

1 MARY DRYOVAGE (CA SBN 112551)
Law Offices of Mary Dryovage

2 600 Harrison Street, Suite 120
3 San Francisco, CA 94107
4 Telephone: (415) 593-0095
Fax: (415) 593-0095
E-mail: mdryovage@igc.org

5 Attorney for Plaintiff

6
7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9

10 GERALD DUMAGUIT,

11 Plaintiff,

12 v.

13 JOHN E. POTTER, POSTMASTER
GENERAL, U. S. POSTAL SERVICE,

14 Defendant.
15
16

Docket No.

**COMPLAINT - EMPLOYMENT
DISCRIMINATION BASED ON RACE,
NATIONAL ORIGIN, DISABILITY AND
RETALIATION**

JURY TRIAL REQUESTED

17
18 **I.**

19 **NATURE OF THE ACTION**

20 1. This action is brought by Plaintiff GERALD DUMAGUIT (hereafter "DUMAGUIT"),
21 EEO DISPUTE RESOLUTION SPECIALIST, U.S. POSTAL SERVICE, employed by JOHN E.
22 POTTER, POSTMASTER GENERAL, U.S. POSTAL SERVICE (hereafter "Defendant",
23 "POTTER", or "USPS") for race/ national origin discrimination (Asian/Filipino), disability
24 discrimination and retaliation to wit: wrongful discharge, hostile environment, denial of
25 promotions and benefits and refusal to provide reasonable accommodation and reimburse sick
26 leave ordered by the U.S. Department of Labor.

27 2. This action is brought under the Civil Rights Act of 1964, 42 U.S.C. §2000e-16 *et seq.* as
28 amended by the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991) (Title VII),
the Civil Service Reform Act, 5 U.S.C. §2101, *et seq.* as amended by the Whistleblower

1 Protection Act, the Rehabilitation Act of 1973, 29 U.S.C. § 791, as amended by the Americans
2 With Disabilities Act, and the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.* Plaintiff
3 seeks backpay, front pay and compensatory damages, as well as a declaratory judgment and
4 injunction to restrain defendant employer from committing prohibited personnel practices,
5 policies, customs and usages, from discriminating and retaliating against plaintiff and other
6 employees of the USPS based race, national origin, sex, and/or opposition to unlawful
7 discrimination and retaliation. Plaintiff seeks injunctive relief requiring defendant employer to
8 take affirmative and effective steps to remove and otherwise discipline managers who have failed
9 to comply with Title VII, the Rehabilitation Act and the Civil Service Reform Act. Plaintiff seeks
10 injunctive relief requiring the defendant employer to take specific actions designed, implemented
11 and confirmed by qualified non-government consultants to ensure that all supervisory employees
12 are adequately trained to identify, investigate and stop situations and complaints. Such specific
13 actions, include, but are not limited to:

- 14 a. allocation of significant funding and trained staff to implement all changes within
15 two years;
- 16 b. discipline managers who have violated the agency's policies and failed to meet
17 their legal responsibility to promptly investigate complaints and to take effective
18 action to stop and deter prohibited personnel practices against employees;
- 19 c. establishing and strictly measuring EEO compliance as a critical element in every
20 manager's performance standards;
- 21 d. creating a process for the prompt investigation of harassment and reprisal
22 complaints separate from the agency's process;
- 23 e. mandatory and effective training for all employees and managers on
24 discrimination and retaliation issues, investigations and appropriate corrective
25 actions; and
- 26 f. eliminating the backlog of current EEO cases alleging discrimination, harassment
27 and reprisal.

1 **II.**

2 **JURISDICTION AND VENUE**

3 3. The jurisdiction of this Court is based upon the Civil Rights Act of 1964, 42 U.S.C.
4 §2000e-16 *et seq.*, 28 U.S.C. §§ 1331, 1337, 1343, 1345 and 2401(a), which grant district courts
5 jurisdiction over actions alleging unlawful and discriminatory employment practices by federal
6 agencies and provides for judicial review of cases involving race, national origin and/or disability
7 discrimination and retaliation. The unlawful practices alleged in this complaint occurred in the
8 County of San Francisco, which is situated in the Northern District of California.

