

DISTRICT COURT, ADAMS COUNTY, STATE OF COLORADO 1100 Judicial Center Drive Brighton, CO 80601 303-659-1161		
Plaintiff: DAVE A. BOONE v. Defendant: MVM, Inc., a California corporation that does business in Colorado		▲Court Use Only▲
Thomas H. Stocker Attorney at Law 200 Union Blvd., Suite 118 Lakewood, CO 80228 Attorney for Plaintiff	Ph: 303-988-4205 Fax: 303-989-2825 tom@thstocker.com Att'y Reg. No. 14716	Case No: Division:
COMPLAINT AND JURY DEMAND		

Plaintiff, David A. Boone ("Boone" or "plaintiff"), through his attorney, Thomas H. Stocker of Thomas H. Stocker, P.C., Attorney at Law, for his complaint against defendant, alleges, avers and states as follows:

1. By this Complaint, plaintiff seeks remedies for defendant's breach of express and implied employment contract and termination of plaintiff's employment in violation of public policy and in retaliation for plaintiff's opposition to illegal weapons, an illicit romantic relationship and refusal to endorse a fraudulent after action report written by certain Scorpion PSD security team members working for MVM on a government security contract in Baghdad, Iraq.

Jurisdiction and Venue

2. After over 20 years of experience, plaintiff retired from the US Army Special Forces in 1998 and since then has provided private security services in many countries around the world.

3. Because of the nature of plaintiff's work, he often travels outside of Colorado and often outside of the country.

4. When plaintiff is working, it is common for plaintiff to be outside of Colorado and on station ("in-country") for approximately 90 days and then return to

Colorado for approximately 30 days. The in-country time is referred to as a "rotation" or a "deployment."

5. In 2001 plaintiff established a residence in Colorado.
6. Beginning in 2001, at the end of each rotation plaintiff has always returned to his home in Adams County, Colorado.
7. In 2003 plaintiff was married to Jordan, a Colorado resident, in Adams County, Colorado, pursuant to an Adams County Marriage Certificate.
8. Plaintiff and his wife maintain their residence at 3563 W. 112th Circle Westminster, CO 80031 (plaintiff's "Colorado residence"). This is the residence to which plaintiff returns after his deployments outside of Colorado.
9. Plaintiff has maintained this residence since 2001.
10. Plaintiff's wife is a full time higher education student in Colorado.
11. Plaintiff's mail and paychecks from defendant were delivered to his residence at 3563 W. 112th Circle, Westminster, CO 80031.
12. Plaintiff maintains bank accounts in Colorado and has other business interests in Colorado.
13. Plaintiff was employed by defendant while plaintiff resided in Colorado.
14. A key potential witness in this case, Perry Cloutier ("Cloutier"), is a resident of Colorado who lives in Palmer Lake, Colorado.
15. Cloutier was also employed by defendant while Cloutier resided in Colorado.
16. Plaintiff's travel expenses have been paid by defendant from plaintiff's residence at 3563 W. 112th Circle, Westminster, CO 80031, to places outside of Colorado, including Iraq.

17. Plaintiff has used the services of the Veterans Administration offices located in Lakewood, Colorado, to adjudicate certain military disability claims.

18. For the purposes of this case and the Colorado Citizens' Access to Colorado Courts Act, C.R.S. § 13-20-101 *et seq.*, plaintiff is a resident of Adams County, Colorado.

19. On information and belief, defendant is engaged in business in Colorado including, but not necessarily limited to, providing security or other personnel to the Department of Justice and the U.S. Marshall's office located in Colorado.

20. Defendant reached out to both plaintiff and Cloutier, and possibly others, while they were in Colorado and maintaining residences in Colorado and recruited plaintiff and Courtier for oversea's assignments.

21. In reaching out to plaintiff in Colorado, defendant voluntarily subjected itself to the jurisdiction of Colorado courts, to venue in Colorado, and to Colorado law.

22. Plaintiff was terminated by defendant while plaintiff was at his residence in Colorado.

23. Plaintiff has suffered damages in Colorado.

24. Colorado law applies.

25. The District Court in and for Adams County, Colorado, has jurisdiction over this case.

26. Venue is proper in the District Court in and for Adams County, Colorado.

MVM

27. Defendant MVM, Inc. ("MVM") is a California corporation.

28. Defendant MVM is a security and staffing company that furnishes a wide variety of services, including security services and personnel to U.S. Government agencies throughout the U.S. and abroad.

29. MVM has its principal place of business in Vienna, Virginia.

30. On information and belief, as alleged above, MVM does business in Colorado.

31. MVM reached out to plaintiff, Cloutier, and possibly others, employed them while they were in Colorado, and thereby subjected itself to Colorado law and to Colorado courts.

