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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVID P. ADAM, LANFORD H. ADAMI, JAMES  
P. CALZIA, BELA CSEJTEY, JR., ALICE S. DAVIS,  
JAMES L. DRINKWATER, ARTHUR B. FORD,  
ARTHUR GRANTZ, BARRY F. HIRSHORN, H.  
MAHADEVA IYER, CHI-YU KING, STEPHEN L.  
LEWIS, ALLAN G. LINDH, DENNIS M. MANN, A.  
THOMAS OVENSINE, BRENT D. TURRIN,  
CHESTER T. WRUCKE, *et al.*,

Plaintiffs,

v.

BRUCE BABBITT, SECRETARY,  
U.S. DEPARTMENT OF THE INTERIOR,

Defendant.

NO. C98-02094 FMS

**FIRST AMENDED COMPLAINT  
CLASS ACTION AND INDIVIDUAL  
EMPLOYMENT DISCRIMINATION/  
CIVIL RIGHTS COMPLAINT**

AGE DISCRIMINATION IN EMPLOYMENT ACT,  
TITLE VII OF THE CIVIL RIGHTS ACT, FAIR  
LABOR STANDARDS ACT, AND CIVIL SERVICE  
REFORM ACT

JURY DEMANDED

I.

**NATURE OF THE ACTION**

1. This is a proceeding for declaratory and injunctive relief against defendant BRUCE BABBITT, Secretary of the U.S. Department of Interior, his predecessors, successors, agents, servants, officers, and employees, to redress the deprivation of rights secured to the plaintiffs by the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.* (ADEA); Title VII of the Civil Rights Act of 1964; 42 U.S.C. Section 2000e *et seq.*, as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991) (Title VII); Fair Labor Standards Act of 1938, 29 USC 216(b), Section 16(b)(FLSA); and the Civil Service Reform

Act of 1978, 5 U.S.C. 1201 *et seq.* (CSRA) arising from the illegal purge of over 500 scientists, refusal to reemploy them under federal regulations and the continuing harassment of employees who support their efforts to obtain reinstatement.

2. Plaintiffs seek a declaratory judgment and injunction to restrain defendant employers from committing prohibited personnel practices, policies, customs and usages, from discriminating and retaliating against plaintiffs and members of the classes that they represent because of their age, and/or their age plus sex, national origin, status as a veteran or their opposition to unlawful discrimination and retaliation. Plaintiffs seek injunctive relief requiring defendant employer to take affirmative and effective steps to remove and otherwise discipline managers who have failed to comply with the ADEA, FLSA, Title VII, and CSRA. Plaintiffs seek injunctive relief requiring the defendant employer to take specific actions designed, implemented and confirmed by qualified non-government consultants to ensure that all supervisory employees are adequately trained to identify, investigate and stop situations and complaints. Such specific actions, include, but are not limited to:
  - a. Allocation of significant funding and trained staff to implement all changes within two years;
  - b. removal or demotion of all managers who have violated the agency's policies and failed to meet their legal responsibility to promptly investigate complaints or to take effective action to stop and deter prohibited personnel practices against employees;
  - c. establishing and strictly measuring EEO compliance as a critical element in every manager's performance standards;
  - d. creating a process for the prompt investigation of harassment and reprisal complaints separate from the agency's process;
  - e. mandatory and effective training for all employees and managers on discrimination and retaliation issues, investigations and appropriate corrective actions; and
  - f. eliminating the backlog of current MSPB and EEO cases alleging discrimination, harassment and reprisal.

## II.

### JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1331, 1337, 1343, 1345 and 2401(a). This COMPLAINT - CLASS ACTION PAGE 2

is an action authorized and instituted pursuant to 5 U.S.C. Section 7703 of the Civil Service Reform Act, as amended and the Age Discrimination in Employment Act, as amended, 29 U.S.C. 633a(c ) which grant district courts jurisdiction over actions alleging unlawful and discriminatory employment practices by federal agencies and provides for judicial review of cases involving age, sex and national origin discrimination. The unlawful practices alleged in this complaint occurred at the USGS, County of San Mateo, which is situated in the Northern District of California, San Jose Division.

### **III.**

#### **PLAINTIFFS**

1. Plaintiffs bring this action pursuant to Rule 23(a) and (b)2 of the Federal Rules of Civil Procedure and Section 16(b) of the Fair Labor Standards Act, 29 USC 216(b) on their own behalf and on behalf of all other persons similarly situated. The members of the classes are:
  - a. All past, current and prospective employees of the defendant who are over age 40 and have been, are, or will be subjected to prohibited personnel practices by the U.S. Geological Survey.
  - b. All past, current and prospective employees of the defendant who have complained about or objected to defendant's unlawful harassment and discrimination at the U.S. Geological Survey and have been, are, or will be subjected to prohibited personnel practices by the U.S. Geological Survey.
  - c. The members of these classes, which have at least 1000 members, are too numerous to be joined.
2. The questions of law common to and typical of the above described classes are whether or not the defendant used unlawful policies and practices by conducted an illegal reduction in force which discriminated against employees based on their age, sex, national origin/race, veterans status or retaliated against them and failed to properly respond to complaints and other denials of rights, benefits and privileges of their employment which deprives the members of these classes of civil rights secured to them by the laws of the United States. The classes and subclasses were directly denied rights due to defendants' policies and practices denying plaintiffs prompt investigations and effective actions to stop and deter prohibited personnel actions. These policies and practices of the defendants had and continue to have a direct adverse impact on the classes and subclasses and contributes to the continuing unlawful treatment of them.
3. Defendant has acted or refused to act, on grounds generally applicable to the classes, thereby making

appropriate injunctive and declaratory relief with respect to the classes as a whole.

**IV.**

**PARTIES**

1. The named plaintiffs are:
  - a. Plaintiff DAVID P. ADAM (“ADAM”) was employed by defendant at the U.S. Geological Survey in Menlo Park, California, which is in the County of San Mateo, California until October 15, 1995.
  - b. Plaintiff LANFORD H. ADAMI (“ADAMI”) was employed by defendant at the U.S. Geological Survey in Menlo Park, California, which is in the County of San Mateo, California until October 15, 1995.
  - c. Plaintiff JAMES P. CALZIA (“CALZIA”) was employed by defendant at the U.S. Geological Survey in Menlo Park, California, which is in the County of San Mateo, California until the present.
  - d. Plaintiff BELA CSEJTEY, JR. (“CSEJTEY”) was employed by defendant at the U.S. Geological Survey in Menlo Park, California, which is in the County of San Mateo, California until October 15, 1995.
  - e. Plaintiff ALICE S. DAVIS (“DAVIS”) was employed by defendant at the U.S. Geological Survey in Menlo Park, California, which is in the County of San Mateo, California until October 15, 1995.
  - f. Plaintiff JAMES L. DRINKWATER (“DRINKWATER”) was employed by defendant at the U.S. Geological Survey in Menlo Park, California, which is in the County of San Mateo, California until October 15, 1995.
  - g. Plaintiff ARTHUR B. FORD (“FORD”) was employed by defendant at the U.S. Geological Survey in Menlo Park, California, which is in the County of San Mateo, California until October 15, 1995.
  - h. Plaintiff ARTHUR GRANTZ (“GRANTZ”) was employed by defendant at the U.S. Geological Survey in Menlo Park, California, which is in the County of San Mateo, California until October 15, 1995.
  - i. Plaintiff BARRY F. HIRSHORN (“HIRSHORN”) was employed by defendant at the U.S. Geological Survey in Menlo Park, California, which is in the County of San Mateo, California until October 15, 1995.

- j. Plaintiff H. MAHADEMA IYER (“IYER”) was employed by defendant at the U.S. Geological Survey in Menlo Park, California, which is in the County of San Mateo, California until October 15, 1995.
  - k. Plaintiff CHI YU KING (“KING”) was employed by defendant at the U.S. Geological Survey in Menlo Park, California, which is in the County of San Mateo, California until October 15, 1995.
  - l. Plaintiff STEPHEN L. LEWIS (“LEWIS”) was employed by defendant at the U.S. Geological Survey in Menlo Park, California, which is in the County of San Mateo, California until October 15, 1995.
  - m. Plaintiff ALLAN G. LINDH (“LINDH”) was employed by defendant at the U.S. Geological Survey in Menlo Park, California, which is in the County of San Mateo, California until October 15, 1995.
  - n. Plaintiff DENNIS M. MANN (“MANN”) was employed by defendant at the U.S. Geological Survey in Menlo Park, California, which is in the County of San Mateo, California until the present.
  - o. Plaintiff A. THOMAS OVENS HINE (“OVENS HINE”) was employed by defendant at the U.S. Geological Survey in Menlo Park, California, which is in the County of San Mateo, California until October 15, 1995.
  - p. Plaintiff BRENT D. TURRIN (“TURRIN”) was employed by defendant at the U.S. Geological Survey in Menlo Park, California, which is in the County of San Mateo, California until October 15, 1995.
  - q. Plaintiff CHESTER T. WRUCKE (“WRUCKE”) was employed by defendant at the U.S. Geological Survey in Menlo Park, California, which is in the County of San Mateo, California until October 15, 1995.
2. Defendant BRUCE BABBITT, Secretary of the U.S. Department of the Interior is the head of an executive agency within the meaning of the ADEA, as amended. As such, defendant has the full responsibility for administration of all programs within the agency, including the employment policies and practices of the Department of Interior in all regions and is in a position to create and implement a policy to eliminate and prevent any form of discrimination and retaliation and to provide complete relief for plaintiff. Defendant is sued in his official capacity.

V.