9 **III.**

10 **PLAINTIFF**

11 4. Plaintiff GERALD DUMAGUIT is a citizen of the United States who has been employed
12 as a ACTING MANAGER, NORTHERN CALIFORNIA EEO COMPLAINTS PROCESSING
13 CENTER, U.S. POSTAL SERVICE, by JOHN POTTER, POSTMASTER GENERAL, U.S.
14 POSTAL SERVICE, in San Francisco, California, for over 26 years, not including four years of
15 military service. His performance was rated satisfactory or better, at all times material to this
16 action.

17 **IV.**

18 **DEFENDANT**

19 5. Defendant JOHN E. POTTER, POSTMASTER GENERAL, U.S. POSTAL SERVICE, is
20 the head of an executive agency within the meaning of the Civil Service Reform Act, 5 U.S.C.
21 1065 and the Civil Rights Act, as amended, 42 U.S.C. 2000e-16. As such, defendant has the full
22 responsibility for administration of all programs within the agency, including the employment
23 policies and practices of the U.S. POSTAL SERVICE in all regions and is in a position to create
24 and implement a policy to eliminate and prevent any form of discrimination and retaliation and to
25 provide complete relief for plaintiff. Defendant is sued in his official capacity.

26 **V.**

27 **EXHAUSTION OF REMEDIES**

28 6. Plaintiff DUMAGUIT requested EEO counseling on July 31, 2000 regarding his claims of

1 hostile work environment, denial of terms and conditions of employment including performance
2 evaluation, bonuses, promotions, and posting a “Wanted” type poster containing his picture on
3 the building to prevent his entry, based on his race (Asian), national origin (Philippines) and
4 retaliation, based on his objections to unlawful actions. A timely formal complaint was filed on
5 September 26, 2000, Case No. HC-00000008-00. The U.S. Postal Service issued a Final Agency
6 Decision (FAD) on March 8, 2004. A timely appeal to the Equal Employment Opportunity
7 Commission, Office of Federal Operations was filed on April 24, 2004, EEOC No. 370-A1-
8 x2502. The OFO EEOC Decision on Complaint No.HC-00000008-00 has been pending for
9 approximately two years.

10 7. Plaintiff DUMAGUIT requested EEO counseling on October 5, 2001 regarding his
11 claims of denial of reasonable accommodation, denial of leave request, placed him in AWOL
12 status, which cancelled his medical insurance, denial of EVA (Economic Value Added) bonus,
13 based on his race (Asian), national origin (Philippines), disabilities and retaliation. He filed a
14 timely formal complaint on January 16, 2002, Case No. HO-0019-02. The Final Agency Decision
15 was received on March 27, 2004. A timely appeal to the Equal Employment Opportunity
16 Commission, Office of Federal Operations was filed on April 24, 2004, EEOC No. 370-2003-
17 01285. The OFO EEOC Decision on Complaint No. HO-0019-02 has been pending for
18 approximately two years.

19 8. Plaintiff DUMAGUIT requested EEO counseling on August 23, 2004 regarding his
20 claims of unlawful separation based on his disability (constructive discharge), failure to process
21 his disability retirement, refusal to process his leave buy back hours approved by U.S.
22 Department of Labor Office of Workers Compensation (OWCP), based on his race (Asian),
23 national origin (Philippines), disabilities and retaliation. He filed a timely formal complaint on
24 December 28, 2004, Case No. 4F-940-0154-04. The Final Agency Decision (FAD) was received
25 on July 25, 2005. The complaint was appealed to the Equal Employment Opportunity
26 Commission, Office of Federal Operations, EEOC No. 01A55900. The FAD was rescinded and
27 reissued on December 8, 2005 as a mixed case. On March 8, 2006, the OFO notified plaintiff that
28 “in its new decision, the agency gave you appeal rights to the Merit Systems Protection Board

1 only. Accordingly, this appeal is closed.” The FAD was received on December 20, 2005 and
2 provided 90 days to file a civil action in district court.

3 9. Plaintiff DUMAGUIT filed a complaint with the Office of Inspector General for the U.S.
4 Postal Service on March 10, 2003 concerning interference in the Postal Service EEO process by
5 USPS managers in Labor Relations and the Law Department, which were previously brought to
6 the attention of Bernadine Faison, Manager of the Compliance and Appeals. Plaintiff
7 DUMAGUIT also sent letters concerning these complaints to his Senators, Barbara Boxer and
8 Diane Feinstein, which were forwarded to the USPS for action. Over 180 days has elapsed since
9 the filing of this OIG complaint and no final action has been taken.

