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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
SAN FRANCISCO REGIONAL OFFICE

| | | |
|-----------------------------|---|---------------------------------|
| LINDA DAVIS ANDERSON, Ph.D. |) | EEOC No. 370-99-X2040 |
| |) | |
| Complainant, |) | Agency No. WGS-95-031 |
| |) | |
| vs. |) | COMPLAINANT'S MOTION FOR |
| |) | REASONABLE ATTORNEYS |
| |) | FEES AND COSTS |
| U.S. GEOLOGICAL SURVEY, |) | |
| DEPARTMENT OF THE INTERIOR, |) | |
| |) | |
| Agency. |) | |
| _____ |) | |

1. **INTRODUCTION AND SUMMARY**

Pursuant to the Decision Issued Pursuant to 29 C.F.R. §1614.109(i) by Administrative Judge Daniel E. Leach, U.S. Equal Employment Opportunity Commission, dated December 7, 2000, 29 C.F.R. §1614.501(e) and EEO Management Directive 110, Chapter 11 (hereafter referred to as "MD 110, Ch. 11"), the Complainant, LINDA

DAVIS ANDERSON, Ph.D. moves for an award of reasonable fees and costs.

The Complaint filed by Dr. Linda Anderson came for hearing before Administrative Judge Daniel Leach on June 13 and June 14, 2000. A third day of testimony was taken on June 21, 2000, by telephone. Administrative Judge Leach rendered a decision on December 7, 2000, awarding compensatory damages and attorneys fees for the Agency's unlawful retaliation. Complainant files the instant motion pursuant to that Decision.

2. **FACTUAL STATEMENT**

Complainant, Dr. Linda Anderson, was hired by the United States Geological Survey ("USGS" or "the Agency") in August or September of 1989, as a Hydrologist GS-11 HE: A, B. She was selected by Jim Davis, a project chief. Davis reported to Fred Nichols, the branch chief. Dr. Anderson possessed a PhD in Earth Sciences, obtained prior to her hire, although such degree was not required for the GS-11 position. HT: pp.478-479.

At the outset, according to Davis, complainant performed her job in an outstanding fashion. In 1990, among other achievements, Dr. Anderson played a leading role in assembling and using new and innovative equipment known as an "ICPO," and Davis issued her an "outstanding" rating along with a monetary award. (EEO Exh. 6, p. 031). Dr. Anderson's Performance Evaluations from 1989 through April of 1994 were Fully Successful or above. (EEO Exh. 15, Appellant's Exh. EE) Dr. Anderson's evaluation for the period preceding the "Unacceptable" evaluation issued by Davis in January of 1995, was "Fully Successful." (See, EEO Exh. 15, Evaluation from April 1, 1993 through January 31, 1994)

In 1991, Davis recommended that Complainant be converted to a permanent position. At the

same time, Davis discussed promoting complainant to a GS-12 with Fred Nichols. Both Davis and Nichols were supportive of converting Dr. Anderson to permanent employment status, and devised a strategy to achieve the same. HT: pp. 485-490.

Around this time, Dr. Anderson began questioning Davis' assignment of first authorship, or lack thereof, to herself and another female scientist, Jennifer Coston. In both cases, Davis had an alternative explanation for his assignment, which were not persuasive to Complainant. HT: pp. 22-142, 496-630. Another issue which arose was Dr. Anderson's removal from the "large scale tracer" project in late 1992. Upon direction from Davis, Dr. Anderson created a new job description, which Davis did not approve. HT: 75-78, 525. The two reached some form of compromise, with Dr. Anderson performing some work on projects directed by Drs. White and Bullen. HT: pp. 520-620. Significantly, both Nichols and Davis stated that at least part of the reason Complainant was not allowed to transfer was because she was "invaluable" or "indispensable" to the Davis team. HT: pp. 410-472, 490-600.