**EXHAUSTION OF REMEDIES**

1. Plaintiffs each filed a timely “mixed case” appeal to the U.S. Merit System Protection Board on or about

November 10, 1995, the first Initial Decision was issued on March 20, 1998, which became final on April 24, 1998. Their positions were part of the 500+ positions eliminated by the USGS on October 14, 1995. They exhausted their administrative remedies by participating in a protracted administrative hearing, which began on December 2, 1996. The record was closed on November 14, 1997. The first of the Initial Decisions became final on April 24, 1998; the initial decisions for James P. Calzia, James Drinkwater, Barry Hirshorn and Brent Turrin became final on September 21, 1998; the initial decision for Joel R. Bergquist became final on November 30, 1998; the initial decision for Allan G. Lindh became final on December 7, 1998. Landford H. Adami and Alice S. Davis filed a timely petition for review before the MSPB and there has been no decision within 120 days. Each of the named plaintiffs are expressly authorized to bring this action by 5 U.S.C. Section 7703(a)(2) of the Civil Service Reform Act, 29 U.S.C. Section 633a(c) of the Age Discrimination in Employment Act of 1967, Section 16(b) of the Fair Labor Standards Act of 1938, 29 U.S.C. 216(b), and Section 717(c) of Title VII, 42 U.S.C. Section 2000e-16(c) of the Civil Rights Act of 1964 and 5 C.F.R. 1614.310. Pursuant to 29 U.S.C. 791, this Court has jurisdiction over plaintiffs' claims.

## **VI.**

### **STATEMENT OF CLASS CLAIMS**

1. Plaintiffs allege that defendant maintains policies and a pattern and practice of targeting, discrimination and retaliation. These policies and practices include, but are not limited to:
  - a. Mass use of "unique competitive level codes" to abrogate Round I of RIF;
  - b. "Subject Matter Experts" were instructed by the Personnel Office to destroy all notes of meetings in Round I and Round II;
  - c. "Add back" lists used to save over 100 specific people or new vacant positions;
  - d. Position Descriptions modified to prevent legitimate bumps and retreats;
  - e. Involvement of Branch Chiefs who had the power veto decisions made at every level of the RIF, including staffing plans, position descriptions CLCs, and bump and retreat determinations.
  - f. Staffing plans which conflict with the Five Year Science Plans and eliminate the people who are assigned as Project Chiefs for key projects.
  - g. Allowing managers to use their authority to retaliate with impunity against older employees, women,

minority groups members, environmental whistleblowers, employees who have filed complaints, served as witnesses in co-worker grievance procedures, or reported potential illegal conduct through proper channels.

- h. Filling positions without complying with the obligation to reemploy plaintiffs who were separated in the RIF.
2. As evidence of defendant's policies and their pattern and practice of discrimination and retaliation, plaintiff's alleged the following:
  3. Defendant violated 5 C.F.R. 351.201(c), which requires each agency to be responsible for assuring that the RIF regulations are uniformly and consistently applied in any one reduction in force.
  4. From the beginning of his incumbency as Director of the U.S. Geological Survey in early 1994, Gordon Eaton let it be known in talks to employee assemblies and in private conversations that it was time for older employees of the Geologic Division to retire.
  5. Dr. Eaton admitted that he made jokes about **getting rid of the dinosaurs**. In his first speech in Denver, Dr. Eaton said:

The transition team, as those of you who may have spoken with it, was by and large of the next generation behind Dallas [Peck] and me. A bright-eyed eager, intensely intelligent, intensely concerned about the future. They fanned out at some stage in this process as small teams and they visited in a number of different places and along the way they heard some things from members of the Geologic Division which sounded to them like intransigency and an unwillingness to change even an unwillingness in fact to embrace it, and while that clearly is not true for the whole Geologic Division I would have to argue that some of the people that I know and love the most that are of my generation within the organization may have been the very ones that said the things that lead them to pose the question "**What is the difference between Jurassic Park and the Geologic Division in the Geological Survey?**" And you've probably heard the answer. The answer is "**One is an amusement park filled with dinosaurs and the other is a movie.**" **So! Those of you in my generation in the Geologic Division, take that!**" [Stipulated by USGS Counsel]

1. Dr. Eaton subsequently testified under oath that these "dinosaur jokes" were **not aimed at older employees**, just "people who would not change". This explanation is a well-recognized surrogate for invalid stereotyping of "older employees".
2. The USGS Notice to all employees in the Geologic Division announcing "Briefings on General Reduction in Force, March 23, 1995 contained a Gary Larson cartoon ridiculing older workers. Exhibit Y-64B. It featured

the caption “You gotta help me, Mom . . . This assignment is due tomorrow, and Gramps doesn’t understand the new tricks.” This flier was posted at the USGS facilities in Menlo Park and Deer Creek by the agency. John Filson, Acting Chief Geologist, Judy George and Sandy Sherman of the Office of Personnel were the advertised speakers. The topic: to brief employees and answer their questions about the coming reduction in force!

3. The ground rules for the RIF issued by Chief Geologist Patrick Leahy explicitly included his knowledge that if employees were allowed to bump within their tenure group and subgroup, “many of the younger, more recently trained staff would be lost”. See Agency File, Tab 4(1), June 19, 1995 memorandum from P. Patrick Leahy. The agency decided as a matter of policy to not allow bumping within tenure groups and subgroups because “the remaining staff would include most of our highly experienced senior scientists”.
4. Defendant’s rebuttal statistical expert, Dr. Samaranayake admitted that USGS statistical expert Ms. Wallace’s “bell curve” analysis was amateurish and “hid age discrimination”. When asked whether the statistics showed “age discrimination” and he testified that “if there was age discrimination, it would look like this.”
5. An analysis of the USGS RIF by Dr. Paul Switzer, Professor of Statistics at Stanford University, using both his own methodology and the "logistic regression" analysis used by Defendant’s expert, Dr. V.A. Samaranayake, showed that the statistical correlation between age and the probability of being RIFed is "as plain as the nose on one's face" (Declaration of Dr. Switzer of October 08, 1997). For All Permanent Staff of the Geologic Division the p-value for Age is 6/10,000, a statistically significant value. For the Permanent Professional Staff of the Geologic Division the p-value is less than 1/1,000,000, also a statistically significant value.
6. At a lower organizational level, discrimination against older workers in the Office of Mineral Resources is shown by the fact that, without exception, all professional employees born before 1937 were RIFed in both its Branches of Alaskan Geology and Western Mineral Resources. There are also many instances where older workers were separated by the RIF on the grounds that their positions were not on the new Staffing Plan, yet the same work was continued after the RIF by younger workers.
7. The majority of employees who were RIF’d were replaced by one or more employees who were younger than they and had lower ASCDs.

**A. Bogus Claims of a Funding Shortage**

1. Defendant sought to justify the RIF by claiming there was a “shortage of funds”. Chief Geologist Ben Morgan prepared a memo to USGS Director Eaton on March 15, 1994 which stated that the agency needed to convert the salaries of 379 positions to operating funds, in order to deal with a potential shortage of funds. See Agency Exhibit 1 and Agency File Tab 4w.
2. When the initial RIF was proposed, Acting Chief Geologist Filson estimated that it could be avoided only if the staff was reduced by 200 to 300 positions.
3. By March 31, 1995, the agency had conducted three buyouts and exceeded this goal by getting 405 employees to accept retirement.
4. In early 1995, defendant was negotiating with Congress for funding. The funding shortage of \$40 million evaporated when Congress informed defendant it would give full funding minus (-)1% to the Geologic Division of the USGS in late June or early July 1995. After the FY 96 funding was received, the Working Capital Fund was expanded in FY 1996 and \$6,117,925.14 was diverted to Geology Publications for expenditure in future years. [See Pectol rebuttal testimony and Agency Ex. 65] The Department of Interior USGS Working Capital Fund budget for FY 96 showed \$10,036,000.00 was allocated to future salaries and benefits for full time employees (FTEs).
5. The “Justification for Change” contained in the plans to reorganize the USGS Geologic Division directly conflicts with the elimination of Appellants’ positions. (See Appellants’ Exhibit Y-4, 1-2.) The agency claimed “[t]he new organizational structure is designed to:
  - a. establish centralized program development and regionalized program implementation and management.
  - b. facilitate streamlining of management and administrative functions.
  - c. promote improved linkages to the customer base and enhance customer service.
  - d. stimulate the development of partnerships and outreach.
  - e. enhance coordination and shared decision making.
  - f. promote leadership and effective staff management.
  - g. assure cost-effective operations and fiscal accountability.
  - h. allow flexibility for future program growth and change.

- i. facilitate the planning and production of high-quality and timely scientific reports, maps, and data, and
  - j. provide an environment for creative scientific inquiry by enhancing interdisciplinary efforts.
6. The evidence shows that these goals were obstructed by the manner in which the RIF was done and each of the Appellants would have been staffed if USGS implemented these principles.
7. When it became apparent in June 1995 that the feared budget cuts were not actually going to happen, and that the buyouts had produced the needed staff reductions already, the RIF had already become unstoppable. In the words of David Oppenheimer, “this organization was going to get **one chance to clean house** and this was the time to do it”. (See Agency Exhibit 33.3(DHO-B), Oppenheimer e-mail, August 15, 1995)
8. USGS officials knew that **Congress restored forty million dollars for FY96** by early July 1995 and that the FY96 budget would be approximately 1% less than FY95. The plans to RIF between 400 - 600 people were based on (-)20% funding cut projection. When it became known that those cuts would not materialize, USGS went ahead and RIF’d people who were targeted.
9. At the end of FY 96, over \$800,000.00 was given in performance awards, special act awards and other monetary awards to employees (Exhibit 1-Y-3). Agency records show that over one third of the people received an award (545 people; 33.5%). Multiple awards were common (125 awards; 7.7%); Many multiple awards were closely spaced; Some individuals received up to 5 awards in FY96. Over one million dollars was passed out at the end of FY96 in performance awards in the USGS Geologic Division.
10. Millions of dollars of agency funds were allocated to contracts for equipment and/or services, but according to Defendant’s Budget Expert Ms. Pectol, none of the agency’s funds in FY96 were for contracting out of work done by USGS personnel.