10 VI.

11 STATEMENT OF FACTS

12 10. Plaintiff DUMAGUIT is a member of a protected group based on his race (Asian),
13 national origin (Philippines), disabilities and in retaliation for protected activity (filing EEO
14 complaints and opposing unlawful practices).

15 11. Plaintiff DUMAGUIT fully exhausted his administrative remedies for Case No. HC-
16 00000008-00, Case No. HO-0019-02, and Case No. 4F-940-0154-04.

17 12. Plaintiff DUMAGUIT served in the Air Force from July 1973 until June 1977 and was
18 honorably discharged. He was hired as a Machine Distribution Clerk at the San Francisco Post
19 Office in 1978. He was promoted to a Supervisor, Distribution Operations in 1986 and
20 subsequently was promoted to an EEO Counselor/Investigator in 1997. In 1999, he was detailed
21 to Acting Manager, EEO Complaints Processing Center, Richmond, California. In 2000, he was
22 given a directed reassignment as EEO Dispute Resolution Specialist.

23 13. At all times material to this action, Plaintiff DUMAGUIT received performance ratings of
24 satisfactory or better, including an “Outstanding” rating in 1998.

25 14. At all times material to this action, defendant took no disciplinary action against Plaintiff
26 DUMAGUIT and had no valid documented criticism of his work.

27 **DENIAL OF PROMOTION AND EMPLOYMENT OPPORTUNITIES**

1 15. Defendant POTTER, through his agents, discriminated against Plaintiff DUMAGUIT in
2 terms and conditions of employment, including but not limited to performance evaluations,
3 bonuses, and promotions. Similarly situated employees not in Plaintiff's protected group were
4 promoted to positions that the plaintiff was denied.

5 16. The USPS had a long history of denying promotions for higher graded positions to
6 qualified Asians. The USPS also has a long history of disparate treatment towards Asian.
7 Filipinos in the Pacific Area were forced to quit their postal jobs as a result of harassment.

8 17. In 2000, the USPS conducted a restructuring of the EEO Office (hereafter referred to as
9 the "2000 EEO restructure"). All of the employees who were promoted to higher level positions
10 in the 2000 EEO restructure were Caucasians. No Asians were promoted during the 2000 EEO
11 restructure. One African-American was given a lateral position.

12 18. During the 2000 EEO restructure, Plaintiff DUMAGUIT was qualified for one of the eight
13 vacant Pacific Area, EEO Investigator positions, Level EAS 17. Plaintiff DUMAGUIT opposed
14 the practice of having Labor Relations managers in the board panel selecting candidates for EEO
15 positions.

16 19. Plaintiff DUMAGUIT was not selected for any of the EEO Investigator positions, Level
17 EAS 17 filed in the Pacific Area.

18 20. Each of the eight vacant Pacific Area, EEO Investigator positions, Level EAS 17 were
19 awarded to employees who were not members of Plaintiff's race/national origin; one was
20 Caucasian/white and seven were African-American/black. Most of the selectees reported to
21 Plaintiff while he served as Acting Manager, EEO Complaints Processing Center, Richmond,
22 California.

23 21. At all times relevant to this case, USPS management was made aware that William Norris
24 had a drinking problem; however management refused to take action.

25 22. After the 2000 EEO restructure, Plaintiff DUMAGUIT was given a directed reassignment
26 to San Francisco District as an EEO Dispute Resolution Specialist.

27 23. During the 2000 EEO restructure, Plaintiff DUMAGUIT was qualified for one of the EEO
28 Investigator Senior Investigator position, Level EAS 21 in the Pacific Area.

1 24. Plaintiff DUMAGUIT was not selected for the EEO Senior Investigator position, Level
2 EAS 21 in the Pacific Area.

3 25. Defendant POTTER selected a Caucasian-white, William Norris. Defendant, through his
4 agent Maria Robinson, pre-selected William Norris for the position. Mr. Norris was initially to
5 be reassigned to the Sacramento District. Mr. Norris took a downgrade to an EAS-17
6 investigator position the following day, in order to remain a Pacific Area employee. However, he
7 was never taken out of his higher level assignment despite his election to be downgraded as an
8 investigator.

9 26. During the 2000 EEO restructure, Plaintiff DUMAGUIT was qualified for one of the
10 EEO Compliance and Appeals Specialist position, Level EAS 23 in the Pacific Area.

