sending of Voluntary Waiver of Notification of Adverse MSSR memoranda to any MAVNI Soldiers. The Battalion subsequently passed that directive to each of its Recruiting Stations. The Battalion was unaware of the error until I informed them on July 9, 2019.

6. The Battalion has confirmed that the waiver memorandum guidance will not be included in any subsequent DOWNREPs and that the recruiter was informed again that he is to have no contact with Plaintiff Calixto.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 9, 2019.

Lin H St. Clair Digitally signed by Lin H St. Clair
Date: 2019.07.09 16:00:43 -04'00'

LIN H. ST. CLAIR