B. **Managers were Permitted to Target Employees.**

1. Although the RIF was ostensibly under the Vice-President’s Reinvention of Government plan and was authorized for the purpose of eliminating managers position, of the eighty USGS managers, only one was separated.
2. USGS managers survived at such a high rate by
  - a. inserting scientific positions tailor-made by the managers for themselves into the staffing plans at the last minute when they could be sure there was no competition in their competitive level,

- b. vacating their management posts and assuming their scientific positions on June 11, 1995, and,
  - c. being immediately reappointed as "Acting" managers until after the RIF was completed. By this pretext, the Division continued to be managed by the same individuals as before even though on paper it had no managerial positions.
3. This practice deprived former managers (who were older than the managers retained) of retreat possibilities and constituted an unauthorized preference for the benefit of existing management. More than 26 former managers were separated, many of whom under unbiased circumstances would have been able to retreat to management positions. The managers were allowed to protect those individuals they wanted to save and target those individuals they wanted to get rid of.
4. Defendant used illegal practices extensively during the RIF which adversely affected member of protected groups, including but not limited to the following:
- a. Staffing of individuals whose position descriptions (PDs) did not match position descriptors;
  - b. Staffing plan position descriptors were tailored for individuals, deliberately omitting other individuals or leaving descriptors general to allow managerial selection of individuals for retention;
  - c. Coaching of individuals in writing PDs;
  - d. Protection of choices and omissions through management involvement in SME deliberations;
  - e. Making staffing plan changes without group consensus, i.e., informal telephone calls between managers to take employees off the staffing plan.
5. Branch Chiefs were part of the original SME teams and had veto authority over any potential bump or retreat. In the rare instance in which a match was found, the Branch Chief of that position was called in and allowed to block the bump or retreat.
6. For example, the Marine Program managers documented their efforts to manipulate the process in various e-mail messages between the Marine Branch Chiefs. They contain suggestions for strategies for protecting individuals, and manipulating the process: "I'm thinking about the best strategy for the RIF following the test RIF results. If we could place a few of the tenured support staff in the add-back plan [lists specific individuals], that would reduce the bumping considerably and they could do the needed jobs." Appellants' Exhibit 16-C-4, E-mail from Butman to Morton. "Since we could need to use this position to "catch" [specific individual], I listed

in as 13 rather than 14 and used series 1320." Appellants Exhibit E-10, E-mail from Morton to Butman. "I also suggest we add an additional vacancy to the keep list to catch [lists specific individuals], etc. in case they are bumped; these guys are critical." Also, "I have added the 3 term positions to the add back list that we changed on the keep list to contract [lists specific individuals] to the top of the add back list (they will not enter the salary target). We may be able to hire some of these folks for a year through WHOI". Appellants' Exhibit E-6, E-mail from Butman to Morton.

7. The "add back list" was used to create vacancies, which were selectively filled with people the managers wanted to "save", who had lower status in the RIF, lower ASCDs and were younger. The "add-back list" included people who had been bumped or retreated upon and many of those positions did not go through the Round II process.

**C. Managers were Saved from the RIF, Save One**

1. On June 2, 1995, Chief Geologist Leahy decided that managers were all to be staffed as scientists. The science positions were re-created (or invented) after Round I and the staffing plan process was completed.
2. Managers did not compete in Round I or Round II of the RIF procedures. Although they were placed in "scientist" positions, they were detailed to temporary manager positions and continued in their managerial role.
3. It was easy for current managers to write unique PDs which were on the staffing plan and bullet proofed in the bump and retreat process, since they controlled the staffing plan and no one questioned what tasks were put in PDs. The success of this procedure is clearly demonstrated by the fact that none of the existing managers were RIF'd [except for Dawn McGuire, Denver who had filed a sex discrimination complaint].

**D. Unique CLCs were used to eliminate Round I competition.**

1. Defendant was required by 5 C.F.R. 351.403(a)(1) to "establish competitive levels consisting of all positions in a competitive area which are in the same grade (or occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that an agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption."
2. 5 C.F.R. 351.403(a) (2) provides that "competitive level determinations are based on each employee's official position, not the employee's personal qualifications."

3. Defendant, through his agents, created illegal procedures in order to specify which individuals would be retained and which would be separated. Under the direction of John McGurk, who devised the RIF methodology, USGS managers implemented a system that would allow them to name who would be kept and who would be separated, by using Subject Matter Experts (SMEs) to create unique competitive level codes (CLCs) for use in the RIF. These illegal procedures revoked the Civil Service Reform Act protection for plaintiffs.
4. Defendant made virtually all (97.3%) competitive levels and retention registers contain only one scientist, created staffing plans that were mere lists of competitive levels chosen with specific individuals, rather than functions, in mind, and, prohibited "bumping" within tenure groups.
5. 5 C.F.R. 351.501(a) requires "competing employees shall be classified on a retention register on the basis of their tenure of employment, veteran preference, length of service, and performance."
6. The illegal procedure defendant used in conducting the RIF eliminated consideration of seniority, veteran preference, length of service and performance as factors in retention, and allowed USGS management to target older employees, including older female employees, older minority group member employees and older employees who had disclosed gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety.
7. Portraying scientists as very narrow in ability was a stance contrived just for the RIF. The USGS historically had hired scientists with broad backgrounds, gave them different assignments, and valued highly in promotion and performance the ability to work in and across many subdisciplines.
8. In order to justify the use of unique CLCs, defendant made the absurd claim that after a hundred years of assigning geologists to interdisciplinary teams around the world, suddenly, USGS scientists were narrow and hyper-specialized and that no one could possibly be assigned do anyone else's job.
9. Armed with a tool designed to separate individuals, USGS managers proceeded to remove older scientists, ex-managers, many veterans, whistleblowers, foreign-born workers and women scientists. Instances of retaliation are recognized in testimony as are attempts to deal with performance problems outside of the performance evaluation system.
10. Failure to develop proper competitive levels allowed targeting of individuals selected for release and

deprived plaintiffs of their substantive rights in First Round Competition.

11. Most of the employees who were RIF'd would not have been RIF'd but for the unique CLCs because their ASCD was superior to "essentially identical" Geologist positions that survived.
12. Defendant pioneered a hair splitting use of the concept of "essentially identical" which violates existing federal law and regulations. The USGS instructed both Round I and Round II SMEs that the essential identity of each positions was a "two-way street". If the PD of either the "retreater" or "retreatee" contained a single duty that was not in the comparison PD, it was determined to be not "essentially identical".
13. Matches (two employees in the same CLC) that the Round I SMEs found were uncoupled by USGS managers and placed in unique CLCs.
14. In their review of the CLC determinations, the USGS personnel office did not inquire whether the PD was accurate, such as whether the duties in question were current or actually done by the incumbent.
15. Some of the Branch Chiefs signed position descriptions which contained duties that were no longer being performed or contained information personal to the incumbent of the position. In some instances, the Branch Chief instructed employees to put in certain information in order to prevent other employees from being placed in the same CLC or from bumping or retreating into the position.
16. The Branch Chiefs were allowed to influence the CLC determinations, after the SMEs had completed their sham review of the position descriptions. The CLC determinations were completed in mid-May 1995.

E. **Agency SMEs were Instructed to Destroy Evidence**

1. Defendant violated 5 C.F.R. 351.505, which provides that "each agency shall preserve intact all registers and records relating to an employee for at least one year from the date the employee is issued a specific notice."
2. The Federal Records Act of 1950, as amended by the Federal Records Management Act Amendments of 1976, 44 U.S.C. 3101 requires the "head of each federal agency shall made and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.
3. Former USGS Director Eaton knew that the Federal Records Act and RIF Regulations require that all documents concerning decisions, such as the RIF determinations, be maintained. He received at least a half a

dozen letters notifying him that criminal conduct was occurring during the RIF procedure. He forwarded these personal letter to the Department of Interior's Personnel Office, who instructed him to take no action. Neither he nor anyone else at the USGS took steps to ensure that the records would not be destroyed.

4. Dean Anderson, the head of the Personnel Office in Menlo Park, ordered that the SMEs leave their notes in the meeting room where the decisions on CLCs were made in Round I and when bump and retreat were being made in Round II. Notes made and used by the Subject Matter Experts (SMEs) were destroyed by a shredder. Few records and no handwritten SME notes survived the process.
5. Appellants, while trying to find out why bumps and retreats were denied to them, discovered that many of the documents they needed to investigate the matter had been destroyed.
6. A memorandum by William Normark, then Assistant Chief Geologist for the Western Region and the ranking Geologic Division Official, dated September 29, 1995, states that "informal notes" taken by SMEs during evaluation panels "were destroyed at the end of each day."
7. Susan Murphy, Dean Anderson, and Catherine Balboni, all of the USGS Personnel Office, indicate SMEs were told to leave their notes in the meeting rooms and that at the end of the day someone from the Personnel Office would collect and destroy them. Robert Tilling, who was a leader of the Round I SME Panel, testified that notes were collected and destroyed.
8. A policy of gathering and destroying records of the deliberations that occurred in evaluating bumps and retreats was conceived, adopted, and carried out during the RIF. The systematic destruction of evidence was explained by some of the agency witnesses as justified, given the high stakes of the RIF. The defendant's efforts to cover-up the actual discussions in the Round II process was shown by the fact that new Subject Matter Experts were selected to reevaluate each of the Bump and Retreat claims by each Appellant and the original SMEs were not asked to testify about their deliberations, with rare exception.
9. Defendant, through his agents, violated plaintiffs' reemployment rights by failure to comply with the regulations, failure to notify plaintiffs of newly created vacant positions for which they are qualified, failure to consider them for positions which were filled since October 14, 1995, failure to interview them for positions for which they had applied and instituting policies and procedures designed to frustrate their efforts to secure their rights.