11 27. Plaintiff DUMAGUIT was not selected for the EEO Compliance and Appeals Specialist
12 position, Level EAS 23 in the Pacific Area.

13 28. Defendant POTTER selected a Caucasian-white, Randall Sims for the EEO Compliance
14 and Appeals Specialist position, Level EAS 23 in the Pacific Area.

15 29. Defendant POTTER excluded Plaintiff DUMAGUIT from the selection process for the
16 EEO Investigator Senior Investigator position, Level EAS 21 and EEO Compliance and Appeals
17 Specialist position, Level EAS 23.

18 30. The asserted justification for excluding Plaintiff DUMAGUIT from the selection process
19 for the Level EAS 21 and 23 positions was that he was no longer employed in the Pacific Area,
20 because he was given a directed reassignment to the San Francisco District three days before the
21 vacancy announcement was posted. Plaintiff DUMAGUIT was denied an opportunity to be
22 considered for those higher level positions.

23 31. In or about June and July 2000, all of the Filipino employees in the Pacific Area EEO
24 office were reassigned to work in Richmond after the 2000 EEO restructure. Defendant stated
25 that none of the Filipino employees who had been employed in the Pacific Area EEO office prior
26 to the 2000 EEO restructure could be considered for the vacant EAS Level 21 and 23 positions,
27 because these positions were restricted to Pacific Area employees. This asserted justification
28 violated the USPS policies and was pretext for discrimination based on race/national origin.

1 32. In or about December 2000, Plaintiff DUMAGUIT was denied a performance evaluation,
2 and thereafter denied bonuses and salary increases.

3 33. Plaintiff DUMAGUIT had experienced continuing harassment until he went out on a
4 stress leave in December 2000.

5 DENIAL OF REASONABLE ACCOMMODATION

6 34. Plaintiff DUMAGUIT was and is a disabled person, based on his mental disability (major
7 depression) and physical disability (chronic gout).

8 35. Plaintiff DUMAGUIT applied for workers compensation benefits with the U.S.
9 Department of Labor, Office of Workers Compensation Program (OWCP) by filing a Form CA-2
10 in January 2000.

11 36. On February 9, 2001, Defendant POTTER, through his agent Roger Collado, submitted a
12 statement of non-concurrence challenging Plaintiff DUMAGUIT's request for OWCP benefits
13 which states, in pertinent part:

14 1. A review of Mr. Dumaguit's statements notes that he makes various general
15 allegations of mismanagement by "*top level managers in the Postal Service.*"

16 However, he does not elaborate further.

17 2. After he doesn't seek a promotion because of an alleged conspiracy between
18 the EEO and Labor Relations Offices, Mr. Dumaguit files a complaint with

19 Headquarter regarding what he believes are violations at the EEO office. Mr.

20 Dumaguit then cites major staffing changes at the Oakland and San Francisco

21 District Offices that handle EEO and Injury Compensation as proof that he has

22 been retaliated against. That the Oakland District is reallocating office space is an

23 administrative issue consistent with its staffing needs. No proof has been

24 submitted to substantiate that these changes are the result of agency error or abuse.

25 37. OWCP sent Plaintiff DUMAGUIT to a third party medical provider, Dr. Anderson, for a
26 medical evaluation. Dr. Anderson agreed with Dr. Joel Fine, Plaintiff DUMAGUIT's physician.

27 38. OWCP approved Plaintiff DUMAGUIT's request for benefits on September 5, 2001.
28

1 39. Defendant POTTER was required to provide reasonable accommodation to Plaintiff
2 DUMAGUIT by providing him with a job offer within his medical limitations.

3 40. On July 21, 2001 and again on August 10, 2001, Plaintiff DUMAGUIT provided medical
4 documentation to the U.S. Postal Service Manager of Human Resources in support of his OWCP
5 claims and request for reasonable accommodation, so that he could return to work within his
6 medical limitations.

7 41. At all times relevant to this dispute, Defendant POTTER refused to provide reasonable
8 accommodation to Plaintiff DUMAGUIT and instead placed him on AWOL.

9 42. Defendant POTTER, through his agent Donald Barrett, erroneously claimed that Plaintiff
10 DUMAGUIT's request for reasonable accommodation was submitted to the District Reasonable
11 Accommodation Committee (DRAC) for review, in his letter dated August 27, 2001. On or about
12 September 28, 2001, Donald Barrett admitted that the District Reasonable Accommodation
13 Committee (DRAC) was not yet in existence.