32. During times relevant hereto and continuing, MVM held a contract with an agency of the U.S. Government to provide security services for the agency in Baghdad, Iraq.

33. The agency of the U.S. Government is classified and is referred to herein as the "agency," the "Client" or "MVM's Client." The name of this agency is not relevant to this lawsuit.

34. At times relevant hereto, plaintiff was employed by MVM to provide armed protection and security services to personnel and visitors of MVM's Client (the "security services") in Baghdad, Iraq.

Plaintiff's Employment with MVM

35. In February 2004 plaintiff was contacted by phone by an official of MVM while plaintiff was at his Colorado residence.

36. In this phone conversation, MVM made an offer of employment to plaintiff.

37. The principal terms and conditions of plaintiff's employment with MVM were discussed and agreed upon during this telephone conference.

38. The principal terms and conditions agreed on included plaintiff's rate of pay, payment by defendant of plaintiff's travel expenses from and to his Colorado residence, plaintiff's normal rotations of 90 days in-country followed by 30 days home in Colorado, and provision by defendant to plaintiff of clothing, equipment, tools, weapons, and other items needed by plaintiff to carry out his employment, along with transport on U.S. military aircraft.

39. But for this oral understanding between plaintiff and MVM, plaintiff would not have left Colorado to begin work for MVM.

40. While defendant specified that there would be a minimum of three rotations, it is customary in the industry for rotations to continue unless the employee presents good cause for termination.

41. On the basis of these principal terms and conditions, plaintiff, while in Colorado, accepted employment with defendant MVM.

42. Cloutier was employed by MVM while he was in Colorado under virtually identical circumstances as plaintiff.

43. As a follow-up to the oral employment understanding described above, plaintiff and MVM entered into a written Employment Agreement with MVM dated March 23, 2004. Copy attached as Ex. A.

44. Signing this written Employment Agreement was a ministerial act hurriedly done by plaintiff at the insistence of MVM while plaintiff was on his way to Baghdad without time to read or consider the contract and without the advice of counsel. The written Employment Agreement is therefore an adhesion contract and should be strictly interpreted against MVM which drafted it.

45. In this written Agreement, plaintiff specified his address as 3563 W. 112th Circle, Westminster, CO 80031.

46. The Employment Agreement does not specify any venue for resolution of disputes.

Plaintiff was a contract employee of MVM, not an independent contractor, and plaintiff could only be terminated for good cause

47. The written Employment Agreement did not create an independent contractor relationship between plaintiff and MVM.

48. MVM required compliance with its instructions, either oral or written, concerning when, where and how plaintiff was to perform his security duties.

49. MVM trained plaintiff to perform his security duties in a particular manner for the Baghdad assignment.

50. MVM integrated plaintiff's services into its operations to such a degree that the success or continuation of MVM's business depended in part upon plaintiff's performance.

51. MVM required that plaintiff's security services be rendered by plaintiff personally. Plaintiff was not free to delegate, subcontract, or reassign any of the security services plaintiff was hired to provide.

52. Plaintiff was not permitted by MVM to hire, supervise or pay any assistants to plaintiff.

53. Any notes, reports or other documents generated by plaintiff were the property of MVM.

54. During in-country rotations to Baghdad, plaintiff was required to work at MVM or its Client's facilities and with MVM or its Client's equipment including vehicles and weapons.

55. During in-country rotations, plaintiff was not free to follow his own pattern of work, but had to follow the routines and schedules established by MVM and its Client.

56. MVM required plaintiff to periodically submit oral or written reports to MVM.

57. Plaintiff was paid by MVM on a per-diem basis, not on a per-job basis.

58. Plaintiff was paid as follows:

a. \$300 per day during travel to and from assignments, Client required orientations and during training;

b. \$500 per day while providing security services;

c. Hazardous duty pay as provided for by the U.S. Dept. of State ("USDOS"); and,

d. Post differential pay following the forty-second day of overseas duty.

59. Plaintiff typically earned about \$75,000 gross for each 90 day rotation to Iraq.

60. MVM issued paychecks to plaintiff on the regular pre-scheduled basis of twice a month.

61. MVM caused plaintiff's paychecks to be delivered to his home address in Colorado.

62. MVM also paid plaintiff's expenses including travel expenses from and to his Colorado residence.

63. MVM provided plaintiff with the clothing, tools, weapons, materials, vehicles and other equipment necessary for plaintiff's performance of the security services.