## VII.

### STATEMENT OF INDIVIDUAL CLAIMS

#### DAVID P. ADAM

1. Plaintiff DAVID P. ADAM is a member of a protected group based on his age (DOB 5/18/41). At the time of the RIF in 1995, he was the oldest Quaternary Palynologist in the USGS Geologic Division.
2. Three Quaternary Palynologists who were younger than plaintiff DAVID P. ADAM were retained and three vacant Pollen Preparation Technician positions were created in Denver and Reston shortly before the RIF.
3. Plaintiff DAVID P. ADAM was originally hired On June 20, 1971 by the USGS, to fill the position of Geologist.
4. Plaintiff DAVID P. ADAM is and has been qualified for his position at all times relevant herein and has received “Outstanding” and “Excellent” performance ratings during his career.
5. In 1995, Plaintiff DAVID P. ADAM was a Geologist GS -1350-14, who worked on the Global Change and Climate History Program.
6. Plaintiff DAVID P. ADAM opposed the unlawful treatment of a female employee, Connie Throckmorton by submitting a letter on her behalf in support of grievance.
7. Connie Throckmorton’s grievance concerning the discriminatory treatment she received from Dick Poore was decided in her favor in 1986.
8. The decision on the grievance cited Plaintiff DAVID P. ADAM’s letter as support for the finding that Dick Poore had unlawfully taken various actions, including failure to convert her to permanent status.
9. Dick Poore knew of DAVID P. ADAM’s protected activity since 1986 and continued to hold a grudge against him. Dick Poore’s ability to hold grudges and use his authority to retaliate against USGS employees was known to USGS managers, including Thomas Fouch, USGS Central Regional Geologist.
10. Dick Poore, Program Coordinator for the Global Change Program, decided to eliminate DAVID P. ADAM’s position from the staffing plan in 1995.
11. The Five Year Plan for the USGS Global Change Program lists Plaintiff’s core sites, including Tulare Lake, Klamath, Butte Valley, Owens Lake and Yukon Basin Cores and future studies at Upper Klamath Lake.

positions would be eliminated.

12. The USGS spent hundreds of thousands of dollars building a new positive pressure pollen extraction laboratory and refrigerated core storage in Menlo Park to plaintiff DAVID P. ADAM's specifications.
13. Before the lab was completed, plaintiff DAVID P. ADAM was RIF'd.
14. The Western Region (Menlo Park) is the only USGS Region with no Quaternary Palynologist on staff; there is no one to work in the new lab. The laboratory in Menlo Park has the only refrigerated core storage in the USGS Global Change and Climate History Program.
15. The Defendant, through his agents, by the creation of illegal practices and procedures described above, denied plaintiff DAVID P. ADAM of his right to bump and/or retreat into other positions.
16. The Defendant, through his agents, by the creation of illegal practices and procedures described above, denied plaintiff DAVID P. ADAM consideration for any of the newly created manager positions.
17. The Defendant, through his agents, by the creation of illegal practices and procedures described above, denied plaintiff DAVID P. ADAM consideration for any of the vacant positions which were filled after the RIF. The USGS failed to send him an acknowledgment that he had applied for positions and he was never contacted or interviewed for any vacant position.

#### **LANFORD ADAMI**

1. Plaintiff LANFORD ADAMI is a member of a protected group based on his age (DOB 2/9/35). At the time of the RIF in 1995, he was 60 years old.
2. Plaintiff ADAMI was originally hired on April 21, 1961 by the USGS, to fill the position of Chemist.
3. Plaintiff ADAMI is and has been qualified for his position at all times relevant herein and has received "Outstanding" and "Excellent" performance ratings during his career.
4. Defendant did not consider Plaintiff ADAMI for a retreat to PD # W0650A
5. Defendant added back PD # W0650A, listed as PPN 802, on August 2, 1995.
6. Defendant filled PD # W0650A with a younger employee who had a less favorable ASCD, James Saburomaru, age 44 at the time of the RIF.
7. Plaintiff ADAMI's ASCD was April 22, 1949; James Saburomaru's ASCD was January 5, 1957.
8. Plaintiff ADAMI's GS -9 Position and PD # W0650A are "essentially identical".

9. Defendant's expert witnesses, Dr. Kistler and Dr. Lanphere admitted that stated the procedure for extracting oxygen is similar to that of extracting argon in the following ways:
  - a. Both extraction procedures require the preparation of rock and mineral samples for isotope analysis using similar techniques.
  - b. Both procedures extract the gases on a glass and metal vacuum extraction system.
  - c. Both procedures require heating the samples.
  - d. After the extractions are completed both procedures require that the isotope ratios of the extracted gases be measured on mass spectrometers.
10. Defendant failed to consider Plaintiff ADAMI for any of the positions which were filled after the RIF.
11. Plaintiff ADAMI was older than and at least as well qualified as the persons hired by the defendant after the RIF.

**JAMES P. CALZIA**

1. Plaintiff DAVID P. ADAM is a member of a protected group based on his age (DOB 9/71/47). At the time of the RIF in 1995, he was 48 years old.
  2. Plaintiff CALZIA was originally hired on November 6, 1973 by the USGS, to fill the position of Geologist.
  3. Plaintiff CALZIA is and has been qualified for his position at all times relevant herein and has received "Outstanding" and "Excellent" performance ratings during his career.
  4. Defendant, through his agents, including Ron Worl, targeted Plaintiff CALZIA for removal due to his protected activity.
  5. Plaintiff CALZIA disclosed gross waste of funds, gross mismanagement and abuse of authority regarding:
    - a. Worl's decision to stop funding Dr R.W. Kistler; and
    - b. Worl's expenditure of FY94 surplus funds on computers and management training instead of a sulfur isotope lab.
  6. Plaintiff CALZIA's PD for FY 1995 showed that he was the Project Chief of the Barstow-Ridgecrest Project and the Northern and Eastern Colorado Desert Ecosystem Management Plan Project.
  7. The Barstow-Ridgecrest Project and the Northern and Eastern Colorado Desert Ecosystem Management Plan Project were two high-priority mineral resource assessment projects for the Bureau of Land Management
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that are listed in USGS' National Mineral Resource Surveys Five Year Plan (Agency Exhibit 6-TDF-C9).

8. Worl recreated Plaintiff CALZIA's position on Aug 28, 1995 and assigned it to R.J. Kamilli.
9. Kamilli was unqualified to be Project Chief of the Barstow-Ridgecrest or the Colorado Desert Ecosystem Management Plan projects, and these duties were not in his pre-RIF PD, whereas they were in Calzia's PD.
10. Defendant, through his agents, renamed the Colorado Desert Ecosystem Management Plan Project twice and gave two different project numbers in an attempt to hide the fact that Plaintiff CALZIA's job was not in fact abolished.
11. Defendant, through his agent R.A. Koski, Team Leader of WMR provided written testimony that "there is not, and never has been, a project called the California Desert District Project.
12. Koski subsequently admitted that there is no difference between Calzia's Colorado Desert Ecosystem Management Plan Project and Kamilli's Northern and Eastern Colorado Desert District Project after a careful comparison and review of location maps and project objectives (Koski MSPB testimony, March 1997).
13. Defendant violated the Civil Service Reform Act by denying Plaintiff CALZIA bump rights to positions which were given to younger employees in lower tenure subgroups, including
  - a. PD # W 3832 (Phelps)
  - b. PD # W 3648 (Wan)
  - c. PD # W 3832 (Fenton)
  - d. PD # W 3467A (Cecil)
  - e. PD # W 3640A (Livingston)
  - f. PD # W 2389E (Laird) and
  - g. PD # W 3674 (Brown)
14. Defendant failed to consider Plaintiff CALZIA for any of the positions which were filled after the RIF.
15. Plaintiff CALZIA was older than and at least as well qualified as the persons hired by the defendant after the RIF.

**BELA CSEJTEY, JR.**

1. Plaintiff BELA CSEJTEY is a member of a protected group based on his age (DOB 5/18/41) and his national origin (Hungary). At the time of the RIF in 1995, he was 61 years old.

2. Plaintiff CSEJTEY was originally hired on July 13, 1966 by the USGS, to fill the position of Geologist.
3. Plaintiff CSEJTEY is and has been qualified for his position at all times relevant herein and has received “Outstanding” and “Excellent” performance ratings during his career.
4. All five of the oldest employees in the Alaskan Geology Branch, including Plaintiff CSEJTEY were separated by the RIF.
5. Defendant claims that Plaintiff CSEJTEY’s position, *inter alia*, as the Project Chief of the Denali Project was abolished.
6. The asserted justification for abolishing Plaintiff CSEJTEY’s position is pretextual.
7. The Denali project in fact continues; the Project Chief of the Denali Project was given to Alison Till, a younger and lower graded employee.
8. Defendant violated Plaintiff CSEJTEY’s right to retreat into Till’s position.
9. Defendant retained younger employees with lower ASCD’s than plaintiff ASCD (7/29/29) to do the work previously done by plaintiff.
10. Defendant violated the Civil Service Reform Act by denying Plaintiff CSEJTEY’s bump rights to positions which were given to younger employees in lower tenure subgroups, including
  - a. PD # W3646 (Hecker)
  - b. PD # W2230 (Stanley) and
  - c. PD # W 3378 (Prentice).
11. Plaintiff CSEJTEY was qualified to perform the duties of PD # W3646, PD # W2230 and PD # W 3378.
12. Defendant failed to consider Plaintiff CSEJTEY for any of the positions which were filled after the RIF.
13. Plaintiff CSEJTEY was older than and at least as well qualified as the persons hired by the defendant after the RIF.