14 43. Defendant POTTER through his agents, stated in the FAD that they would not provide a
15 reasonable accommodation because Plaintiff DUMAGUIT did not have a permanent disability.

16 44. Providing Plaintiff DUMAGUIT the reasonable accommodation he requested, namely a job
17 offer for a vacant position not under the USPS managers who were harassing him would not have
18 been an undue hardship on Defendant POTTER or the USPS.

19 **HARASSMENT AND HOSTILE WORK ENVIRONMENT**

20 45. In 2001, Defendant's agent BMC Plant Manager May Henderson posted Plaintiff
21 DUMAGUIT's picture near the Richmond BMC entrance for all employees to see, as if he were
22 a criminal who was "wanted" by the FBI.. Henderson stated that the reason for posting Plaintiff
23 DUMAGUIT's picture at the entrance was that the security guards were instructed not to let
24 Plaintiff DUMAGUIT in the building because he is on stress leave. The only other person who's
25 picture was posted in a similar fashion during this period was Lina Siam, another Filipino
26 manager in the USPS EEO Department who had also filed an EEO complaint and applied for
27 OWCP benefits.

1 46. Defendant's agents, including May Henderson, Holly Bedell, Maria Robinson and
2 Virginia Glover were aware that Plaintiff DUMAGUIT had engaged in protected activities at the
3 time they engaged in the harassing behavior. As a result of the ongoing harassment and hostile
4 work environment, Plaintiff DUMAGUIT's health was adversely affected.

5 **DENIAL OF FY 2001 VARIABLE PAY**

6 47. On October 12, 2001, USPS Manager, Human Resource Gerald S. Sanchez issued a
7 notification that decision regarding exclusion from the FY 2001 Variable Pay Program would be
8 made by USPS Pacific Area Director, Al Iniguez.

9 48. Under the USPS procedures for excluding employees from the FY 2001 Variable Pay
10 Program, all recommendations must be fully documented and discussed with the employee prior
11 to submitting to Mr. Iniguez for approval. No such discussion took place.

12 49. On October 24, 2001, Scott Tucker sent a memorandum to Al Iniguez for his approval,
13 which included the requisite documentation and stated the EAS employees who were to be
14 excluded from the FY 2001 Variable Pay Program. This list did not include plaintiff
15 DUMAGUIT.

16 50. On or about October 28, 2001, Plaintiff DUMAGUIT was notified by HR Manager Holly
17 Bedell that he was excluded from the FY 2001 Variable Pay Program due to his absence from his
18 position.

19 **LEAVE BUY BACK HOURS**

20 51. The U. S Department of Labor notified the Defendant POTTER, through his agents that
21 over 1100 hours of leave used prior to the approval of Plaintiff DUMAGUIT's OWCP should be
22 returned to him.

23 52. Defendant POTTER, through his agents refused to compensate Plaintiff DUMAGUIT for
24 the earned leave.

25 53. Defendant POTTER, through his agents failed to promptly investigate the complaint that
26 the OWCP ordered the USPS to compensate Plaintiff DUMAGUIT for earned leave. Defendant
27 POTTER, through his agents removed documentation submitted by plaintiff from the
28

1 investigative files regarding the earned leave and mis-stated the hours of earned leave in the
2 investigative files.

3 **WRONGFUL DISCHARGE**

4 54. On or about June 29, 2004, Defendant POTTER, through his agent Beverly Harris, Labor
5 Relations, San Francisco District, mailed a letter instructing Plaintiff DUMAGUIT to seek
6 disability retirement counseling or be separated from the USPS for disability reasons.

7 55. On or about July 11, 2004, Plaintiff DUMAGUIT telephoned Ruth Padilla and requested
8 disability retirement counseling; the USPS could not provide him with counseling, due to the
9 increased number of applicants filing for retirement from the USPS.

10 56. On August 19, 2004, Defendant POTTER, through his agent sent Plaintiff DUMAGUIT
11 another letter re: notice of proposed separation which stated “on or about July 17, 2000, you
12 suffered a compensable injury.” The reason given for separating him was his disability and the
13 USPS’s failure to provide him with a job offer with reasonable accommodation.

14 57. Plaintiff DUMAGUIT submitted an application for disability retirement on September 8,
15 2004, pursuant to the instructions in the July 11, 2004 letter.