64. MVM provided weapons which had to be approved by CENTCOM ("Central Command").

65. The purpose of scheduled rotations back to Colorado from Baghdad was for rest, relaxation, recuperation and training. Such rotations did not allow plaintiff to work for another employer.

66. Both parties retained the right to terminate the Employment Agreement upon a material breach thereof.

67. The minimum term of the Employment Agreement was for one year which could be extended for so long as the parties saw fit.

68. It was the custom and practice of MVM, and the industry, to continue such Employment Agreements for so long as MVM's underlying contract with its Client continued and there was not good cause to terminate the employee.

69. MVM's underlying contract with its Client in continuing.

70. The Employment Agreement required that the security services provided by plaintiff "conform to the highest recognized and accepted professional standards and ethics."

71. Plaintiff was referred to as an "employee of MVM" in a U.S. Dept. of Defense ("DOD") letter dated March 18, 2004, signed by Joseph W. Adlam. Copy attached as Ex. B.

72. Plaintiff was referred to as an "employee of MVM" in a U.S. Dept. of Defense ("DOD") letter dated Nov. 29, 2004, signed by Joseph W. Adlam. Copy attached as Ex. C.

MVM's Employee Manual and Standards of Conduct

73. MVM provided plaintiff with a copy of its Employee Manual captioned "MVM, Inc."

74. Among other things, included in the Employee Manual was a statement of the "Chain of Command" showing MVM executives in command of plaintiff's work.

75. The Employee Manual also contained MVM's Standards of Conduct. A copy of MVM's Standards of Conduct is attached as Ex. D.

76. By requiring that the security services provided by plaintiff "conform to the highest recognized and accepted professional standards and ethics," and by providing plaintiff with its Employee Manual, MVM incorporated its Standards of Conduct into its employment relationship with plaintiff.

77. Plaintiff represented in the Employment Agreement that he would conduct himself at all times in a professional manner so as not to bring ill-repute upon himself or upon MVM.

78. Plaintiff was not an independent contractor for MVM.

79. Plaintiff was an employee of MVM.

80. Plaintiff could only be terminated for good cause.

Plaintiff's Deployments to Baghdad, Iraq

81. MVM maintained a continuing relationship with plaintiff under which plaintiff was rotated into Baghdad for approximately 90 days and then rotated back to Colorado for approximately 30 days for rest and recuperation.

82. Plaintiff's rotations to Iraq were called "in-country rotations."

83. MVM determined the timing and length of each in-country rotation.

84. MVM determined the timing and length of each out-of-country rest period.

85. During in-country rotations, MVM determined the hours of plaintiff's work.

86. During in-country rotations, plaintiff was not free to work for any employer other than MVM.

87. During in-country rotations, plaintiff worked full time for MVM.

88. It was not possible or practical for plaintiff to work for any other employer during out-of-country rest periods.

Plaintiff's Initial Deployment

89. Plaintiff deployed to Baghdad for his initial in-country rotation with MVM from March to June 2004.

90. Plaintiff returned to Colorado for rest and recuperation during July and part of Aug. 2004.

91. After plaintiff's first rotation to Baghdad, plaintiff raised with MVM concerns regarding the actions of some team members in Baghdad.

92. After plaintiff's first rotation to Baghdad, plaintiff resigned his employment with MVM due to concerns plaintiff had about operations and the actions of some team members in Baghdad.

93. MVM investigated plaintiff's concerns, confirmed them to be true, and as a result removed two individuals from the team.

MVM Rehires Plaintiff

94. In August 2004, defendant MVM again reached out to plaintiff while plaintiff was at his Colorado residence and sought to persuade plaintiff to return to employment with MVM.

95. MVM represented to plaintiff that it had investigated the concerns he had raised, found them to be true, and that as a result MVM had removed two individuals.

96. On the basis of MVM's representations, plaintiff agreed to rejoin MVM.

97. Plaintiff agreed to rejoin MVM while he was at his residence in Colorado and notified MVM of same from his Colorado residence.

98. The guaranteed minimum three rotations promised by MVM began when MVM rehired plaintiff in August 2004.

99. Under MVM's policies, customs and practices, and the customs and practices in the industry, plaintiff could not be removed from this contract absent good cause for termination.

100. Based on MVM's investigation of plaintiff's expressed concerns, plaintiff formed a reasonable good faith belief that MVM would fully investigate any future concerns or complaints that plaintiff might raise, would remove any offending parties who had materially violated MVM's or CENTCOM's policies, procedures or rules, and would not retaliate against plaintiff for raising legitimate concerns.