From October of 1994 to December 1994, Davis made continued requests for information and documents regarding her work in order to prepare her evaluation.¹ In the case of complainant, this process proved unusual, unrelenting and onerous. Davis repeatedly instructed complainant to furnish data and documentation concerning her work during the rating period. He invariably did so in writing. Invariably, also, the data and documentation furnished promptly by complainant was deemed insufficient by Davis and he E-mailed requests to her for follow-up responses. He then sought follow-ups to the follow ups. Never before, Davis testified, had he adopted such an evaluation-by-repeated-E-mail

¹ The Evaluation was to cover the period from February 1, 1994 to September 30, 1994. Davis finally issued the evaluation of Anderson on January 5, 1995 (EEO Exh. 16)

procedure with respect to any employee who served under his supervision. HT: pp. 570-633. At the same time, other managers and scientists testified to the consistently high caliber of complainant's work as a scientist and researcher. HT: 113-136, 381-412, 443.

Moreover, the late 1994 communications Davis seeking detailed information about complainant's work reflect petulance and sarcasm reminiscent of one holding a grudge. HT: pp. 550-620; HE: R, U,V, AA, BB, CC, FF. His inconsistent appraisal of her strengths are exemplified in his own memoranda, where, on the one hand, he praises her ability to work independently, and on the other, chastises her independence. HE: F, HH; HT: p. 544-545. His testimony about not being able to communicate is incredulous.

Complainant, whose substantive work had been consistently praised, and who was held in the highest regard by her peers, had never been subjected to such an onslaught or inquisition. As confirmed by a female colleague, Jennifer Coston, "Davis applied standards to her that he wasn't applying to the rest of us."

Complainant became wary of Davis' nitpicking in late 1994, and, as her suspicion about being treated unfairly grew, she began to exercise her rights under EEO laws on regulations. On October 26, 1994, she sent a memorandum to the Chief Hydrologist of the Agency, voicing her concerns about the issues between her and Davis. She also noted Davis' intransigence with respect to her desire to move to a different project, and observed that "other than the EEO process, there is no mechanism for an employee to register a complaint against perceived mistreatment . . ." On November 21, 1994, Anderson complained directly to Jim Davis about his disparate treatment. She also refuted apparent criticisms of her work ethic which Davis was now raising, and noted that Davis was "using an arbitrary

yard stick to evaluate my accomplishments.” (Exh. X; see also Exh. Y, e-mail form of memo)

Anderson copied this complaint to Branch Chief Fred Nichols, the Assistant Branch Chief and Research Advisor Art White. (Id.) Also on November 21, 1994, Anderson wrote a separate memo to Branch Chief Fred Nichols, concerning, “My Treatment.” (Exh. Z) Anderson listed the issues of first authorship, failure to timely promote to GS-12, disagreement with authorship of the Coston paper, the inequitable allocation of chores on the large-scale tracer, and the refused reassignment to the White/Bullen project. HE: Z. In a comprehensive “EEO Grievance” memorandum dated December 19, 1994 to the Agency’s EEO counselor, complainant cited sex-based adverse treatment at the hands of Davis, extending from the inception of her employment by the agency and including the dispute regarding Davis’ handling of her performance evaluation. HE: T,X,Y, IF: Complaint File, “Misc.” Exhibit.

The records reflects that complainant initially contacted the EEO office in December of 1994 and “filed an informal complaint.” HT: p. 178. After complainant went to the EEO office to file the informal complaint, she talked with Davis about it, also in December. HT: p. 180. The record also reflects that about this time complainant had been pressing Davis to complete his evaluation of her and issue a rating. HE: BB. Specifically, Anderson wrote a memo dated December 7, 1994, indicating that her performance evaluation had been “dragging on for two months . . . I would like to see my performance done. I will request that an EEO counselor be present [at the review].” Id.

Three weeks later, on January 5, 1995, Jim Davis issued a performance evaluation, rating Dr. Anderson “Unacceptable,” the lowest possible Agency rating. (EEO Exh. 16) This action was taken by Davis within days of complainant’s visit to the EEO counselor and within days of her report to Davis

that she had lodged and informal EEO complaint against him, and within days of her request that an EEO specialist attend any meetings with him to review her rating. Up to this time, complainant's performance had been consistently considered "invaluable" and she was given fully successful or outstanding ratings by Davis. At the performance evaluation review meeting, complainant's previous request that an EEO counselor be present was denied and Davis would not yield on the issue of the "unacceptable" rating. HT: pp. 81-105, 500-520; IR: Exhs. 15, 16; HE: EE.