16 58. On or about September 30, 2004, Defendant POTTER refused to process Plaintiff
17 DUMAGUIT’s application for disability retirement from the USPS.

18 59. On September 30, 2004, Defendant POTTER through his agents, notified Plaintiff
19 DUMAGUIT separated him from his position for disability reasons.

20 60. Defendant POTTER, through his agents, failed to take appropriate remedial steps to stop
21 the discrimination, ongoing harassment and retaliation.

22 61. Defendant POTTER, through his agents, knew of Plaintiff DUMAGUIT’s protected
23 activity at all times relevant to this action.

24 **VII.**

25 **FIRST CLAIM**

26 **(UNLAWFUL DISCRIMINATION BASED ON RACE/NATIONAL ORIGIN)**

27 62. Paragraphs 1 through 60 above are hereby incorporated by reference as though fully set
28 forth in this claim.

1 63. Defendant has unlawfully discriminated against plaintiff DUMAGUIT based on his
2 race/national origin (Asian/Filipino) in violation of Title VII of the Civil Rights Act of 1964, 42
3 U.S.C. § 2000e-16 *et seq.* as amended.

4 64. Plaintiff is a member of a protected group based on his race/national origin (Asian/
5 Filipino).

6 65. Defendant treated Plaintiff less favorably than similarly situated employees who are not
7 Asian/Filipino.

8 66. Defendant has discriminated against plaintiff in the terms and conditions of his
9 employment on the basis of his protected group status (Asian/Filipino), in violation of Title VII.

10 67. Defendant has a pattern and practice of using the USPS procedures to deny Asian/Filipino
11 employees promotions and other employment opportunities on the basis of their national
12 origin/race, in violation of Title VII.

13 68. Plaintiff is now suffering and will continue to suffer irreparable injury and monetary
14 damages as a result of defendant's discriminatory practices unless and until the Court grants
15 relief.

16 VIII.

17 SECOND CLAIM

18 (UNLAWFUL DISCRIMINATION BASED ON DISABILITY)

19 69. Paragraphs 1 through 60 above are hereby incorporated by reference as though fully set
20 forth in this claim.

21 70. Defendant has unlawfully discriminated against Plaintiff DUMAGUIT based on his
22 disability in violation of Rehabilitation Act of 1973, 29 U.S.C. § 791, as amended by the
23 Americans With Disabilities Act.

24 71. Defendant POTTER has a legal obligation to provide reasonable accommodation to
25 employees who are disabled. An individual with a disability is defined as one who (1) has a
26 physical or mental impairment that substantially limits one or more major life activities, (2) has a
27 record of such an impairment or (3) is regarded as having such an impairment. 29 C.F.R. §
28 1630.2(g).

1 72. Plaintiff DUMAGUIT is and has been an individual with a disability at all times relevant
2 to this action.

3 73. A qualified individual with a disability is an individual with a disability who satisfies the
4 requisite skill, experience, education and other job-related requirements of the position she holds
5 or desires, and who with or without reasonable accommodation, can perform the essential
6 functions of the position. 29 C.F.R. § 1630.2(m).

7 74. Plaintiff DUMAGUIT is and has been a qualified individual with a disability at all times
8 relevant to this action.

9 75. Defendant POTTER, through his agents, received Plaintiff DUMAGUIT's request for
10 reasonable accommodation, namely to be provided a job offer consistent with his medical
11 limitations, so he could return to work.

12 76. The U.S. Postal Service is an agency is required to make reasonable accommodations for
13 the known physical and mental limitations of an otherwise qualified individual with a disability
14 unless the agency can show that accommodation would cause an undue hardship.

15 77. Defendant POTTER, through his agents, refused to provide reasonable accommodation to
16 Plaintiff DUMAGUIT.

17 78. On September 30, 2004, Defendant POTTER through his agents, notified Plaintiff
18 DUMAGUIT was he was separated for disability reasons. Defendant POTTER's reason given for
19 separating Plaintiff DUMAGUIT was the fact that he was considered to be "disabled" within the
20 meaning of the Rehabilitation Act and that in spite of his disability, the USPS's failed to provide
21 him with a job offer with reasonable accommodation. The asserted justification for separating
22 plaintiff is inconsistent with defendant's claim in the FAD that he is not permanently disabled.