Plaintiff's Next Deployment

101. Plaintiff's next deployment to Baghdad with MVM was during Sept. to Dec. 2004.

102. Toward the end of plaintiff's scheduled 90 day in-country deployment, MVM requested plaintiff to overstay his rotation until MVM could find replacement

personnel. MVM would not have made this request had plaintiff's performance been anything but exemplary.

103. Plaintiff left Baghdad on Dec. 8, 2004.

104. After this deployment and as he had done in the past, plaintiff returned to his Colorado residence for rest and recuperation during Dec. 2004 and part of Jan. 2005.

Plaintiff's Termination

105. Plaintiff was scheduled to leave Colorado for his next deployment to Baghdad with MVM on Jan. 20, 2005.

106. On Jan. 18, 2005, two days prior to the start of plaintiff's deployment to Iraq, MVM notified plaintiff, while he was at his residence in Adams County, Colorado, that he would not be redeployed.

107. MVM told plaintiff that he was not being redeployed because he "did not fit in."

108. Plaintiff was not terminated for good cause.

109. Plaintiff's termination by MVM was without good cause, was intentional, malicious, willful and wanton and retaliatory.

110. Plaintiff was not notified in writing of his termination until he received a letter from MVM's counsel dated March 7, 2005, and for this reason alone should be paid for the January through March rotation. See Ex. E, attached.

Nature of Security Work in Baghdad, Iraq

111. MVM is under contract to the Client to provide security services to high level personnel and visitors of the Client while they are in Baghdad.

112. While in Baghdad, plaintiff was on a team of six security personnel providing such security services. Such a team is referred to as a "Protective Services Detail" or "PSD."

113. Plaintiff was on the "Scorpion PSD team."

114. Besides plaintiff, the other five team members were: Michael Pietragallo ("Pietragallo") (team leader), Thomas Smith ("Smith"), Tony Romanzo ("Romanzo"), Mickey Johnson ("Johnson") and Oscar Hinojosa ("Hinojosa").

Plaintiff's Top Secret Security Clearance

115. Plaintiff is a retired U.S. Army Special Forces soldier having more than 20 years experience in the U.S. Army Special Forces.

116. Plaintiff maintains a top secret security clearance.

117. Plaintiff could not obtain the kind of work he performed for MVM without his top secret security clearance.

118. Plaintiff's top secret security clearance is up for review in fall 2005.

119. To maintain his top secret security clearance, plaintiff must be employed in a fashion that uses his top secret security clearance.

120. By failing to re-deploy plaintiff in Jan. 2005, MVM has potentially adversely affected plaintiff's top secret security clearance.

121. If plaintiff loses his top secret security clearance, he will no longer be employable to provide the kinds of security services that he provides, and he will suffer substantial future damages.

Nov. 20, 2004 Action on the Airport Road

122. While in Baghdad, plaintiff and the other five MVM personnel on the Scorpion PDS team were based in the Presidential Palace in the International Zone (also called the Green Zone).

123. A common security assignment was to chauffeur MVM Client personnel in armored Ford Excursion vehicles between the Green Zone and Baghdad International Airport ("BIAP").

124. On Nov. 20, 2004, all six members of the Scorpion PSD Team had delivered Client personnel to BIAP and were returning to the Green Zone in a two vehicle convoy.

125. Approximately $\frac{3}{4}$ mile west of the Check Point 12 entrance to the Green Zone, while traveling eastbound on the Qadisiyah overpass, at approximately 1730 hours (5:30 PM), a vehicle approached from the opposite direction, swerved into the lanes of travel of the two vehicle convoy, and detonated (a vehicle born improvised explosive device or "VBIED").

126. Both armored Ford Excursions of the two vehicle PSD convoy suffered severe damage and were rendered inoperable and forced to stop. Example photos are attached as Ex. F.

127. The lead Excursion (or "limo") was occupied by Pietragallo and Hinojosa.

128. The trail or following Excursion was occupied by plaintiff, Smith, Johnson, and Romanzo.

129. Romanzo occupied the rear gunner position facing backwards (i.e., opposite to the direction of travel).

130. After both vehicles stopped, plaintiff exited his vehicle. About the same time, Pietragallo, Hinojosa, Smith and Johnson also exited their respective vehicles.

131. Plaintiff assessed the situation and determined that after the detonation of the VBIED there was no further threat.

132. Plaintiff determined that there was no incoming fire.

133. However, Romanzo was firing his weapon on full automatic in 5-7 round bursts into nearby civilian residential buildings in a residential area. Plaintiff observed some of the rounds hitting civilian buildings.