3. **ARGUMENT**

A. **COMPLAINANT IS A "PREVAILING PARTY" ENTITLED TO AN AWARD OF REASONABLE ATTORNEY'S FEES AND COSTS.**

Complainants who prevail on claims alleging violations of Title VII of the Civil Rights Act of 1964, *as amended*, are presumptively entitled to an award of attorney's fees and costs, unless special circumstances render such an award unjust. 29 C.F.R. §1614.501(e). A "prevailing party" within the meaning of Section 706(k) of Title VII, 42 U.S.C. 2000e-5(k), is a complainant who has succeeded on any significant issue that achieved some of the benefit the complainant sought in filing the complaint. *Texas State Teachers Association v. Garland I.S.D.*, 489 U.S. 82 (1989), cited in MD 110, Ch. 11. Complainant Linda Anderson prevailed on her retaliation claim. There is no question that Dr. Anderson is a prevailing party, and accordingly is entitled to reasonable attorneys fees. The only issue before the EEOC now is the amount of those fees.

B. **COMPLAINANT'S FEE AWARD SHOULD NOT BE REDUCED SIMPLY BECAUSE SHE WAS NOT SUCCESSFUL ON ALL OF HER CLAIMS.**

In calculating a reasonable fee, it has been established that the attorney fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit. *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983). "Litigants in good faith may raise

alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters." *Hensley*. In cases where a prevailing plaintiff succeeds on some of her claims but not others, the United States Supreme Court has formulated the following questions in awarding attorneys' fees: (1) "Did the plaintiff fail to prevail on claims that were unrelated to the claim [on which she] succeeded; [and] (2) did the plaintiff achieve a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award." *Hensley*, at 343.

MD 110, Ch. 11-7 requires the EEOC Administrative Judge to make a case-by-case determination of the degree of success. "Failure to obtain the maximum damages allowable or a large monetary award generally does not reflect limited success." The relief obtained (including both monetary and equitable relief) should be considered in light of the complainant's goals. *City of Riverside v. Riviera*, 477 U.S. 561 (1986). *Id.* at MD 110, 11-6. In this case, Complainant was awarded \$100,000.00 of compensatory damages, "based on all of the issues raised in her complaint, . . . discounted by 90%, representing that portion of her suffering endured because of issues on which she did not prevail and those previously dismissed and extinguished. Decision, page 19.

1. Dr. Anderson's claims were based on the same course of conduct, namely discrimination and retaliation by the same decision maker, Jim Davis.

With regard to the first question, a prevailing party is entitled to an attorney's fee award for all the time expended pursuing claims related to those on which plaintiff ultimately prevailed. *Hensley*, at 434-440. The time spent on related claims are awardable if it is determined that it is based on the same set of facts or "course of conduct." *Odima v. Westin Tucson Hotel*, 53 F.2d 1484, 1499 (9th Cir. 1995). The hours spent on unsuccessful claims should be excluded in considering the amount of a reasonable fee only where the unsuccessful claims are distinct in all

respects from the successful claims. *Hensley* at 424, cited in MD 110, Ch. 11-6 ¶ 7. Here, Dr. Anderson's sex discrimination claims were inextricably intertwined with the same course of conduct as her retaliation claims.

In *Odima*, the court found that plaintiff's unsuccessful tort claim was related to plaintiff's successful Title VII and 42 U.S.C. 1981 claims because they all arose from common core facts. Hence, the court awarded fees for all work performed. Likewise, in *City of Riverside v. Rivera*, 477 U.S. 561, 572-73 (1986), the Court affirmed an award of attorneys' fees for all time reasonably spent litigating the case, despite the fact that the plaintiffs did not prevail on every contention made at trial. *City of Riverside* involved a large number of police officers who, acting without a warrant, broke up a party using tear gas and unnecessary force. *Id.* at 561. Full compensatory fee awards were granted to the prevailing parties because the unsuccessful claims were all related to the vindication of plaintiff's civil rights. *Id.* at 572-74.