23 79. Defendant POTTER, through his agents, treated Plaintiff DUMAGUIT in such a manner
24 that a reasonable person in his position would have found his working conditions intolerable.

25 80. Defendant POTTER, through his agents, engaged in conduct that constituted
26 discrimination against Plaintiff DUMAGUIT and thereby created the intolerable working
27 conditions.
28

1 81. Defendant POTTER, through his agents, wrongfully separated Plaintiff as a result of the
2 intolerable working conditions, failure to provide reasonable accommodation and failure to
3 process his retirement application.

4 82. Plaintiff is now suffering and will continue to suffer irreparable injury and monetary
5 damages as a result of defendant's discriminatory practices unless and until the Court grants
6 relief.

7 **IX.**

8 **THIRD CLAIM**

9 **(UNLAWFUL DISCRIMINATION BASED ON RETALIATION)**

10 83. Paragraphs 1 through 61 above are hereby incorporated by reference as though fully set
11 forth in this claim.

12 84. Defendant POTTER, through his agents has retaliated against Plaintiff DUMAGUIT,
13 *inter alia*, by denying him opportunities for employment on the basis of his having opposed
14 unlawful practices and having participated in the EEO process by filing a complaint alleging
15 discrimination, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16 *et*
16 *seq.* as amended.

17 85. Defendant POTTER, through his agents, were aware of Plaintiff DUMAGUIT's
18 opposition to illegal practices.

19 86. USPS regulation EL 603, 2.1.15 page 28 states: "The Area Manager or designee will
20 render a final agency decision prepared by the Appeals Processing Center. The final agency
21 decision will be based on the Appeal Processing Center's review of the case file in its entirety
22 and will clearly state the reason for the Postal Service's findings on the merits of each issue in
23 the complaint."

24 87. Plaintiff DUMAGUIT brought to the attention of USPS managers that USPS regulation
25 EL 603,2.1.15 page 28 was violated, that the EEO office had a practice of permitting the EEO
26 Counselor Investigators ("EEO C/Is") to dismiss cases pursuant to 29 C.F.R. §1614.107(g) for
27 alleged "failure to cooperate".
28

1 88. In 1997, Plaintiff DUMAGUIT brought to the attention of USPS managers that managers
2 in the Labor Relations and the Law Department interfered with the investigative process of EEO
3 complaints by ordering EEO C/Is to discuss the open investigation of high profile cases, thereby
4 jeopardizing the integrity of the investigations, including the *Abordo et al v. Potter* case.

5 89. Defendant POTTER, through his agents, were aware of Plaintiff DUMAGUIT's
6 participation in the EEO process, by filing EEO complaints on his own behalf.

7 90. Defendant POTTER, through his agents, were aware of Plaintiff DUMAGUIT
8 complained that his EEO complaints were not being investigated as required by 29 C.F.R. § 1614.

9 91. Defendant POTTER, through his agents, took adverse employment actions against
10 Plaintiff DUMAGUIT, including failing to process his EEO complaints, failing to give him a job
11 offer or provide him with reasonable accommodation, failing to process his disability retirement
12 application and terminating him from his position.

13 92. Defendant POTTER has a pattern and practice of using the EEO process and other
14 procedures to deny employees who engage in protected activities assignments, promotions,
15 benefits and other employment opportunities in reprisal, in violation of Title VII and the
16 Rehabilitation Act.

17 93. Defendant's actions toward Plaintiff and other employees who engage in protected
18 activity constitutes a violation of 29 C.F.R. 1614 and Title VII and the Rehabilitation Act.

19 94. Plaintiff is now suffering and will continue to suffer irreparable injury and monetary
20 damages as a result of defendants retaliatory practices unless and until the Court grants relief.

21
22 **X.**

23 **FOURTH CLAIM**

24 **(RETALIATION - WHISTLEBLOWER PROTECTION ACT)**

25 95. Paragraphs 1 through 61 above are hereby incorporated by reference as though fully set
26 forth in this claim.

27 96. Defendant POTTER, through his agents has retaliated against Plaintiff DUMAGUIT,
28 *inter alia*, by denying him opportunities for employment on the basis of his having opposed

1 unlawful practices and by filing a whistleblower complaint alleging prohibited personnel
2 practices as well as violations of laws, rules and regulations were being committed by managers
3 in the USPS, in violation of the Whistleblower Protection Act, 5 U.S.C. 2301, *et seq.* as
4 amended.