134. Romanzo was firing his automatic weapon indiscriminately into an Iraqi civilian residential area where no targets were present. By so doing, Romanzo demonstrated a failure of fire discipline, and a violation of the CENTCOM Rules of Engagement.

135. PSD personnel are subject to CENTCOM rules of engagement.

136. It is illegal and against CENTCOM rules of engagement to fire indiscriminately into an Iraqi civilian residential neighborhood where no threat exists.

137. Neither plaintiff, Pietragallo, Johnson, Smith or Hinojosa fired their weapons at any time during this action.

138. Immediately after the VBIED detonated and the two vehicle convoy stopped, an Army unit appeared on the scene.

139. After firing a few short .50 cal. bursts and 2 or 3 40mm grenade rounds, the Army checked its fire and directed MVM personnel to stop firing.

140. Despite this order, Romanzo continued to fire until again ordered by the Army to stop. This U.S. Army orders for Romanzo to stop firing were relayed by plaintiff to Romanzo.

141. Romanzo finally stopped firing.

142. Within another 10 to 15 minutes, all team members left the scene in civilian vehicles from another PSD unit that had happened by.

143. At no time after the explosion of the VBIED did plaintiff observe any threat or any incoming fire.

144. Plaintiff did not observe any enemy killed, wounded or captured.

145. Several Scorpion Team personnel suffered minor burns and minor injuries from the VBIED.

146. No Scorpion Team member or Army personnel suffered any gunshot wounds.

147. There is no evidence that the disabled Ford Excursion vehicles were hit with incoming gunfire.

148. No rocket propelled grenades ("RPGs") were fired at the Scorpion PSD team or at the Army unit.

149. Plaintiff wrote a statement describing his observations during the Nov. 20, 2004, action. A copy is attached as Ex. G.

150. After all members of Scorpion PSD returned to the International Zone, Pietragallo directed them to meet at a bar where Client personnel were present.

151. On information and belief, Pietragallo and others bragged to Client personnel about the action and the number of enemy they claim to have killed and wounded.

The After Action Report ("AAR")

152. Romanzo and Smith prepared the After Action Report ("AAR") of the Nov. 20, 2004, action. Pietragallo approved and adopted it. A copy of the text portion is attached as Ex. H ("text") and a copy of the accompanying Power Point slides are attached as Ex. I ("slides"). The text and slides together are referred to as the After Action Report or AAR.

153. The AAR states that, "[p]eriodically gunman (sic) were seen, and engaged, as they moved on the rooftops and in the windows and balconies of the South side buildings." Ex. H, p. 1.

154. The AAR states that, "[d]uring the firefight a SGT Taylor who was part of the MP unit came under fire from the rooftop. XXXXX saw the sniper, engaged and neutralized the threat." Ex. H, p. 1.

155. The AAR states that there were 20-30 enemy "shooters" involved in the "ambush" who were located in buildings on both sides of the road and "constantly firing." Ex. H, pp. 11 and 14.

156. The AAR states that: "The losses for the Enemy 3 KIA [killed in action], 7 wia [wounded in action], and after an Army sweep of the building, 21 captured." Ex. H, p. 14.

157. Smith did not fire his weapon during the Nov. 20, 2004, incident. However, he later claimed to have engaged and killed three enemy personnel.

158. The AAR is inaccurate and untrue.

159. The AAR is a fraudulent and false report.

160. Under 18 U.S.C. § 1001(a), making false statements and false reports on a government contract are violations of law.

161. On information and belief, the AAR is intended to cast Scorpion PSD team members and MVM in a favorable light when in fact their actions were illegal and grossly negligence.

162. The AAR is intended to cover up the illegal and grossly negligent actions of certain Scorpion Team members.

163. The AAR was written to bolster the stories some Scorpion team members, including Smith and Pietragallo, told to Client personnel in the bar after the action.

**Plaintiff's Opposition to the AAR and to Other Improper Conduct
by Scorpion PSD Team Members in Baghdad**

164. Because the AAR is inaccurate and largely untrue, plaintiff opposed the AAR and refused to endorse or sign it.

165. Plaintiff is a highly trained and experienced veteran of the U.S. Army Special Forces and is accustomed to, and is trained to handle, situations such as were presented by the Nov. 20, 2004, Airport Road action.

166. Plaintiff's report on the incident that is attached as Ex. G is an accurate portrayal of the action.

167. Plaintiff repeatedly voiced his objections to the AAR to MVM and to its Client.

168. Plaintiff repeatedly requested that MVM and its Client investigate the veracity of the AAR. For examples, see plaintiff's plaintiff's statement attached as Ex. G and plaintiff's letter to MVM's CEO dated April 14, 2005, attached as Ex. J.

