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OF OHIO

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IN THE COURT OF CLAIMS OF OHIO

WILLIAM RUSSELL,	)	CASE NO. 2013-00138
	)	
Plaintiff,	)	JUDGE PATRICK M. McGRATH
	)	
vs.	)	MAGISTRATE HOLLY T. SHAVER
	)	
CLEVELAND STATE UNIVERSITY,	)	**PLAINTIFF WILLIAM RUSSELL'S**
	)	**MOTION FOR LEAVE TO FILE REPLY**
Defendant.	)	**IN SUPPORT OF MOTION FOR**
	)	**PARTIAL SUMMARY JUDGMENT**

Plaintiff William Russell respectfully moves the Court for an Order for leave to file, *instanter*, the reply brief attached hereto in support of his motion for partial summary judgment. Defendant Cleveland State University filed a memorandum in opposition to Russell's Motion. The Opposition includes arguments that Liss did not anticipate and therefore was unable to address in his Motion. In such circumstances, leave for a reply is appropriately granted.[1]

For the limited purpose of refuting unanticipated arguments, Liss respectfully requests leave to file, *instanter*, the attached reply brief.

[1] *See, e.g.*, *Eng'g & Mfg. Servs., LLC v. Ashton*, 387 Fed. Appx. 575, 583 (6th Cir. 2010) (holding trial court abused its discretion in denying motion for leave to file sur-reply where reply brief presented new arguments); *Zindroski v. Parma City Sch. Dist. Bd. of Educ.*, 8th Dist. Cuyahoga No. 93583, 2010-Ohio-3188, 2010 Ohio App. LEXIS 2659, ¶10 (noting court previously granted leave for a sur-reply for purposes of "responding to the Board's new arguments [in its reply brief].").

ON COMPUTER

Respectfully submitted,

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CERTIFICATE OF SERVICE

A true and accurate copy of the foregoing was served via electronic mail, on this 10th day of October 2014 to:

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IN THE COURT OF CLAIMS OF OHIO

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Plaintiff,	)	JUDGE PATRICK M. McGRATH
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vs.	)	MAGISTRATE HOLLY T. SHAVER
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CLEVELAND STATE UNIVERSITY,	)	**PLAINTIFF WILLIAM RUSSELL'S**
	)	**REPLY IN SUPPORT OF MOTION FOR**
Defendant.	)	**PARTIAL SUMMARY JUDGMENT**

Plaintiff William Russell's motion for partial summary judgment should be granted. Defendant Cleveland State University ("CSU") does not dispute that it engaged in the wrongful conduct alleged, including refusing to accurately report to the Ohio Public Employees Retirement System ("OPERS") the service credit to which Russell is entitled. Russell, a loyal CSU alumnus, was in the very first class of entering students at CSU. Russell also earned his law degree at CSU, taught as an Adjunct Professor at CSU, and co-authored the treatise on Ohio tax law. Russell's dedication and commitment to CSU is unmatched. As a way of giving back to his alma mater, Russell left his job as a successful lawyer and law professor to devote 12 years at minimal pay to building CSU's student community. Now, CSU has rewarded Russell by cheating him out of his service credits. CSU does not deny that it failed to fully credit Russell for his time.

Instead, CSU tries to duck its obligations to a long-term, loyal employee by claiming that Russell's claims are procedurally defective. CSU's arguments in this regard fail: (1) the claims are not wholly premised on the collective bargaining agreement and therefore this Court has jurisdiction, and (2) Russell timely filed the claims under the applicable statute of limitations. The Court should grant Russell partial summary judgment.

I. Russell's Claim for Appropriate Service Credit Is Based on CSU's Statutory Obligations.

Russell's claim that CSU failed to report all OPERS service credit to which Russell is entitled is not premised on Russell's collective bargaining agreement with CSU. Rather, it is premised on R.C. 145.016, which provides, in pertinent part:

> For [OPERS] service not later than December 31, 2013, credit for any contributing service shall be allowed as follows . . . For each month for which the member's earnable salary is two hundred fifty dollars or more, allow one month's credit[.]

As such, CSU's argument that the Court of Claims is without jurisdiction under R.C. 4117.09 (which provides that "suits for violation of [collective bargaining] agreements" should be brought in common pleas court)[1] fails and summary judgment should be granted.

II. Russell's Service Credit Claim Accrued When He Sought Retirement Benefits.

It is axiomatic that "[a] cause of action for breach of contract accrues when the breach occurs *or when the complaining party suffers actual damages*."[2] Similarly, it is well-established that OPERS service credit is used to determine retirement benefits.[3] Russell was employed until October 2012; therefore, he could not have retired any earlier than November 2012, which is within two years of the date on which this action was filed—March 4, 2013. As such, Russell filed within the statute of limitations.

CONCLUSION

For the foregoing reasons, as well as those set forth in Russell's motion, the Court should reject CSU's procedural arguments, along with its attempt to falsely report the credits that Russell has earned—conduct it does not dispute—and grant Russell partial summary judgment.

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[1] *Archer v. Cleveland State Univ.*, Ct. of Cl. No. 2012-08001 (Dec. 4, 2012). *See also* CSU's brief in opposition to motion for summary judgment at n.2.

[2] *Anadell v. Office of the Ohio Pub. Defendant*, 2012-Ohio-6255, ¶9 (Ct. of Cl.) (emphasis added; internal citations omitted).

[3] *See, e.g.*, R.C. 145.33 and 145.332.

Respectfully submitted,

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TPG THORMAN PETROV GRIFFIN

October 10, 2014

Via UPS Overnight Mail
The Ohio Judicial Center
Court of Claims of Ohio
65 South Front Street
Third Floor
Columbus, OH 43215

Re: *Russell v. Cleveland State University-Case No.: 2013-00138*

Dear Sir/Madam:

I have enclosed an original and two copies of *Plaintiff's William Russell's Motion for Leave to File Reply in Support of Motion for Partial Summary Judgment* for the case referenced above. The original is for filing with the Clerk and the two other copies we would like to have time-stamped. Please return the time-stamped copies to me in the enclosed self-addressed postage-prepaid envelope.

Thank you for your attention to this matter. Please do not hesitate to call me should you have any questions.

Sincerely,

Lesa Liston
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Enclosures

Cc: Randall W. Knutti, Esq.
Amy S. Brown, Esq.
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