5 97. Defendant POTTER, through his agents, were aware of Plaintiff DUMAGUIT's
6 opposition to illegal practices.

7 98. Defendant POTTER, through his agents, took adverse employment actions against
8 Plaintiff DUMAGUIT, including failing to process his whistleblower complaints, failing to give
9 him a job offer or provide him with reasonable accommodation, failing to process his disability
10 retirement application and terminating him from his position.

11 99. Defendant POTTER has a pattern and practice of using USPS procedures to deny
12 employees who engage in protected activities assignments, promotions, benefits and other
13 employment opportunities in reprisal, in violation of Whistleblower Protection Act, 5 U.S.C.
14 §2301, *et seq.* as amended.

15 100. Plaintiff is now suffering and will continue to suffer irreparable injury and monetary
16 damages as a result of defendants retaliatory practices unless and until the Court grants relief.

17 18 **XI.**

19 **PRAYER FOR RELIEF**

20 WHEREFORE, plaintiff GERALD DUMAGUIT, respectfully prays that this Honorable
21 Court grant the following relief:

- 22 1. Issue a permanent injunction:
 - 23 a. Requiring defendants to abolish discrimination and reprisal;
 - 24 b. Requiring allocation of significant funding and trained staff to implement
25 all changes within two years;
 - 26 c. Requiring removal or demotion of all managers who have violated the
27 agency's policies and failed to meet their legal responsibility to promptly
28

1 investigate complaints or to take effective action to stop and deter prohibited
2 personnel practices against employees;

3 d. Establishing and strictly measuring EEO compliance as a critical element
4 in every manager's performance standards;

5 e. Creating a process for the prompt investigation of harassment and reprisal
6 complaints separate from the agency's process;

7 f. Requiring mandatory and effective training for all employees and
8 managers on discrimination and retaliation issues, investigations and appropriate
9 corrective actions; and,

10 g. Eliminating the backlog of current EEO cases alleging discrimination,
11 harassment and reprisal.

12 2. Issue an order requiring Defendant to retroactively restore Plaintiff to one of the
13 positions to which he was entitled by virtue of his application and qualifications, and
14 expunge her personnel file of all negative documentation.

15 3. For such damages, including back pay, front pay and benefits, overtime
16 compensation as plaintiff is entitled to under Title VII of the Civil Rights Act and the
17 Rehabilitation Act;

18 4. For other and further damages, including compensatory damages for plaintiff
19 emotional distress, as may be proven at trial;

20 5. For an order commanding defendants and each of them to cease and desist from
21 any employment practice which discriminates against plaintiff or others on the basis of
22 race, national origin, disability or in retaliation against the person because he complained
23 about such discrimination;

24 6. For an award of costs of suit including reasonable attorney's fees, including fees
25 under 29 U.S.C. § 216(b); and
26
27
28

1 GERALD DUMAGUIT,
2
3 Plaintiff,
4 v.
5 JOHN E. POTTER, POSTMASTER
6 GENERAL, U. S. POSTAL SERVICE,
7 Defendant.

Docket No.

CERTIFICATE OF SERVICE

8 I am a citizen of the United States and have an office in the County of San Francisco; I
9 am over the age of eighteen years and not a party to the above-entitled action; my address is 240
10 Stockton Street, San Francisco, CA 94108.

11 On March 17, 2006, I served the within COMPLAINT, SUMMONS, CIVIL COVER
12 SHEET, on the parties in said action by MAILING a true copy thereof enclosed in a sealed
13 envelope, first class postage fully prepaid to the following address:

14 JOHN E. POTTER
15 POSTMASTER GENERAL
16 980 Brentwood Road NE
17 Washington, DC 20066

Certified Mail No. 7003 3110 0001 4475 5760

18 JOHN ASHCROFT,
19 U. S. ATTORNEY GENERAL,
20 U.S. DEPARTMENT OF JUSTICE,
21 Main Building, Room 51
22 10th and Constitution Ave. N.W.
23 Washington, D.C. 20530

Certified Mail No. 7003 3110 0001 4475 5777

24 Assistant U.S. Attorney
25 Civil Division
26 450 Golden Gate Avenue
27 San Francisco, CA 94102

via hand delivery

28 I declare under penalty of perjury that the foregoing is true and correct and was executed
on March 17, 2006 at San Francisco, California.