**ALICE S. DAVIS**

1. Plaintiff ALICE S. DAVIS is a member of a protected group based on her age (DOB 8/25/42) and sex (female). At the time of the RIF in 1995, she was 53 years old.
2. Plaintiff DAVIS was originally hired on March 25, 1982 by the USGS, to fill the position of Geologist.
3. Plaintiff DAVIS is and has been qualified for his position at all times relevant herein and has received

“Outstanding” and “Excellent” performance ratings during her career.

4. In 1995, Plaintiff DAVIS was a Geologist GS-13, who worked for the Branch of Pacific Marine Biology.
5. Plaintiff DAVIS’ GS-011 position was essentially identical to PD # W 3761 (Gibbs).
6. Plaintiff DAVIS’ GS-09 position was essentially identical to PD # W 3021 (Reid).
7. Plaintiff DAVIS’ GS-09 position was essentially identical to PD # W 3640 (Livingston).
8. Defendant, through his agents violated Plaintiff DAVIS’s retreat rights by failing to apply the RIF regulations.
9. Defendant violated the Civil Service Reform Act by denying Plaintiff DAVIS bump rights to positions which were given to younger employees in lower tenure subgroups.
10. Defendant failed to consider Plaintiff DAVIS for any of the positions which were filled after the RIF.
11. Plaintiff DAVIS was older than and at least as well qualified as the persons hired by the defendant after the RIF.

**JAMES L. DRINKWATER**

1. Plaintiff JAMES L. DRINKWATER is a member of a protected group based on his age (10/8/51). At the time of the RIF in 1995, he was 43 years old.
2. Plaintiff DRINKWATER was originally hired on 10/2/79 by the USGS, to fill the position of Geologist. At the time of the RIF, his ASCD was 10/2/66.
3. Plaintiff DRINKWATER is and has been qualified for his position at all times relevant herein and has received “Outstanding” and “Excellent” performance ratings during his career.
4. In 1995, Plaintiff DRINKWATER was a Geologist GS-1350-11.
5. From 1983 to 1986, prior to his promotion to a GS -09 Geologist position, Plaintiff DRINKWATER held a PST GS-07 position.
6. The PST GS-07 position which Plaintiff DRINKWATER held was “essentially identical” to PD # W3510.
7. Defendant retained a younger employee (Rick Bishop) in PD # W3510.
8. Plaintiff DRINKWATER’s Work Plan described the GS-09 duties he performed between April 1, 1992 and March 31, 1993.
9. Both Plaintiff DRINKWATER’s and Mr. Bishop worked in the same lab between 1980 - 1986 as Physical

Science Technicians doing essentially similar duties.

10. Plaintiff DRINKWATER was qualified for retreat to PD # W3510 under 5 CFR 351.702.
11. Plaintiff DRINKWATER made a claim to retreat to PD #W3510 based on his prior GS-09 positions.
12. The regulations in effect at the time of the RIF, 5 C.F.R. 351.403(a) do not require the positions to be in the same “classification series” to be considered “substantially identical”.
13. Defendant violated the Civil Service Reform Act by denying Plaintiff DRINKWATER bump rights to positions which were given to employees in lower tenure subgroups, including
  - a. PD # W3467A (Cecil) and
  - b. PD # W3832 (Fenton).
14. Defendant failed to consider Plaintiff DRINKWATER for any of the positions which were filled after the RIF.
15. Plaintiff DRINKWATER was older than and at least as well qualified as the persons hired by the defendant after the RIF.

**ARTHUR B. FORD**

1. Plaintiff ARTHUR B. FORD is a member of a protected group based on his age (DOB 9/4/32). At the time of the RIF in 1995, he was 63 years old.
2. Plaintiff FORD was originally hired on July 26, 1949 by the USGS, to fill the position of Geologist.
3. Plaintiff FORD is and has been qualified for his position at all times relevant herein and has received “Outstanding” and “Excellent” performance ratings during his career.
4. All five of the oldest employees in the Alaskan Geology Branch, including Plaintiff FORD were separated by the RIF.
5. Prior to March 1995, Plaintiff FORD was in GS-15 competitive level "AA", which was occupied by six Geologist 1350 positions.
6. Plaintiff FORD was the oldest of the employees in CLC AA. He therefore would have been at the top of the list based on ASCD and the last to be reached for release.
7. Defendant violated plaintiff FORDs rights by creating a unique CLC for him and 97% of the USGS employees.

8. But for the change of Plaintiff FORD's CLC, he would have been retained by the USGS.
9. Defendant retained younger employees with lower ASCD's than plaintiff ASCD (7/29/29)
10. Defendant violated the Civil Service Reform Act by denying Plaintiff FORD retreat rights to positions which were given to younger employees in lower tenure subgroups, including PD #H 0168, PD #H 0119, PD #H 0987, PD #H 0485, PD #H 0485, PD #H 0605, PD H# 1184.
11. Defendant failed to consider Plaintiff FORD for any of the positions which were filled after the RIF.
12. Plaintiff FORD was older than and at least as well qualified as the persons hired by the defendant after the RIF.

**ARTHUR GRANTZ**

1. Plaintiff ARTHUR GRANTZ is a member of a protected group based on his age (DOB 11/9/27). At the time of the RIF in 1995, he was 67 years old.
2. Plaintiff GRANTZ received the Distinguished Service Award of the U.S. Department of the Interior for his work in 1996, and received Outstanding performance ratings for many years.
3. Plaintiff GRANTZ should have been allowed to bump into the position of Chief of the Climate History of the Arctic Ocean Project, of which he was co-Project Chief at the time of the RIF. This project continued to be funded and staffed by his co-Project Chief, Dr. R.L. Phillips after the RIF.
4. Dr. Phillips is eleven years younger than Plaintiff GRANTZ.
5. Dr. Phillip's Adjusted Service Computation Date of 1/11/54 is inferior to that of Plaintiff GRANTZ (7/26/29).
6. At the MSPB hearing, the Defendant's expert witness Dr. Charles Bacon admitted as follows about Plaintiff GRANTZ' qualifications for this position (MSPB Transcript Vol. XXVII, page 121:17) **"Of course he's qualified to do the work."**
7. Plaintiff GRANTZ was Chief of the Branch of Pacific Environmental Geology (which is now called Chief, Branch of Western Regional Geology) from 1966 to 1971 and should have been allowed to retreat into this position.
8. Defendant did not consider Dr. Grantz for the position of Chief, Branch of Western Regional Geology.
9. Defendant selected a younger employee with a less favorable Adjusted Service Computation Date (ASCD)

for the position of Chief, Branch of Western Regional Geology.

10. Defendant, through his agents found that Dr. Grantz was not qualified for retreat into any of the 152 positions and two vacancies for which he had a superior Adjusted Service Computation Date (ASCD), including positions PD # H-0570, # H-0581, and # H-0968.

11. The duties of GS-15 positions # H-0570 (Marlow), # H-0581 (Nelson), and # H-0968 (Ettrien) were “essentially identical” to plaintiff’s prior GS-15 positions.

12. Defendant erroneously claimed that plaintiff was not qualified for PD# H0570, # H-0581, and # H-0968.

13. PD #H 0570 was given to a younger employee with a lower ASCD, Michael S. Marlow.

14. PD #H 0570 involves the study of the marine geologic hazards and processes in central California and San Francisco Bay, using standard geological and geophysical techniques. Dr. Grantz conducted similar investigations off northern Alaska and also studied active faults in California and Alaska.

15. Dr. David W. Scholl, who supervised plaintiff when he worked for the Branch of Pacific Marine Geology, and Dr. George Plafker, an expert witness on the active faults of Alaska, testified that Dr. Grantz did, in fact, use high resolution seismic reflection data to map environmental geology and active faults on continental shelves when he was a GS -15.

16. PD #H 0570 was essentially identical to Plaintiff GRANTZ’ GS-15 duties.

17. PD #H 0581 was given to a younger employee with a lower ASCD, C. Hans Nelson.

18. PD #H 0581 involves the study of possibly earth-quake triggered turbidite deposits off the Oregon/Washington coast.

19. During the relevant time period, Plaintiff GRANTZ studied earthquake-triggered turbidite deposits in marine deposits, and marine turbidite deposits in both outcrops and in geophysical records.

20. PD #H 0581 was essentially identical to Plaintiff GRANTZ’ GS-15 duties.

21. PD #H0968 was given to a younger employee with a lower ASCD, Stephen L. Eittrien than Plaintiff GRANTZ .

22. PD #H0968 requires the interpretation of geophysical and geologic data of types that Plaintiff GRANTZ has been interpreting since 1969.

23. PD #H 0968 was essentially identical to Plaintiff GRANTZ’ GS-15 duties.

24. The geologic problems of the Monterey Bay area are similar to those that Dr. Grantz studied in outcrops and geophysical records in Alaska and California.
25. The SME panel did not have any of Plaintiff GRANTZ 's Positions Descriptions (PDs) for the years prior to 1986, when he was a scientific GS-15 and therefore, they had no basis for comparing his duties to the 152 positions and 2 vacancies.
26. The SME panel failed to consider Plaintiff GRANTZ 's April 6, 1995 Position Description, his 1995 Professional/Technical Record, Performance ratings, and his Meritorious and Distinguished Service Awards in determining his qualifications to retreat.
27. Defendant failed to consider Plaintiff GRANTZ for any of the positions which were filled after the RIF.
28. Plaintiff GRANTZ was older than and at least as well qualified as the persons hired by the defendant after the RIF.