169. On information and belief, no adequate investigation has ever been conducted by either MVM or its Client.

Improper Romantic Relationship

170. Plaintiff also opposed the improper romantic relationship of team member Romanzo with a married female active duty military member of the Client's Baghdad staff while in Baghdad.

171. On information and belief, such improper romantic relationship violates the Uniform Code of Military Justice (UCMJ).

172. Such a relationship compromises the mission of the security team which is to provide security to all Client personnel.

Illegal Weapons

173. Plaintiff also opposed the acquisition and possession of illegal weapons not approved by CENTCOM by certain Scorpion PSD team members while in Baghdad.

174. Acquisition and possession of such illegal weapons violated MVM and Client policies and CENTCOM rules.

175. Possession of such illegal weapons also posed a safety hazard to team members and other personnel.

176. On information and belief, such illegal weapons were purchased with U.S. Government funds.

MVM's Willful and Wanton Termination of Plaintiff

177. Plaintiff was not deployed as scheduled in January 2005 because of his opposition to the AAR, his opposition to the illegal weapons, and his opposition to the improper romantic relationship.

178. Even though plaintiff was not deployed as scheduled on Jan. 20, 2005, he was not notified of his termination until March 7, 2005, when MVM's counsel, Charles E. Gaba, issued a letter dated March 7, 2005, to Thomas H. Stocker, counsel for plaintiff. Ex. E, attached.

FIRST CLAIM FOR RELIEF
(Breach of Express or Implied Contract)

179. Plaintiff incorporates herein all previous paragraphs of this Complaint.

180. It was the custom and practice of MVM to rotate security personnel, such as plaintiff, into Baghdad and then home for rest on a 90 day in/30 day out cycle.

181. Plaintiff was rotated once on this schedule before plaintiff resigned in July 2004. He was then rehired and rotated one more time on this schedule.

182. The term of employment provided for a minimum of three in-country rotations. Because of plaintiff's July 2004 resignation and subsequent rehire, his first rotation was from Sept. to Dec. 2004.

183. On Jan. 18, 2005, two days before leaving for his next scheduled in-country rotation, MVM told plaintiff that he would not be rotated in as scheduled.

184. MVM stated to plaintiff that he did not "fit in."

185. Plaintiff did not "fit in" because he opposed the AAR, had complained about the acquisition and possession of illegal weapons, and had opposed the improper romantic relationship between Romanzo and a married female military member of the Baghdad staff of MVM's Client.

186. On information and belief, Pietragallo and MVM excluded plaintiff from any further in-country rotations in retaliation for plaintiff's opposition to the AAR, plaintiff's complaints about illegal weapons, and plaintiff's opposition to Romanzo's illicit romantic relationship.

187. On information and belief, Pietragallo and MVM excluded plaintiff from any further in-country rotations so that Pietragallo could hire replacement team members who would not oppose Pietragallo's actions.

188. Throughout plaintiff's employment with MVM, his performance met or exceeded MVM's requirements.

189. After Nov. 20, 2004, and prior to leaving Baghdad on Dec. 8, 2004, MVM discussed with plaintiff extending his deployment in Baghdad for approximately another three weeks to make up for a shortage of personnel.

190. Plaintiff did not commit any "material breach" of the Employment Agreement.

191. Defendant MVM materially breached the Employment Agreement by not deploying plaintiff as scheduled in January 2005, and for subsequent rotations thereafter.

192. MVM's breach of contract was willful, wanton and intentional.

193. MVM's breach of contract was without reasonable justification.

194. In intentionally breaching its contract with plaintiff, MVM acted in an insulting manner and disregarded the rights of plaintiff.

195. MVM's breach was willful and wanton and therefore plaintiff is entitled to exemplary damages and damages for mental suffering, along with all other damages he has suffered.

196. As a result of MVM's breach of Employment Agreement, plaintiff has suffered damages including, but not limited to, lost past and future income, additional income taxes, reduction in future earning power, damage to security clearance, damage to reputation, emotional pain and suffering, impairment of the quality of life, exemplary damages, attorneys' fees and costs, and other damages yet to be ascertained.

WHEREFORE, plaintiffs pray for the judgment shown in the Prayer for Relief.

SECOND CLAIM FOR RELIEF

(Breach of Standards of Conduct and CENTCOM Rules)

197. Plaintiff incorporates herein all previous paragraphs of this Complaint.

198. At or about the time of execution of the Employment Agreement, MVM gave plaintiff a copy of its Standards of Conduct, a copy of which is attached as Ex. D.