Here, Dr. Anderson is entitled to full compensation for her attorneys' fees because all of her's claims involved the same course of conduct. Dr. Anderson's claims were based on decisions made by Jim Davis and ratified by his superiors. Because Plaintiff's claims were all related, plaintiff has satisfied the first prong of *Hensley*.

2. The Level of Success Warrants the Full Award Requested.

Plaintiff has also satisfied the second inquiry under *Hensley*, which evaluates the "significance of the overall relief obtained by the plaintiff in relation to the hours reasonable expended on the litigation." *Thorne v. City of El Segundo*, 802 F.12d 1131, 1141 (9th Cir. 1986), quoting *Hensley*, 461 U.S. at 435. In *Finkelstein v. Bergna*, 804 F. Supp at 1237, the court found that the result obtained there could not possible be described as a partial or limited victory where the judgment obtained exceeded the defendant's final settlement offer by a factor of more than

three. The same formula applies here.

3. **THE LODESTAR REQUESTED IN REASONABLE.**

Attorneys' fees are properly awarded for all pre-and post-hearing work reasonably performed, including work to prepare and prosecute the fee application. *Davis v. City & County of San Francisco*, 976 F.2d 1536, 1544 (9th Cir. 1992) *reh'g en banc denied*, 984 F.2d 345 (1992).

To accomplish this goal, the EEOC Administrative Judge first computes the "lodestar" amount by multiplying the number of hours reasonably expended by each attorney and separately billed member of staff by the reasonable hourly rate for that person's services. *Gates v. Deukmajian*, 987 F.2d 1392, 1397 (9th Cir. 1993). In calculating the reasonable lodestar figure, the EEOC Administrative Judge may account for such factors as the undesirability of the case and preclusion of other employment. *Id.* at 1402. The Administrative Judge must determine a "lodestar" or reasonable hourly rate, based on "prevailing market rates in the relevant community" for attorneys of similar experience in similar cases.

1. **The Number of Hours Claimed Is Reasonable**

Complainant seeks compensation for a total of 322.65 attorney hours, plus costs of \$1,302.09. The total lodestar fee is \$ 98,433.59, including hours and costs, through January 7, 2001. The nature of work performed by plaintiff's counsel is documented in Exhibit 1, an invoice

from computerized contemporaneous time and costs records, which are described in the Declarations of Mary Dryovage and Mary Leichliter, filed herewith. The time records reflect billing practices on a minimum of one tenth of the hour. Declarations of Mary Dryovage and Mary Leichliter.

Plaintiff's counsel is not required to record in great detail how each minute was expended. *Hensley*, 461 U.S. 15 437, n. 12. However, counsel should identify the general subject matter of time expenditures. *Id.* See also, *Davis*, 976 F.2d 1536. The detailed records of counsel for plaintiff more than satisfy this specificity standard set forth by the Supreme Court and EEOC regulations.

As reflected in counsel's time records, preparation of this case required a tremendous commitment of time, talent and resources to prepare the case for hearing. Successful litigation of retaliation claims by necessity requires vigorous legal advocacy and skilled trial presentation as described in the Declarations of Mary Dryovage and Mary Leichliter. Quick and equitable resolution of this case was made impossible by the agency's refusal to consider a fair settlement before the hearing and its refusal to make a reasonable offer during the hearing. Declaration of Mary Dryovage. Complainant's counsel had every incentive to litigate as efficiently and effectively as possible and no incentive whatsoever to over litigate or "churn" the file. Taking into account the volume of work required to prevail against the agency, complainant's attorneys' hours are demonstrably reasonable.

