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11
12 **UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

13 **ROMEO R. DE FERNANDEZ,
14 CIRIACO C. DELA CRUZ,
15 VALERIANO C. MARCELINO,
16 VETERANS EQUITY CENTER,
a non-profit organization,
on behalf of themselves and others
similarly situated,**

17 **Plaintiffs,**

18 **vs.**

19 **UNITED STATES DEPARTMENT OF
20 VETERANS AFFAIRS;**

21 **ERIK K. SHINSEKI, Secretary of
Department of Veterans Affairs;**

22 **MICHAEL WALCOFF, Acting Under
23 Secretary, Veterans Benefits
Administration;**

24 **BRADLEY G. MAYES, Director,
25 Compensation and Pension Service;**

26 **DAVID WEST, Veteran Service Center
27 Manager, Oakland Regional Office of
Veterans Benefits Administration;**

28 **Defendants.**

E-filing

JL

CASE NO. 10 2468

**CLASS ACTION COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF UNDER THE
UNITED STATES CONSTITUTION**

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I.

INTRODUCTION

1
2
3 1. Through this action, Plaintiffs, Filipino veterans of the United State's
4 World War II war against Imperial Japan in the Far East and organizations that serve
5 those Vets' needs, on behalf of themselves and all others, seek a just and merciful end to
6 their almost 65-year Kafkaesque pursuit of compensation for their valiant service to the
7 United States.

8 2. The approximately 200,000 Filipino soldiers of the United States not only
9 courageously fought the invading Japanese army in the Philippines for three years under
10 brutal conditions, they also fought the Japanese army in other parts of the Pacific and
11 assisted in the occupation of those areas after the allies' victory, all of it as officially
12 recognized and, in fact, conscripted by the United States Army and much of it completely
13 uncompensated.

14 3. When the hostilities finally ended, and their American comrades went back
15 to the United States to heros' welcomes, the WWII Filipino Vets' valuable service and
16 immeasurable sacrifice to the United States was given no official recognition. Rather, the
17 opposite happened.

18 4. In 1946, the United States Congress passed, and President Harry Truman
19 signed, the Rescission Act, which perversely, on the one hand, recognized that the WWII
20 Filipino Vets, by virtue of official acts of the United States congress and military, "were
21 in the service of the Armed Forces of the United States" in its war against the Japanese,
22 but, on the other hand, "shall not be deemed to have been active military, naval, or air
23 service for the purposes of any law of the United States conferring rights, privileges or
24 benefits upon any person by reason of the service of such person or the service of any
25 other person in the Armed Forces."

26 5. For the next sixty-three years, the WWII Filipino Vets and the Vet Service
27 Organizations tirelessly struggled to get back these rights, privileges and benefits that the
28 Recision Act so callously took from them.

1 6. That struggled falsely appeared to have ended in partial success, on
2 February 17, 2009, when President Barrack Obama signed into law the **Filipino Veterans**
3 **Equity Compensation (FVEC)** provision of the American Recovery and Reinvestment
4 Act of 2009.

5 7. The law purported to provide for one-time payments of \$9,000 to WWII
6 Filipino Veterans who are not United States citizens and \$15,000 to WWII Filipino
7 Veterans who are United States citizens. However, only \$198,000,000 was allocated to
8 the Veterans Administration (“VA”) to create the Filipino Veteran's Equity Compensation
9 Fund (“FVECF”), from which the VA was supposed to make these payments. Given that
10 there are approximately twenty-five thousand WWII Filipino Veterans, or spouses
11 thereof, who currently alive, there is no reasonable way that Congress could have
12 believed that the funds allocated would be sufficient to cover this long overdue, if
13 meager, recognition.

14 8. Thus, not surprisingly after a few months of the program’s operation, in
15 apparent response to the quickly diminishing amount of money in the FVECF from which
16 to make claims, the VA came up with two **arbitrary and amazingly disrespectful** ways
17 to deny the claims made by these octogenarian and nonagenarian patriots.

18 9. First, they put up a barrier that the VA requires, regardless what other proof
19 of service a WWII Filipino Veteran has, such as certification of honorable discharge,
20 records of citations from the United States military, etc., the Vet’s name must appear on
21 what is known as the “**Missouri List**,” which by the United States government’s own
22 admission is irrevocably flawed and incomplete. If the Vet’s name is not on the list, the
23 Vet’s claim is denied.

24 10. Second, if a Vet’s name does appear on the Missouri List, the VA seeks to
25 deny the Vet’s claim by challenging the Vet’s loyalty to the United States based on
26 evidence that the VA frequently admits is flawed but which the octogenarian or
27 nonagenarian Vet has no ability to refute.