**BARRY HIRSHORN**

1. Plaintiff BARRY HIRSHORN is a member of a protected group based on his age.
2. Plaintiff HIRSHORN was originally hired on September 21, 1984 by the USGS, to fill the position of Geophysicist.
3. Plaintiff HIRSHORN is and has been qualified for his position at all times relevant herein and has received "Outstanding" and "Excellent" performance ratings during his career.
4. In 1995, Plaintiff HIRSHORN was a Geophysicist, GS-1313-12, who worked in the Branch of Seismology.
5. Congress specifically budgeted funding for real-time earthquake monitoring, pursuant to the requirements in the National Earthquake Hazards Reduction Act.
6. Plaintiffs HIRSHORN and LINDH worked on the USGS Earthquake Hazards Reduction Program (EHRP), which provides civil authorities with the location and magnitude of damaging earthquakes as soon as possible after their origin. They designed an interim Notification System, which was in use by the USGS prior to and after the RIF.
7. During the development and testing of the primary Notification System, the interim Notification System was used as a backup system.
8. Plaintiff HIRSHORN's position involved *inter alia* testing and developing the primary Notification System

which was being developed by the USGS for real-time earthquake monitoring and the maintenance of the interim Notification System.

9. Prior to the RIF, Plaintiff HIRSHORN and Lynn Dietz worked on the Binder Association Program (Earthquake Phase Associator computer program).
10. Plaintiff HIRSHORN's position and Lynn Dietz' GS-1313-11 position was essentially identical.
11. Plaintiff HIRSHORN's position was placed in CLC 40 and Lynn Dietz' position was placed in CLC 41.
12. The SME's decided that Dietz' position was not essentially identical because "Dietz' position involves **real time location** of earthquake hypocenters" and Plaintiff HIRSHORN's involves "near real time".
13. Plaintiff HIRSHORN's position description describes his duties *inter alia* as involving "seismic parameters in **real time**".
14. Plaintiff HIRSHORN was the primary expert on the **location** and association portion of the Binder program.
15. Plaintiff HIRSHORN's ASCD is 9/21/66.
16. Defendant retained Lynn Dietz, a younger employee who had a lower ASCD (9/8/67).
17. Defendant, through his agent Walter Mooney, targeted Plaintiff BARRY HIRSHORN for removal in the RIF because of his association with Plaintiff Allan Lindh.
18. In assigning points to his ASCD, Defendant failed to credit Plaintiff HIRSHORN for his "Outstanding" rating in 1993.
19. Defendant erroneously listed Plaintiff HIRSHORN as a GS-11 rather than a GS-12 in the documentation used during the RIF by the SMEs.
20. Defendant listed Plaintiff HIRSHORN's PD number as W 3038, instead of W3698 in the documentation used during the RIF by the SMEs.
21. Defendant did not permit Plaintiff HIRSHORN to retreat into any of the positions which were "essential identical" to his position or former positions.
22. Defendant failed to consider Plaintiff HIRSHORN for any of the positions which were filled after the RIF.
23. Plaintiff HIRSHORN was older than and at least as well qualified as the persons hired by the defendant after the RIF.

**H. MAHADEVA IYER**

1. Plaintiff H. MAHADEVA IYER is a member of a protected group based on his age (DOB 6/21/31) and his national origin (Indian-American). At the time of the RIF in 1995, he was 64 years old and was the oldest scientist in the Seismology Branch.
2. Plaintiff IYER was originally hired on September 24, 1967 by the USGS, to fill the position of Geophysicist.
3. Plaintiff IYER is and has been qualified for his position at all times relevant herein and has received “Outstanding” and “Excellent” performance ratings during his career.
4. Plaintiff IYER, as Assistant Branch Chief, was responsible for developing programs and implementing procedures to correct the historical discrimination against racial and ethnic minority groups members at the USGS in Menlo Park.
5. Plaintiff IYER was harassed by Mooney in retaliation for engaging in protected activities, to wit:
  - a. Giving Plaintiff IYER derogatory memos.
  - b. Displaying extreme anger directed at Plaintiff IYER.
  - c. Denying Plaintiff IYER’s request to go India to assist the Government of India following the Latur Earthquake in 1993, even though the trip had been previously approved by USGS managers in Reston and the cost of the trip would be paid for by the Government of India.
  - d. Threatening Plaintiff IYER that if he did not elect to retire, “other important administrative actions”, such as abolishing his position, would be taken, in a memo dated March 24, 1995.
6. Defendant, through his agents, including Walter Mooney, targeted Plaintiff IYER for removal in the RIF because of his protected activity.
7. In November 1994, Plaintiff IYER, together with other racial and ethnic minority scientists at the USGS, Menlo Park, engaged in protected activity by objecting to the racial bias and discriminatory treatment of national minority employees.
8. Defendant, through his agents, was aware of Plaintiff IYER’s protected activity prior to the RIF.
9. Defendant failed to consider Plaintiff IYER for any of the positions which were filled after the RIF.
- 10.** Plaintiff IYER was older than and at least as well qualified as the persons hired by the defendant after the RIF.

**CHI YU KING**

1. Plaintiff CHI YU KING is a member of a protected group based on his age (DOB 8/13/34) and national origin (Chinese-American). At the time of the RIF in 1995, he was 61 years old.
2. Plaintiff KING was originally hired on June 17, 1968 by the USGS, to fill the position of Geophysicist.
3. Plaintiff KING was the only foreign-born ethnic minority full-time scientist in the Branch of Earthquake Geology and Geophysics in Menlo Park.
4. In November 1994, Plaintiff KING, together with other ethnic minority scientists at the USGS, Menlo Park, engaged in protected activity by objecting to the racial bias and discriminatory treatment.
5. In 1992, after many years of excellent and satisfactory ratings, Plaintiff KING's performance was rated "unsatisfactory."
6. Plaintiff's grievance was successful and his performance rating was changed to a fully satisfactory rating.
7. Plaintiff KING filed a grievance concerning the discrimination he was experiencing, including job assignments, promotions, performance appraisals and funding.
8. Defendant, through his agents, was aware of Plaintiff KING's protected activity prior to the RIF.
9. Defendant, through his agents, targetted Plaintiff KING for removal in the RIF because of his protected activity.
10. Defendant failed to consider Plaintiff KING for any of the positions which were filled after the RIF.
11. Plaintiff KING was older than and at least as well qualified as the persons hired by the defendant after the RIF.

**STEPHEN L. LEWIS**

1. Plaintiff STEPHEN D. LEWIS is a member of a protected group based on his age.
2. Plaintiff LEWIS was originally hired on January 18, 1986 by the USGS.
3. Plaintiff LEWIS is and has been qualified for his position at all times relevant herein and has received "Outstanding" and "Excellent" performance ratings during his career.
4. Defendant, through his agents targetted Plaintiff LEWIS for removal in the RIF in retaliation for his protected disclosures.
5. Plaintiff LEWIS opposing the proposed move of the Branch of Pacific Marine Geology to Santa Cruz on the basis of lack of programmatic benefits and increased program costs. Defendant's agency Mike Field was aware

of Plaintiff LEWIS's role in stopping the proposed move of the Branch.

6. Plaintiff LEWIS disclosed his long-standing opposition to the USGS Marine and Coastal Program policy of chartering a large research ship from a private company rather than utilize a USGS-owned research ship fully capable of implementing program objectives at a lower cost.
7. The USGS chartered a British flag vessel from a private British firm, J. Marr & Son at the cost of \$2.5- 3.0 million per year to perform the GLORIA Project, a sonar mapping project.
8. During this same time period, the USGS-owned vessel, which was fully capable of doing the same work at a substantial savings was tied to the dock unused.
9. Plaintiff LEWIS disclosed gross mismanagement, gross waste of funds and abuse of authority involved in the GLORIA Project.
10. Plaintiff LEWIS disclosed an improper and illegal acceptance of gifts and special favors by Gary Hill, a USGS manager and the contracting officer's representative from the owner of the J. Marr, a vendor with whom he was actively involved, to wit, a vacation in Monaco during the Grand Prix.
11. Defendant's agent Hill was aware of Plaintiff LEWIS' protected disclosure.
12. During the course of his duties in an acting supervisory position, Plaintiff LEWIS was informed of and, disclosed to Assistant Chief Geologist William Normark the aforementioned unlawful conduct.
13. Normark told Hill of Plaintiff LEWIS's disclosure shortly thereafter.
14. Within a few weeks of Plaintiff LEWIS's disclosure to Normark, Hill came to the USGS, Menlo Park to give a speech, during which he mentioned his vacation in Monaco.
15. During his trip to the USGS, Menlo Park, Hill cornered Plaintiff LEWIS and castigated him for reporting the disclosure to Normark.
16. Defendant, through his agents, abolished Plaintiff LEWIS's position as a Geophysicist 1313-14.
17. Defendant violated Plaintiff LEWIS's right to bump and/or retreat into positions including PD # W 3905, PD #W 3855, PD #W 3633, PD #W 3378, PD #W 3811, PD #W 3761, PD #W 3646, PD #W3021, and PD W 3906, positions which were retained and for which he was qualified.
18. Defendant failed to consider Plaintiff LEWIS for any of the positions which were filled after the RIF, including numerous positions in the Branch of Pacific Marine Geology.