In preparing this motion, counsel for Dr. Anderson reviewed the records and deleted all arguably duplicative or unnecessary hours from the invoice. In the course of maintaining contemporaneous billing records, the computerized records are reviewed and billing judgment is exercised, so that approximately 30% of the hours expended were eliminated from this fee motion. Complainant is requesting a reasonable amount for attorneys' fees and costs which reflect work

and expenses that were necessary for litigation. The reasonableness of complainant's requests is supported by the fact that complainant made concerted efforts to minimize costs where possible. See Declarations of Mary Dryovage and Mary Leichliter.

B. The Hourly Rates Plaintiff Requests Are Reasonable.

Reasonable fees are generally calculated according to the prevailing market rates in the legal community of the forum. *Blum v. Stenson*, 465 U.S. 886, 895 (1984); *Gates v. Deukmejian* (9th Cir. 1992) 987 F.2d 1392, 1405. The Declarations filed herewith establish that the rates requested are in accord with the prevailing rates for firms specializing in employment litigation and are reasonable, in light of the reputation and skills of the attorneys. See Declarations of Mary Dryovage, Declaration of Mary M. Leichliter, Declaration of Brad Yamauchi, Declaration of Edward Passman, Declaration of Marilyn Mika Spencer, Declaration of William Smith, Declaration of Diane Ritchie, Declaration of Richard M. Pearl, Declaration of Daniel Boone, and Declaration of Donna Miae Ryu.

Mary Dryovage is lead counsel on this complaint. Declaration of Mary Dryovage. She is the principal in the Law Offices of Mary Dryovage, since 1984. She graduated from Wayne State University Law School in 1978 and was admitted to the State Bar of Michigan in 1979 and the State Bar of California in 1984. Martindate Hubbell rates her firm "AV". Her hourly rates have been determined to be reasonable in a number of decision, including *Tolliver v. DeNiro*, 790 F.2d 1394, 40 FEP Cases 1647 (9th Cir. 1986); *United States Department of Agriculture et al v. Scott*, Ninth Cir. No. 87-1518, Eastern District of California, No. S-85-1354-EJG (1986); *Waters v. U.S. Small Business Administration Office of the Inspector General*, MSPB Case No. SFO432920403-I-1; *AFGE Local 51 et al v. Secretary of the Treasury*, C-85-9196-SC, 40 FEP Cases 394, 40 EPD 3681 [preliminary injunction], 677 F.Supp. 636 (N.D. Cal 1987) [compliance], 1992 U.S. Dist.

LEXIS 990 (N.D. Cal 1992) [final order]; *Crawford v. Department of Treasury*, 94 F.M.S.R. 5050 (1994) *Marreno v. Jesse Brown, Secretary, Department of Veterans Affairs*, EEOC OFO Appeal No. 01943104. Declaration of Mary Dryovage. She had primary responsibility for the initial consultation with Dr. Anderson on February 17, 1999, acceptance of the case, preparation of the witness list, prehearing conference, discovery, hearing preparation, cross-examination of agency witnesses, preparation of the fee motion and supervision of all work on the case by co-counsel. Her billing rate for 1999 was \$360.00 and her billing rate for 2000 was \$365.00.

Mary M. Leichliter is a 1992 graduate of University of Michigan Law School. Declaration of Mary M. Leichliter. She was admitted to the State Bar of California in 1994. Ms. Leichliter represented unions and employees as an associate at VanBourg, Weinberg, Roger & Rosenfeld from 1994 - 2000. In 1998, she received attorney fees of approximately \$200.00 in a settlement agreement in *Flores v. Contra Costa County*, U.S. D. C. No. 98-04139. She joined the Law Offices of Mary Dryovage as “of counsel” and began working as co-counsel on this case on May 1, 2000, shortly before the hearing in mid-June. Ms. Leichliter had primary responsibility to the pre- and post hearing brief, preparation of most of Complainant’s witnesses, as well as legal research duties. Her hourly rate for work performed in 2000 is \$250.00.