199. The Standards of Conduct provided that, "[t]he [plaintiff's] Services shall be conducted in compliance with all applicable state and federal laws and will conform to the highest recognized and accepted professional standards and ethics."

200. 18 U.S.C. § 1001(a) is one of the federal laws that MVM's Standards of Conduct, by its own terms, is subject to.

201. Plaintiff and MVM were both subject to MVM's Standards of Conduct.

202. By investigating and taking action as previously described (see ¶¶ 91–97) in response to plaintiff's concerns in May and June 2004, MVM demonstrated a willingness to be bound by its policies, procedures and Standards of Conduct.

203. Paragraph 20 of the Standards of Conduct incorporates into the employment relationship with plaintiff all MVM and Client policies, procedures, rules, regulations and contract requirements affecting employees such as plaintiff.

204. The false AAR violated ¶¶ 6 and 7 of MVM's Standards of Conduct in that it involved dishonesty, lying and falsification of reports.

205. Romanzo's illicit romantic relationship violated ¶¶ 6 and 24 of MVM's Standards of Conduct in that it involved dishonesty, lying, and fraternization with an employee of MVM's Client.

206. The illicit romantic relationship also violated ¶ 25 of the Standards of Conduct as it impaired the ability of MVM to maintain the security it had contracted with its Client, an agency of the American government, to provide.

207. Plaintiff was pressured by MVM and its personnel to accept the AAR and to overlook the illicit romantic relationship and illegal weapons. Plaintiff would not do this.

208. Paragraph 29 of the Standards of Conduct imposed a duty on plaintiff to "notify management of serious violations of the Standards of Conduct by any MVM employee."

209. As required by MVM's Standards of Conduct, in particular ¶ 29, plaintiff notified MVM of the fraudulent AAR and of Romanzo's illicit romantic relationship.

210. As a result, plaintiff was not re-deployed in January 2005.

211. Requiring employees and contractors to "notify management of serious violations of the Standards of Conduct by any MVM employee" creates an implicit contract or promise that MVM will not retaliate against the individual who has notified management of such violations.

212. MVM breached its implied contract and promise of protection against retaliation by failing to deploy plaintiff to Baghdad in January 2005, and for subsequent deployments thereafter.

213. Plaintiff and all Scorpion PSD team members were subject to CENTCOM rules of engagement while deployed to Baghdad.

214. Such rules of engagement are also implicitly incorporated into plaintiff's Employment Agreement.

215. Plaintiff had a duty under CENTCOM's rules of engagement to report actions that violate these rules of engagement.

216. By opposing the AAR, plaintiff was exercising his legal duty to report violations of the rules of engagement.

217. Because of MVM's breaches of its implied contract and promises, plaintiff has suffered damages including, but not limited to, lost past and future income, additional income taxes, reduction in future earning power, damage to security clearance, damage to reputation, emotional pain and suffering, impairment of the quality of life, attorneys' fees and costs, and other damages yet to be ascertained.

WHEREFORE, plaintiffs pray for the judgment shown in the Prayer for Relief.

THIRD CLAIM FOR RELIEF

(Wrongful Discharge in Violation of Public Policy)

218. Plaintiff incorporates herein all previous paragraphs of this Complaint.

219. Plaintiff was employed by defendant, MVM.

220. In Jan. 2005, plaintiff was scheduled to be rotated back to Baghdad.

221. Two days before plaintiff was to leave for this in-country rotation, MVM notified plaintiff that he would not be rotated because he did "not fit in."

222. The reason given by MVM for not rotating plaintiff in Jan. 2005 as scheduled was pretext. The real reason was in retaliation for plaintiff's complaints about illegal weapons, an illicit romantic relationship and the false and fraudulent AAR.

223. During plaintiff's Sept. to Nov. 2004 in-country rotation, plaintiff had complained about certain Scorpion PSD team members acquiring and possessing illegal weapons.

224. Possession of such weapons violated CENTCOM rules and policies, and MVM's policies and procedures.

225. During plaintiff's Sept. to Nov. 2004 in-country rotation, plaintiff had complained about an illicit romantic relationship between Romanzo and a married female military member of MVM's Client's staff in Baghdad.

226. Such romantic relationship compromised the security mission of the Scorpion PSD Team, placed an increased risk of attack on each team member including plaintiff, violated CENTCOM rules and policies, and violated MVM's policies and procedures.

227. After the Nov. 20 Airport Road action, plaintiff refused to concur with the AAR.

228. Plaintiff refused to endorse or concur with the AAR because he reasonably believed it to be a false report.

229. Plaintiff reasonably believed that obtaining illegal weapons, engaging in an illicit romantic relationship, and making false reports on a government contract are illegal actions.