28

1 17. De Fernandez's United States military service began on June 10, 1940 when
2 enlisted in the 24th Field Artillery Regiment (24th FA (PS)), then part of the United
3 States Army's Philippine Division, which was formed in 1922 was active until April 1942,
4 and was based at Ft. Stotsenburg, Philippines.

5 18. De Fernandez participated in the defense of Manila. After the United
6 State's army's capitulation, de Fernandez was captured by the Japanese Imperial Army
7 and was forced to walk the infamous Bataan Death March, suffering from the well-noted
8 atrocities along the way.

9 19. De Fernandez was incarcerated by the Japanese Imperial Army, as a
10 Prisoner of War, at Camp O'Donnell Concentration Camp, Capaz Tarlic in 1942.

11 20. On March 2, 1945 he was honorably discharged from the Btry "B" 24th FA
12 (PS), the 24th Field Artillery Regiment. The next day, on March 3, 1945, he joined the
13 United States Training Group, Philippine Scout Detachment (PS), AFWESPAC, where he
14 was an Active Service member in the Luzon Campaign.

15 21. On March 6, 1946 de Fernandez was honorably discharged from the United
16 States Training Group, Philippine Scout Detachment.

17 22. Despite his well decorated service on behalf of the United States in the
18 Philippines, in May 2009, de Fernandez' FVEC claim was denied because his name did
19 not appear on the Missouri List. Notably, in response to de Fernandez' inquiries seeking
20 to help establish his service record, the VA's National Personnel Records Center admitted
21 the likelihood that any record of his service contained on the Missouri List would have
22 been destroyed in fire that occurred there on July 12, 1973. Specifically, the center stated
23 that the record "would have been in the area that suffered the most damage in the fire on
24 that date and may have been destroyed. The fire destroyed the major portion of records of
25 Army military personnel for the period 1912 through 1959..."

26 23. De Fernandez is not hereby seeking to appeal the individual benefits
27 decision made by the VA on his FVEC claim.
28

1 24. **Plaintiff Ciriaco C. dela Cruz** (“Cruz”) is an eight-four (84) year old male
2 who resides in San Bruno, CA. Based on his service in the United States military in
3 WWII, Cruz became a naturalized citizen of the United States on May 6, 1994.

4 25. Cruz joined the Batute Infantry Regiment, Bulacan Military Area (BMA), a
5 Recognized Guerilla Unit, on September 22, 1944.

6 26. In connection with Cruz’s application for U.S. citizenship, his service to the
7 United States Military was officially confirmed, on February 14, 1992, by the Philippines
8 Department of National Defense, which certified that Cruz’ name is carried with it the
9 designation “Sgt.” on the Approved Revised Reconstructed Guerilla Roster of the “H”
10 Company Supplementary Roster.

11 27. Cruz was honorably discharged after 14 years of continuous military
12 service, on November 10, 1958.

13 28. In early January 2010, Cruz’ FVEC claim was denied based on the absence
14 of his name from the Missouri List.

15 29. Cruz is not hereby seeking to appeal the individual benefits decision made
16 by the VA on his FVEC claim.

17 30. **Plaintiff Valeriano C. Marcelino** is an eight-eight (88) year old male who
18 resides in Bay Point, CA. Based on his service in the United States military in WWII,
19 Marcelino became a naturalized citizen of the United States on May 6, 1994.

20 31. Except for his service in the United States Military during the WWII, Marcelino
21 has worked a farmer all of his life.

22 32. On October 16, 1943, when he was 21 years old, Marcelino was recruited to join a
23 Recognize Guerilla unit called the Pangasinan Anti-Crime Service, Fifth Infantry Regiment,
24 LGAF (“PACS”) which was fighting a guerilla campaign against the Japanese Imperial army.

25 33. Documents dated May 3, 1977 from the Republic of the Philippines, Department
26 of National Defense, Philippine Veterans Affairs Office, recognize that Marcelino was a veteran
27

1 of WWII and served as a in the PACS. In fact, his name is also appears in the Approved Revised
2 Reconstructed Guerilla Roster of 1948.

3 34. Marcelino further served in the United States Military, from November 15, 1944
4 to January 13, 1946, as a member of the Commonwealth Army.

5 35. On April 4, 2009, the National Personnel Records Center confirmed that
6 Marcelino's name appeared on the Missouri List.

7 36. However, on May 3, 2010, the VA informed Marcelino that his FVEC
8 claim could not be processed because "someone with your name may have assisted the
9 Japanese in their war efforts." The VA further stated: "We realize that this could be the
10 result of a record-keeping problem."

11 37. Specifically, the VA denied Marcelino's FVEC claims because it uncovered
12 a copy of a check numbered A 511152 endorsed by The Yokohama Specie Bank,
13 Limited, in the amount of P635.00 made payable to a "V. Marcelino."