Ann Maley is a 1994 graduate of Golden Gate University, San Francisco, California. During law school, she was the recipient of the Phillip Burton Scholarship in 1993 and received a certificate of Labor and Employment Specialization, with honors. She was also a judicial extern to the California Supreme Court from June 1994 to August 1994. Ms. Maley was admitted to the California Bar in 1995. Ann Maley assisted in review of the documents provided by Dr. Anderson, legal research, writing briefs, preparing legal memoranda and attending the prehearing conference. Her hourly rate for

work performed in 2000 is \$225.00.

1. Hourly Rates for 2000 Appropriate for All Work Performed.

Complainant seeks compensation for the successful work in this case at 2000 hourly rates, although Ms. Dryovage was retained in 1999. See Declaration of Mary Dryovage. MD 110 authorized EEOC Administrative Judges to adjust the lodestar to compensate for delay in payment, particularly where the delay is caused by the agency. See MD 110, Ch 11-7. The use of current 2000 rates on all fees is appropriate as a means of compensating for delay in payment.

Pennsylvania v. Delaware Valley Citizens' Council, 483 U.S. 711 (1987); *Missouri v. Jenkins*, (1989) 491 U.S. 274, 283-84; *Bouman v. Black* (9th Cir. 940 F.2d 1211, 1235, *cert denied* (1991) 502 U.S. 1005. Complainant is also asking for \$365.00 per hour for all work performed by Mary Dryovage, \$250.00 per hour for Mary M. Leichter's legal services, and \$225.00 per hour for Ann Maley legal services.

Complainant's attorneys' rates are reasonable as measured by the rates charged by attorneys of comparable experience, skill, expertise and reputation in the San Francisco Bay Area. In support of this application for fees and costs, Complainant has provided several declarations of attorneys from Northern California, Central California, Southern California and Washington D.C. that establish that Complainant's counsels' rates are reasonable and well within the prevailing hourly rates billed by attorneys of comparable skills, talent and experience. See Declarations of Mary Dryovage, Declaration of Mary M. Leichter, Declaration of Brad Yamauchi, Declaration of Edward Passman, Declaration of Marilyn Mika Spencer, Declaration of William Smith, Declaration of Daniel Boone, Declaration of Richard M. Pearl, Declaration of Diane Ritchie and

Declaration of Donna Miae Ryu. Moreover, Ms. Dryovage's hourly rate is further supported by her superior reputation as a skilled practitioner and authority in the areas of federal employment law and federal procedure. See Declarations of Mary Dryovage, Declaration of Brad Yamauchi, Declaration of Edward Passman, Declaration of Marilyn Mika Spencer, Declaration of William Smith, Declaration of Diane Ritchie. Accordingly, Complainant's counsels' rates are reasonable.

In support of the hourly rates requested, Complainant submits the declarations of Brad Yamauchi, Edward Passman, Declaration of Marilyn Mika Spencer, William Smith, Daniel Boone, Richard M. Pearl, Diane Ritchie and Donna Miae Ryu. They provide their background and knowledge of the experience and skills of counsel for Complainant and additional reasons why the rates charged in this complaint are reasonable.

Brad Yamauchi, who practices employment and labor law with an emphasis in representing federal employees, was awarded his 1998 hourly of \$350.00 per hour by U.S. District Court Judge Wilken in *Ramirez v. Runyon*, No. C-97-2983, issued August 9, 1999 and U.S. Magistrate Judge Joseph C. Spero found his rate of \$350.00 to be reasonable in *Chaid v. Glickman*, NO. C-98-01004 WHO (JCS). See Declaration of Brad Yamauchi. Edward Passman received hourly rates of \$295.00 from the Department of the Interior in *Indian Educators Federation, AFT/AFL-CIO and the Bureau of Indian Affairs*, FMCS Case No. 98-10388 (2000) and \$295.00 per hour in *John Middleton v. Secretary of Defense*, MSPB Case No. DC-0752-97-0905-M-2 and *Farah Nouravarsani v. Department of Health and Human Services*, MSPB Case No. DC-0432-00-0331-I-1. See Declaration of Edward Passman.