19. Plaintiff LEWIS was older than and at least as well qualified as the persons hired by the defendant after the RIF.

**ALLAN G. LINDH**

1. Plaintiff ALLAN G. LINDH is a member of a protected group based on his age (DOB 3/13/43). At the time of the RIF in 1995, he was 51 years old.
2. Plaintiff LINDH was originally hired on December 14, 1973 by the USGS. His ASCD at the time of the RIF was 11/28/54.
3. Plaintiff LINDH is and has been qualified for his position at all times relevant herein and has received “Outstanding” and “Excellent” performance ratings during his career.
4. Congress specifically budgeted funding for real-time earthquake monitoring, pursuant to the requirements in the National Earthquake Hazards Reduction Act.
5. Plaintiff LINDH played a major role in the development of the USGS Earthquake Hazards Reduction Program (EHRP), which provides civil authorities with the location and magnitude of damaging earthquakes as soon as possible after their origin. Plaintiff Hirshorn and LINDH designed an interim Notification System, which was in use by the USGS prior to and after the RIF.
6. During the development and testing of the primary Notification System, the interim Notification System was used as a backup system.
7. Plaintiff LINDH’s position was on the staffing plan for the Seismology Branch.
8. Defendant, through his agents, including Walter Mooney, targeted Plaintiff LINDH for downgrade in the RIF.
9. Defendant’s agent, Mooney told other USGS employees that certain individuals should not be included in the Branch staffing plan because they were “trouble makers” or should have “retired a long time ago.
10. During July 1994, Plaintiff LINDH disclosed to Walter Mooney violations of contracting practices and management by awarding a “sole source contract” to Carl Johnson, even though a contract to the same person for substantially the same work was still open and long overdue.
11. Defendant, through his agent, Mooney removed Plaintiff LINDH’s name from the staffing plan, after the final list of names had been submitted to the Division in June 1995.

12. Plaintiff LINDH held the position of Supervisory Geophysicist from 1991 to 1994.
13. The Supervisory Geophysicist position was substantially identical to the position of Branch Chief.
14. Defendant failed to consider Plaintiff LINDH for any managerial position, including PD # H 0583 (Mooney).
15. Defendant violated Plaintiff LINDH'S rights to retreat into PD # H 1382 (Oppenheimer).
16. Plaintiff's GS -14 position and PD # H 1382 were substantially identical.
17. Defendant retained a younger employee with lower ASCD than plaintiff in PD # H 1382 (Oppenheimer).
18. Plaintiff LINDH was older than and at least as well qualified as the persons retained by the defendant after the RIF.

**DENNIS M. MANN**

1. Plaintiff DENNIS M. MANN is a member of a protected group based on his age (DOB 4/25/50). At the time of the RIF in 1995, he was 45 years of age and was the employee with the longest tenure in the Pacific Marine Geology Data Group.
2. Plaintiff MANN was originally hired on December 6, 1961 by the USGS.
3. Plaintiff MANN is and has been qualified for his position at all times relevant herein and has received "Outstanding" and "Excellent" performance ratings during his career.
4. In 1995, Plaintiff MANN was a Geophysicist GS -1313-12.
5. During the administrative hearing before the MSPB, as part of a settlement agreement, Plaintiff MANN was rehired by the USGS in a GS-09 position.
6. After his reinstatement to a lower graded position, he was subjected retaliation for engaging in protected activity, namely, filing an MSPB appeal.
7. After his reinstatement in 1997, Plaintiff MANN was assigned to a desk in the middle of the hallway, where he was subjected to ridicule.
8. After his reinstatement, Plaintiff MANN applied for vacant positions for which he was qualified.
9. Plaintiff MANN was not selected for any vacant position he applied for.
10. Defendant canceled the vacant positions which Plaintiff MANN applied for.
11. Defendant failed to consider Plaintiff MANN for any of the positions which were filled after the RIF,

including numerous positions in the Branch of Pacific Marine Geology.

12. Plaintiff MANN was older than and at least as well qualified as the persons hired by the defendant after the RIF.

**A. THOMAS OVENSINE**

1. Plaintiff A. THOMAS OVENSINE is a member of a protected group based on his age.
2. Plaintiff OVENSINE is and has been qualified for his position at all times relevant herein and has received "Outstanding" and "Excellent" performance ratings during his career.
3. Defendant violated an agreement made in 1994 with Plaintiff OVENSINE which provide that he would be given four years of "saved pay" employment in return for his resignation from SES.
4. In late August, 1994, Plaintiff OVENSINE, a 14-year member of upper management in USGS in Reston, VA, met with newly-appointed Director Gordon P. Eaton and after discussion, agreed to resign from his Senior Executive Service (SES) position in exchange for 4 years of "saved pay."
5. Defendant, through his agent Eaton induced Plaintiff OVENSINE to resign by stating that he "wanted his own team."
6. All of Plaintiff OVENSINE's personnel documents dated subsequent to August, 1994, record "saved pay."
7. In March, 1995, Plaintiff OVENSINE was transferred to Menlo Park, California.
8. Defendant violated Plaintiff OVENSINE' right to retreat into managerial positions, including the Regional Geologist for Western Region, the Chief Scientist for Mineral Resource Surveys Team (Koski, PD No. H2969) and the National Cooperative Geologic Mapping Team (Gautier, PD No. W3868) positions.
9. Defendant held all managerial positions as vacancies until 1996 and refused to consider any RIF'd employees for the positions.
10. The aforementioned managerial positions were on the staffing plan prior to the RIF.
11. The USGS managers who held these managerial positions prior to the RIF were staffed into science positions which were unlawfully protected in the RIF by policies implemented in 1995.
12. Plaintiff OVENSINE's position, PD # W 3891, International Minerals Program Advisor, involved a number of specific international representational duties he had accrued as a result of his ten years of service as Chief of International Geology and four years as Chief of Mineral Resources for the USGS.

13. The aforementioned representational duties were spelled out in detail in Plaintiff OVENSHINE's approved 1996 Work Plan. The duties were:
  - a. Co-Convener of Symposium K-10, Accomplishments of the IUGS/Unesco Deposit Modeling Program to be held at the International Geological Congress in Beijing, China in August, 1996;
  - b. Secretary of the U.S. National Committee on Geology of the U.S. National Research Council/U.S. National Academy of Sciences;
  - c. Secretary of the U.S. National Committee for the International Geological Correlation Program (IGCP) of the U.S. National Research Council/U.S. National Academy of Sciences;
  - d. Participant, U.S./Hungary Science and Technology Program to undertake a review and assessment of the mineral resources of Hungary and neighboring Carpathian Regions;
14. Plaintiff OVENSHINE's position also involved studying and writing about national and international mineral policies.
15. Plaintiff OVENSHINE was uniquely qualified to do the duties in PD # W3891, having been the top-ranked official in USGS in both minerals and international geology.
16. PD # W 3891 was not abolished in the RIF.
17. PD # W 3891 was filled with an individual who was not qualified for the position (Piper).
18. Defendant, through his agents, did not accurately evaluate Piper's qualifications for the position in question, PD # W 3891.
19. Piper was not qualified to perform PD #W 3891 at the time of the RIF.
20. The documentation used in the RIF establishes that PD # H2535 (which was not plaintiff OVENSHINE's current PD) was used instead of PD No. W3891.
21. Piper's Performance Appraisal dated November 11, 1996 shows that "Critical Element 3 was not achieved."
22. During the year following the RIF, Piper did not perform the duties of PD # W 3891, to wit:
  - a. Piper did not coordinate Special Symposium K-10, at the International Geological Congress in Beijing, China in August, 1996 on the Accomplishments of the IUGS/Unesco Deposit Modeling Program;
  - b. Piper did not assume the role of Secretary of the U.S. National Committee on Geology of the U.S. National Research Council/U.S. National Academy of Sciences;

- c. Piper did not serve as the Secretary of the U.S. National Committee for the International Geological Correlation Program (IGCP) of the U.S. National Research Council/U.S. National Academy of Sciences; and
  - d. Piper was not a participant in the U.S./Hungary Science and Technology Program that was expected to undertake a review and assessment of the mineral resources of Hungary and neighboring Carpathian Regions.
23. Defendant failed to consider Plaintiff OVENSHINE for any of the positions which were filled after the RIF.
24. Plaintiff OVENSHINE was older than and at least as well qualified as the persons hired by the defendant after the RIF.

**BRENT D. TURRIN**

- 1. Plaintiff BRENT D. TURRIN is a member of a protected group based on his age (DOB 11/18/55).
- 2. Plaintiff TURRIN was originally hired on January 19, 1982 by the USGS, to fill the position of Geologist.
- 3. Plaintiff TURRIN is and has been qualified for his position at all times relevant herein and has received “Outstanding” and “Excellent” performance ratings during his career.
- 4. Defendant, through his agents, including Ronald G. Worl and John Sutter, targeted Plaintiff TURRIN for separation from his position during the RIF.
- 5. Defendant took reprisal action against Plaintiff TURRIN for disclosure of volcanic hazard/risk assessment of the Yucca Mountain repository for nuclear waste.
- 6. Plaintiff TURRIN disclosed concerns about the potential adverse affect on public health and safety of proposed use of the Yucca Mountain as a repository for nuclear waste in SCIENCE, 1991 (Vol. 253, page 654) and SCIENCE, 1992 (Vol. 257, page 555-558).
- 7. Defendant, through his agent, John Sutter, USGS Deputy Assistant Director for Engineering Geology was aware of Plaintiff TURRIN’s disclosures.
- 8. Defendant, through his agents faxed to Plaintiff TURRIN, as well as other individuals outside of the USGS, an unofficial reprimand concerning the aforementioned disclosures.
- 9. Plaintiff TURRIN filed a grievance concerning the reprimand and its disclosure.

10. The aforementioned grievance was resolved in Plaintiff TURRIN's favor on March 1992.
11. Sutter told other USGS employees that because of Plaintiff TURRIN'S handling of the "Yucca Mountain" controversy, Plaintiff TURRIN would be reassigned to Regional Geology "over my dead body".
12. Plaintiff's TURRIN'S protected activities was a factor in the decision to abolish his position.
13. Defendant violated the Civil Service Reform Act by denying Plaintiff TURRIN bump rights to positions which were given to employees in lower tenure subgroups, including:
  - a. PD #W 3646 (Hecker)
  - b. PD #W 3234 (Lowenstern)
  - c. PD #W 3616 (Felger)
  - d. PD #W 3678 (Phelps)
  - e. PD #W 3635 (Christian)
  - f. PD #W 3630 (Harris)
  - g. PD #W 3670 (Beeler)
  - h. PD #W 3634 (Marshall)
  - i. PD #W 3801 (Croker)
  - j. PD #W 3745 (Parsons)
14. Defendant failed to consider Plaintiff TURRIN for any of the positions which were filled after the RIF.
15. Plaintiff TURRIN was older than and at least as well qualified as the persons hired by the defendant after the RIF.
16. Subsequent to the RIF, Plaintiff TURRIN was rated qualified by the Department of Interior United States Fish and Wildlife Service Personnel Office as a hydrologist 1315-12/13.