230. Making false statements and reports on a government contract violates public policy and law as set forth in 18 U.S.C. § 1001(a).

231. By objecting to these matters, plaintiff reasonably believed that he was exercising his legal rights and duties as an American citizen.

232. Defendant MVM knew, or should have known, that obtaining illegal weapons, engaging in an illicit romantic relationship, and making false reports on a government contract are illegal actions, and that plaintiff was exercising his protected legal rights as an American citizen by objecting to these activities.

233. By investigating and taking action in response to plaintiff's concerns in May and June 2004, MVM demonstrated a willingness to be bound by its policies, procedures and Standards of Conduct, and knowledge that the actions complained of by plaintiff in November and December 2004 were illegal and contrary to public policy.

234. MVM fired plaintiff because plaintiff exercised his legal rights as an American citizen to object to illegal and wrongful behavior and behavior that violates public policy.

235. Because MVM's fired plaintiff in retaliation for plaintiff's exercise of his legal rights, plaintiff has suffered damages including, but not limited to, lost past and future income, increased income taxes, reduction in future earning power, damage to security clearance, damage to reputation, emotional pain and suffering, impairment of the quality of life, attorneys fees and costs, and other damages yet to be ascertained.

WHEREFORE, plaintiffs pray for the judgment shown in the Prayer for Relief.

Prayer for Relief

WHEREFORE, plaintiff, Dave A. Boone, prays that this Honorable Court will award judgment in favor of plaintiff and against defendant, MVM, Inc., as follows:

A. For lost back pay;

B. For lost front pay for a reasonable period of at least five years during which plaintiff would have continued to work for MVM but for MVM's willful breach of contract and tortious retaliation;

C. For compensatory damages including damages for emotional and mental pain and suffering, loss of enjoyment of life, inconvenience, mental anguish, damage to reputation, and other nonpecuniary losses;

D. For additional damages calculated to "gross up" any damage award to account for income taxes that would not have been paid by plaintiff had MVM not wrongfully discharged him and plaintiff had continued his normal rotation schedule;

E. For compensatory and exemplary damages as provided for by statute;

F. For attorneys fees, costs, and expert witness fees;

G. For pre- and post- judgment interest; and,

H. For such other and further relief as is just and proper.

Jury Demand

Plaintiff demands a trial by jury on all issues so triable.

DATED: November 7, 2005.

Respectfully submitted,

THOMAS H. STOCKER, P.C.,
Attorney at Law

Thomas H.
Stocker

Digitally signed by Thomas H. Stocker
DN: CN = Thomas H. Stocker, C =
US, O = Thomas H. Stocker, P.C., OU
= Thomas H. Stocker, P.C.
Date: 2005.11.07 17:57:53 -0700

By: _____
Thomas H. Stocker, #14716
200 Union Blvd., #118
Lakewood, Colorado 80228

Phone: 303-988-4205
Fax: 303-989-2825
Email: tom@thstocker.com

Attorney for Plaintiff

Plaintiff's Address:

3563 W. 112th Circle
Westminster, CO 80031

Exhibits attached as a separate pleading captioned: Exhibits to Accompany Complaint and Jury Demand:

- A – Independent Contractor Agreement dated March 23, 2004.
- B – DOD letter dated 18 March 2004 signed by Joseph W. Adlam.
- C – DOD letter dated 9 November 2004 signed by Joseph W. Adlam, Jr.
- D – MVM Standards of Conduct.
- E – Letter from Charles E. Gaba to Thomas H. Stocker dated March 7, 2005.
- F – Photos of Excursions after detonation of VBIED on Nov. 20, 2004.
- G – Plaintiff's statement covering the VBIED attack that occurred on 20 Nov. 2004.
- H – Pietragallo's After Action Report ("AAR") of the Nov. 20, 2004, action.
- I – Overhead slides to accompany Pietragallo's AAR.
- J — Letter from Dave A. Boone to Mr. Marquez (CEO of MVM) dated 14 Apr 2005.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 7, 2005, a true and correct copy of the foregoing was served as follows:

Original via LexisNexis to:

Adams County District Court Clerk
1100 Judicial Center Drive
Brighton, CO 80601

First Class Mail to:

Dave Boone
3563 W. 112th Circle
Westminster, CO 80031

Thomas H. Stocker

Digitally signed by Thomas H. Stocker
DN: CN = Thomas H. Stocker, C = US, O =
Thomas H. Stocker, P.C., OU = Thomas H.
Stocker, P.C.
Date: 2006.11.07 17:58:24 -0700