Richard M. Pearl, a well-know expert in attorney fee litigation testified about his extensive study of the hourly rates of attorneys in the San Francisco Bay Area as an expert witness and litigator in numerous cases and appeals. Donna Ritchie, Marilyn Mika Spencer, William Smith,

and Donna Miae Ryu similarly provide their extensive background and experience representing Title VII plaintiffs. Based on their personal and professional knowledge of the expertise and reputation of Mary Dryovage, they testified that Ms. Dryovage's hourly of \$365.00 is reasonable.

W. Daniel Boone is a partner in VanBourg, Weinberg, Roger & Rosenfeld who supervised Ms. Leichliter during her five years as an associate attorney. He details Ms. Leichliter's high level of skill and success in litigating labor arbitrations, administrative proceedings and state and federal court cases, including a \$1.5 million jury award in *Betts v. United Airlines, Inc.* U.S.D.C. Civ. 97-4329-CW, No. 99-16773 (9th Cir. Nov. 21, 2000). He testified that \$250.00 per hour for work done in 2000 is reasonable, based on his personal experience. Donna Miae Ryu, Associate Director of Golden Gate University School of Law Women's Employment Rights Clinic, testified that she supervised Ms. Leichliter when she worked at the Saperstein firm during 1992 and found her work to be of the highest quality. One of the projects involved Ms. Leichliter's drafting the complaint against the Denny's restaurant chain, which resulted in nationwide changed in the employment practices of that entity. It is her opinion that Ms. Leichliter's hourly rate of \$250.00 is reasonable. Richard M. Pearl testified that the hourly rate of \$250.00 for worked performed by Ms. Leichliter is reasonable and in line with hourly rates in the San Francisco Bay Area.

Full evidentiary support for the requested rates, including the backgrounds and experience of Complainant's counsel, are set forth in detail in the supporting declarations of Mary Dryovage and Mary M. Leichliter, filed herewith.

A. COMPLAINANT IS ENTITLED TO RECOVER ALL HER OUT-OF-POCKET LITIGATION EXPENSES

Complainant respectfully requests that the Court award all costs to Complainant in the amount of \$1,341.09, as set forth in Exhibit 1. A prevailing complainant is entitled to recover her non-statutory, out-of-pocket litigation costs incurred in litigating this action. *Davis*, 976 F.2d at

1556. Costs include those costs authorized by 28 U.S. C. 1920. §1614.501(e)(2)(ii)(C). These include those expenses which are billed in the normal course of providing representation to a fee-paying client, such as transcripts, legal research, photocopying and postage. *Id.* see *Missouri v. Jenkins*, 491 U.S. 274, 285 (1989).

IV. CONCLUSION

For the reasons set forth above, Complainant requests that attorney's fees in the amount of **\$98,433.59**, including \$46,249.15 for the 153.15 attorney hours performed by Mary Dryovage at \$365.00 per hour, \$35,687.50 for the 142.25 attorney hours performed by Mary M. Leichliter at \$250.00 per hour, \$6,018.75 for the 26.75 attorney hours performed by Ann Maley at \$225.00 per hour and costs in the amount of \$1, 302.09, be awarded for the successful prosecution of this complaint.

The total amount of attorneys fees requested is:

| Attorney | Rate | Hours | Amount of Fees |
|--------------------|-------------|--------------|-----------------------|
| Mary Dryovge | 365.00 | 153.15 | \$ 55,425.25 |
| Mary M. Leichliter | 250.00 | 142.75 | \$ 35,687.50 |
| Ann Maley | 225.00 | 26.75 | \$ 6,018.75 |
| TOTAL | | | \$ 97,131.50 |

The costs incurred, prior to today, are:

| COST | AMOUNT |
|-------------|---------------|
| | |

| | |
|-----------------------|--------------------|
| Postage | \$ 32.54 |
| Medical Records | \$ 20.80 |
| Mileage | \$ 60.00 |
| Copying | \$ 147.75 |
| Deposition transcript | \$ 608.00 |
| Lexis research | \$ 400.00 |
| Messenger | \$ 72.00 |
| TOTAL | \$ 1,341.09 |