14 38. In response, Marcelino has certified that he "did not received (sic) this
15 check because I did not served (sic) any pro-Japanese, pro-German or any anti-American
16 unit." Additionally, Marcelino has supplied a copy of the signature on the back of the
17 subject check and as well as his own, true signature, which upon comparison are
18 significantly different from one another. Furthermore, Marceline explained that being a
19 farmer all of his life, he had never seen a check made to his name until he came to the
20 United States and received his first SSI check.

21 39. However, despite these offers of proof and its own admission that its
22 impugnation of Marcelino's loyalty "could be the result of a record-keeping problem" the
23 VA informed Marcelino that in order to disprove this challenge to his loyalty, he would
24 be required to provide the VA *inter alia* with "a detailed account of [his] activities during
25 the Japanese occupation of the Philippines; setting forth the inclusive dates of service or
26 employment (if [he was] then employed); the nature of duties performed; position(s)
27 occupied; salaries received showing raises and promotions, if any; the names of bosses or
28

1 supervisors in each area assigned.” The VA further informed Marcelino that any
2 statements or answers he made regarding these subjects “must be corroborated by two
3 disinterested persons who knew [him] before the war and during the Japanese occupation
4 who may have personal knowledge of [his] activities from 1941 to 1945” and requested
5 that he provide the VA with their “names and respective addresses.”

6 40. Given that his subject service was during war times more than 60 years ago
7 in another country, these demands are unreasonable, cannot be practicably met, and were
8 made without any expectation that they could.

9 41. In addition, to the wrongful denial of rightfully benefits owed to him, these
10 actions by the VA, in particular its impugnation of his loyalty to the country he served,
11 has caused Marcelino substantial anguish and distress.

12 42. Marcelino is not hereby seeking to appeal the individual benefits decision
13 made by the VA on his FVEC claim.

14 43. **Plaintiff Veterans Equity Center (“VEC”)** is a non-profit organization
15 located in San Francisco, CA. The VEC has been serving the WWII Filipino Veteran
16 community since December 1999 as a community-based, non-profit, multi-service center
17 in the South of Market and it remains as the only agency in the country established
18 specifically to serve the WWII Filipino Veterans. For more than ten (10)years VEC has
19 been serving WWII Filipino Veterans and other seniors in San Francisco and its
20 neighboring counties.

21 44. In 1998, service providers, individual members of the community, students
22 and a number of WWII Filipino Veterans formed the Veterans Equity Center Task Force.
23 The Task Force observed the multi-faceted needs of this population upon arrival in the
24 United States in the early nineties as a result of the Immigration and Naturalization Act of
25 1990; this law made it possible for WWII Filipino Veterans to become eligible for
26 naturalization. These aging veterans needed housing, counseling, legal assistance, and
27 health services, just to mention a few. The Task Force's vision was the establishment of a
28

1 center capable of addressing the needs of the newly arrived population of aging Filipino
2 War Veterans.

3 45. Out of this effort, the VEC was born with the mission to Honor, Serve and
4 Advocate for services responsive to the needs of the Filipino Veterans. Rooted on
5 community strength, VEC developed the "one-stop-shop" culturally-appropriate system of
6 care that stabilizes and bridges the gap between the existing services in the community
7 and the population in need of services.

8 46. The primary beneficiaries of VEC programs and services are frail and
9 disabled, in greatest economic need, elderly WWII Filipino Veterans who are among the
10 nearly one thousand (1,000) residing in San Francisco and the Bay Area. Based on the
11 VA study dated January 2001, the estimated number of WWII Filipino Veterans in the
12 United States is 13,849 of which 50% live in California. Today, there are approximately
13 five thousand (5,000) WWII Filipino Veterans in the United States, fifty percent of which
14 live in California.

15 47. The Majority of VEC's consumers comes from the South of Market,
16 Tenderloin, and the Mission Districts in San Francisco. The large concentration of WWII
17 Filipino Veterans in these communities is due to the socio-ethnic network that exists
18 within the community, and because these areas still have some of San Francisco's few
19 remaining unsubsidized affordable housing. Because of the center's expertise in
20 navigating the services available to what the VA calls "Special Veterans", VEC assists
21 veterans from San Francisco's neighboring counties.

22 48. The WWII Filipino Veterans are considered a unique population, in that
23 they require safe and affordable housing, linguistically-appropriate medical care,
24 opportunities to socialize with their peers, and access to food that augments what their
25 SSI can afford to buy.

26 49. An average WWII Filipino Veteran, when given an opportunity to rank his
27 needs and challenges, would rank them as follows: 1. immigration, 2. advocacy for the
28