**CHESTER T. WRUCKE**

1. Plaintiff CHESTER T. WRUCKE is a member of a protected group based on his age (DOB 10/24/27) and his veterans status. At the time of the RIF in 1995, he was 67 years old.
2. Plaintiff WRUCKE was originally hired on 07/14/51 by the USGS, to fill the position of Geologist.
3. Plaintiff WRUCKE is and has been qualified for his position at all times relevant herein and has received "Outstanding" and "Excellent" performance ratings during his career.

4. In 1995, Plaintiff WRUCKE was a Geologist GS-1350-14, who worked in the Branch of Western Mineral Resources.
5. All members of the Branch of Western Mineral Resources who were born before 1936 were separated in the RIF.
6. In February 1995, Plaintiff WRUCKE's competitive level code was "AA". He was at the top of the AA register in his competitive level and therefore would have been the last to be reached for release had proper CLCs been used to group people with similar duties.
7. In March 1995, Plaintiff WRUCKE was assigned a unique CLC and placed in a Retention Register of one.
8. Plaintiff WRUCKE was denied the right to compete on the basis of his Veterans Preference in Veteran Tenure Subgroup (1A) and ASCD which was more favorable than other employees.
9. In 1995, the USGS employed 11 Geologists with expertise in Regional Geology.
10. The 11 Geologists who were classified as CLC "AA" prior to March 1995 had the same general duties (as opposed to current assignments) and their duties were interchangeable with plaintiff WRUCKE.
11. The Agency denied plaintiff WRUCKE reassignment to dozens of positions whose PDs called for broadly the same fields of expertise that he possesses and gave those positions to non-veterans status and/or younger employees.
12. Plaintiff WRUCKE worked on the Denali Project in Alaska prior to the RIF.
13. In 1995, the Denali project was staffed with new but younger personnel (all under the age of 43). Most of the new personnel of the post-RIF Denali project had no geologic knowledge or experience pertaining to the Denali project. The objectives of the pre- and post-RIF Denali project were the same.
14. Dr. McLaughlin was substantially younger than plaintiff WRUCKE.
15. Dr. McLaughlin was retained in PD#H0723.
16. The primary justification given by the agency for finding that plaintiff WRUCKE was "not qualified" for the position given to Dr. McLaughlin was that he allegedly lacked field experience in the kinds of rocks, structural settings and accretionary geology required for the position.
17. Plaintiff WRUCKE had used the same methods and analytical techniques (geologic mapping, stratigraphic and structural studies, etc.), studied the same types of rocks, including extensive studies in accreted rocks, in

geographic areas and geologic provinces in the Western United States throughout his career with the USGS.

18. Both plaintiff WRUCKE and Dr. McLaughlin were “Project Chiefs” of similar Geologic Mapping Projects and clearly had duties which were very similar, if not “substantially similar”.
19. Dr. Moore was substantially younger than Plaintiff WRUCKE.
20. Dr. Moore was retained in PD#H0181.
21. The primary justification given by the agency for finding that Plaintiff WRUCKE was “not qualified” for the position given to Dr. Moore was that position was in the Alaskan Brooks Range
22. Plaintiff WRUCKE had worked in the Alaskan Brooks Range for three years immediately prior to the RIF.
23. Dr. Wentworth, the agency’s expert witness erroneously testified that Plaintiff WRUCKE lacked qualifications for PD #H0181. Wentworth’s main point, “there is no indication in the written record, however, that Wrucke has had much training or experience in the geophysics, sedimentology, sequence stratigraphy, basin analysis, or constructing balanced cross sections” was shown to be flat out wrong.
24. Defendant failed to consider Plaintiff WRUCKE for any of the positions which were filled after the RIF.
25. Plaintiff WRUCKE was older than and at least as well qualified as the persons hired by the defendant after the RIF.

## **VIII.**

### **FIRST CLAIM**

#### **(UNLAWFUL DISCRIMINATION BASED ON AGE)**

1. Paragraphs 1 through 346 above are hereby incorporated by reference as though fully set forth in this claim.
2. Defendant has unlawfully discriminated against plaintiff based on his age in violation of the Age Discrimination in Employment Act of 1967.
3. Plaintiffs are now suffering and will continue to suffer irreparable injury and monetary damages as a result of defendant’s discriminatory practices unless and until the Court grants relief.

## **IX.**

### **SECOND CLAIM**

#### **(UNLAWFUL DISCRIMINATION BASED ON SEX, NATIONAL ORIGIN/RACE, RETALIATION)**

1. Paragraphs 1 through 346 above are hereby incorporated by reference as though fully set forth in this claim.

2. Defendant has unlawfully discriminated against plaintiffs based on their sex, national origin/race, and/or opposition to unlawful discrimination, in violation of Title VII of the Civil Rights Act of 1964.
3. Plaintiffs are now suffering and will continue to suffer irreparable injury and monetary damages as a result of defendants discriminatory practices unless and until the Court grants relief. These plaintiffs will seek leave to amend this complaint at such time as such damages are ascertained.
4. As described above, defendant acted with malice and reckless indifference to the federally protected rights of plaintiffs. Moreover, plaintiffs were humiliated, embarrassed and suffered emotional distress as a direct consequence of defendants violations of Title VII. Accordingly, plaintiffs are entitled to an award of compensatory damages.

**X.**

**THIRD CLAIM**

1. **(UNLAWFUL DISCRIMINATION BASED THE CIVIL SERVICE REFORM ACT, AS AMENDED BY THE WHISTLEBLOWER PROTECTION ACT)** Paragraphs 1 through 346 above are hereby incorporated by reference as though fully set forth in this claim.
2. Defendant has unlawfully violated plaintiffs rights under the Civil Service Reform Act, as amended by the Whistleblower Protection Act.
3. Plaintiffs are now suffering and will continue to suffer irreparable injury and monetary damages as a result of defendant's prohibited personnel practices unless and until the Court grants relief.

**XI.**

**PRAYER FOR RELIEF**

WHEREFORE, plaintiffs respectfully request that this Court rule and order relief,

- A. For the named plaintiffs and the plaintiff class as follows:
  1. Rule that this matter is properly maintained as a class action.
  2. Enter a judgment declaring that the acts, policies and practices of the defendants are in violation of the laws of the United States.
  3. Issue a permanent injunction:
    - a. Requiring defendants to abolish discrimination and reprisal;

- b. Requiring allocation of significant funding and trained staff to implement all changes within two years;
  - c. Requiring removal or demotion of all managers who have violated the agency's policies and failed to meet their legal responsibility to promptly investigate complaints or to take effective action to stop and deter prohibited personnel practices against employees;
  - d. Establishing and strictly measuring EEO compliance as a critical element in every manager's performance standards;
  - e. Creating a process for the prompt investigation of harassment and reprisal complaints separate from the agency's process;
  - f. Requiring mandatory and effective training for all employees and managers on discrimination and retaliation issues, investigations and appropriate corrective actions;
  - g. Eliminating the backlog of current MSPB and EEO cases alleging discrimination, harassment and reprisal; and
  - h. Requiring defendants to make prospective and retroactive monetary awards to named plaintiffs.
4. Award named plaintiffs economic and compensatory damages according to proof, including prejudgment interest as appropriate;
5. Grant plaintiffs and the class they represent such other and further relief as may be necessary and proper;
6. Award plaintiffs the costs of this action together with reasonable attorney's fees;
- B. For the individual plaintiffs:
- 1. For such damages, including back pay, frontpay and benefits, as plaintiffs are entitled to under the ADEA and/or Title VII, and in amounts to be proven at trial including prejudgment interest as appropriate;
  - 2. For other and further damages, including compensatory damages for plaintiffs' emotional distress, as may be proven at trial;
  - 3. For an order commanding defendants and each of them to cease and desist from any employment practice which discriminates against plaintiffs or others on the basis of age, sex, national origin or retaliates against persons because they have complained about such discrimination;
  - 4. For an award of costs of suit including reasonable attorney's fees; and

5. For such other and further relief as the Court may consider just and proper.

Respectfully submitted,

DATED: June 27, 2003

MARY DRYOVAGE,  
Attorney for Plaintiff

**DEMAND FOR TRIAL BY JURY**

Plaintiffs hereby demands a jury trial for each claim herein for which they have a right to a jury.  
Respectfully submitted,

DATED: June 27, 2003

MARY DRYOVAGE,  
Attorney for Plaintiff

DAVID P. ADAM, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 BRUCE BABBITT, SECRETARY )  
 U.S. DEPARTMENT OF THE INTERIOR, )  
 )  
 Defendant. )

No. C 98-02094 FMS  
CERTIFICATE OF SERVICE

\_\_\_\_\_ )  
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.

On June 27, 2003, I served the within FIRST AMENDED COMPLAINT on the parties in said action by FAXING and MAILING a true copy thereof enclosed in a sealed envelope, first class postage fully prepaid to the following address:

MARY BETH UITTE  
Assistant U.S. Attorney  
1301 Clay Street, Room 340-S  
Oakland, CA 94102 (510) 637-3724 (fax)

Karen D. Glasgow  
U.S. Department of the Interior  
Office of the Solicitor  
San Francisco Field Office  
600 Harrison, Suite 545 (415)744-4122fax  
San Francisco, CA 94107

I declare under penalty of perjury that the foregoing is true and correct and was executed on June 27, 2003, at San Francisco, California.

\_\_\_\_\_