DATED: January 7, 2001

Respectfully submitted,

MARY DRYOVAGE

MARY M. LEICHLITER

Attorneys for Complainant

Linda Davis Anderson, Ph.D.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SAN FRANCISCO REGIONAL OFFICE

| | | |
|-----------------------------|---|-------------------------------|
| LINDA DAVIS ANDERSON, Ph.D. |) | EEOC No. 370-99-X2040 |
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| Complainant, |) | Agency No. WGS-95-031 |
| |) | |
| vs. |) | CERTIFICATE OF SERVICE |
| |) | |
| U.S. GEOLOGICAL SURVEY, |) | |
| DEPARTMENT OF THE INTERIOR, |) | |
| |) | |
| Agency. |) | |
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I am a citizen of the United States and have an office in the County of San Francisco; I am over the age of eighteen years and not a party to the above-entitled action; my business address is 1231 Market Street, Penthouse West, San Francisco, CA 94103, Tel. (415) 487-2644; Fax (415) 487-2646.

On January 16, 2003, I served the within

COMPLAINANT’S MOTION FOR REASONABLE ATTORNEYS FEES AND COSTS

DECLARATION OF MARY DRYOVAGE IN SUPPORT OF COMPLAINANT’S MOTION FOR REASONABLE ATTORNEYS FEES AND COSTS

DECLARATION OF MARY M. LEICHLITER IN SUPPORT OF COMPLAINANT’S MOTION FOR REASONABLE ATTORNEYS FEES AND COSTS

DECLARATION OF BRAD YAMAUCHI IN SUPPORT OF COMPLAINANT’S MOTION FOR REASONABLE ATTORNEYS FEES AND COSTS

DECLARATION OF MARYLYNN MIKA SPENCER IN SUPPORT OF COMPLAINANT’S MOTION FOR REASONABLE ATTORNEYS FEES AND COSTS

DECLARATION OF WILLIAM SMITH IN SUPPORT OF COMPLAINANT’S MOTION FOR REASONABLE ATTORNEYS FEES AND COSTS

DECLARATION OF EDWARD PASSMAN IN SUPPORT OF COMPLAINANT’S

**MOTION FOR REASONABLE ATTORNEYS FEES AND COSTS
DECLARATION OF DIANE RITCHIE IN SUPPORT OF COMPLAINANT'S MOTION
FOR REASONABLE ATTORNEYS FEES AND COSTS**

**DECLARATION OF RICHARD PEARL IN SUPPORT OF COMPLAINANT'S MOTION
FOR REASONABLE ATTORNEYS FEES AND COSTS**

**DECLARATION OF W. DANIEL BOONE IN SUPPORT OF COMPLAINANT'S
MOTION FOR REASONABLE ATTORNEYS FEES AND COSTS**

**DECLARATION OF DONNA MIAE RYU IN SUPPORT OF COMPLAINANT'S MOTION
FOR REASONABLE ATTORNEYS FEES AND COSTS**

INDEX OF DECLARATIONS AND EXHIBITS

on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage fully prepaid in the United States mail at San Francisco, California, addressed as follows:

Karen D. Glasgow
Department of the Interior
Office of the Solicitor
San Francisco Field Office
600 Harrison Street, Suite 545
San Francisco, CA 94107

via fax (415)744-4122

I declare under penalty of perjury that the foregoing is true and correct and was executed on January 16, 2003 at San Francisco, California.

INDEX OF DECLARATIONS AND EXHIBITS

- EXHIBIT 1 INVOICE FOR PROFESSIONAL SERVICES, JANUARY 8, 2001
- EXHIBIT 2 INVOICE FOR MEDICAL RECORD COPIES, APRIL 24, 2000
- EXHIBIT 3 INVOICE FOR DEPOSITION TRANSCRIPT, APRIL 3, 2000
- EXHIBIT 4 INVOICE FOR DELIVERY OF PREHEARING EXHIBITS, JUNE 9, 2000
- EXHIBIT 5 LAFFEY MATRIX, 1996 - 2001
- TAB 6 DECLARATION OF MARY DRYOVAGE IN SUPPORT OF
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