

1 Plaintiff spoke to Linda Brown, who was the manager of the EEO
2 office, and discussed with Brown Plaintiff's disabilities and
3 the accommodations she would be provided.

4 8. Also in the EEO Office was Barbara Dwyer, an EEO
5 Specialist, and there were also other individuals who had
6 collateral duties for the EEO office.

7 9. Plaintiff, Ms. Brown, and Ms. Dwyer were the only
8 individuals who worked in the EEO Office, and Ms. Dwyer and
9 Plaintiff were the only individuals supervised by Ms. Brown.

10 10. Ms. Brown was Plaintiff's supervisor during the
11 entire time period of her employment in the EEO Office.

12 11. At the end of Plaintiff's 80-day appointment under
13 the Workforce Recruitment Program, Brown converted Plaintiff
14 to a 2-year "excepted" or special appointment with the Corps.

15 12. Plaintiff's new position was a Program Support Clerk,
16 in which she primarily provided clerical and administrative
17 support to the EEO Office, focused primarily on special
18 emphasis programs.

19 13. In her capacity as the Program Support Clerk, she
20 assisted Ms. Brown, Ms. Dwyer, and the Special Emphasis Program
21 Managers, who did not work in the EEO Office but devoted up to
22 20% of their time as collateral duty to managing special
23 emphasis programs, such as those for individuals with
24 disabilities, or minorities.

25 14. Plaintiff began her probationary period in this
26 position on October 1, 2005.

1 15. On April 7, 2006, Plaintiff and Ms. Dwyer were
2 entering the Army Corps office at the same time as A.R. Smith,
3 another employee of the Corps.

4 16. Mr. Smith is African-American.

5 17. In August 2006, Plaintiff was involved in making
6 changes to a flyer for the Diversity Jubilee, an event
7 sponsored by the EEO Office.

8 18. Some of the contents of the flyer were inaccurate,
9 which was discovered by Ms. Brown while she was meeting with
10 Debora Richert, the Chief of Staff, on or about August 23,
11 2006. Ms. Richert instructed Ms. Brown to schedule a meeting
12 between Ms. Richert, Ms. Brown, Plaintiff, and Ms. Dwyer to
13 discuss the error in the flyer.

14 19. On August 23, 2006, Chief of Staff Richert held a
15 meeting in her office, attended by Plaintiff, Ms. Dwyer and Ms.
16 Brown, in which the errors in the Diversity Jubilee flyer were
17 discussed. During the meeting, Chief of Staff Richert asked
18 Plaintiff whether she was expected to proofread her own work
19 and Plaintiff responded, "No."

20 20. On or about August 23, 2006, Ms. Brown wanted to
21 reward the initiative shown by her staff in setting up meetings
22 with volunteers for the Diversity Jubilee event, and inquired
23 separately of Plaintiff and Ms. Dwyer as to whose idea it was
24 to set up meetings with the volunteers.

25 21. Both Plaintiff and Ms. Dwyer separately claimed
26 credit for the idea.

1 22. On September 7, 2006, Ms. Brown gave notice to
2 Plaintiff that her employment was terminated effective
3 September 15, 2006. The notice stated:

4 You are being terminated because of your
5 unsatisfactory conduct including making a false
6 statement to the Chief of Staff during a meeting on 23
7 August 2006 wherein you stated "you were not required
8 to proofread your work"; on 24 August 2006, you made
9 a false statement to me when you said that it was your
10 idea to meet with Diversity Jubilee volunteers prior
11 to the event; and your inappropriate comment to a
12 member of the Safety Office on 7 April 2006.

13 23. Plaintiff was in a two-year special appointment
14 position.

15 UNDISPUTED FACTS RELEVANT TO PLAINTIFF'S EMPLOYMENT

16 DISCRIMINATION BASED ON DISABILITY CLAIM

17 1. Initially, Ms. Brown proofread Plaintiff's work
18 product.

19 UNDISPUTED FACTS RELEVANT TO PLAINTIFF'S RETALIATION CLAIM

20 1. In late spring of 2006, Plaintiff met with Human
21 Resources representative Ted Surratt to discuss her job
22 description.

23 2. Plaintiff met with Chief of Staff Debora Richert on
24 August 9, 2006.

25 3. Ms. Brown knew that one of the subjects discussed in
26 the August 9, 2006 meeting between Plaintiff and Chief of Staff

1 Richert was Ms. Brown's "management style."

2 **IV. DISPUTED FACTUAL ISSUES**

3 **GENERAL DISPUTED FACTUAL ISSUES RELEVANT TO ALL CLAIMS**

4 1. Whether or not Ms. Brown believed that, as of August
5 23, 2006, Plaintiff was responsible for proofreading
6 Plaintiff's final work product (This is relevant to all claims
7 because Ms. Brown alleged that Plaintiff made an untrue
8 statement regarding this issue and asserts this statement as
9 one of the non-retaliatory and non-discriminatory bases for the
10 decision to terminate Plaintiff's employment.)

11 2. Whether or not Ms. Brown believed that Plaintiff
12 attempted to take credit for a co-worker's work related to
13 setting up a meeting with volunteers for Diversity Jubilee.
14 (This is relevant to all claims because Ms. Brown alleged that
15 Plaintiff made untrue statements regarding this issue and
16 asserts this as one of the non-retaliatory and
17 non-discriminatory bases for the decision to terminate
18 Plaintiff.)

19 3. Whether or not the alleged offensive comment made by
20 Plaintiff to Mr. A.R. Smith contributed to Ms. Brown's decision
21 to terminate Plaintiff's employment. (This is relevant to all
22 claims because Defendant alleges that this statement was one
23 of the non-retaliatory and non-discriminatory bases for the
24 decision to terminate Plaintiff's employment.)

25 4. Whether or not the reasons stated by Ms. Brown in the
26 notice to Plaintiff that she was terminated, are false. (This

1 is relevant to whether or not Plaintiff's disability and/or
2 protected activity contributed to the decision to terminate
3 Plaintiff.)

4 5. Whether or not Plaintiff's employment would have
5 continued past September 30, 2007. (This is relevant to
6 whether Plaintiff would be entitled to back and front pay
7 damages after September 30, 2007.)

8 6. Whether or not Ms. Brown approached Human Resources
9 representative Ted Surratt about making Plaintiff's position
10 permanent and to promote her approximately one month prior to
11 the termination of Plaintiff's employment. (This is relevant
12 to whether Plaintiff would be entitled to back and front pay
13 damages after September 30, 2007.)

14 7. Whether or not Plaintiff normally used special
15 software that read documents to her aloud in order to help her
16 understand the words. She normally used four types of software
17 to read and write. (This is relevant to Plaintiff's claim for
18 disability discrimination, and relevant to whether Ms. Brown's
19 statements that Plaintiff was to proofread her own work were
20 false.)

21 8. Whether or not, because of her disability, it takes
22 Plaintiff significantly longer to read and comprehend a
23 document than a person without her condition. (This is
24 relevant to Plaintiff's claim for disability discrimination,
25 and relevant to whether Ms. Brown's statements that Plaintiff
26 was to proofread her own work were false.)

1 9. Whether or not Mr. Smith heard Plaintiff say to him
2 "where are you going, we don't let your kind in here." (This
3 is relevant to all claims, specifically as to whether
4 Defendant's stated reasons for Plaintiff's termination are
5 false.)

6 10. Whether or not, in her deposition in June 2010,
7 Plaintiff could not recall her exact words to Mr. Smith on
8 April 9, 2006. (This is relevant to all claims, specifically
9 as to whether Defendant's stated reasons for Plaintiff's
10 termination are false.)

11 11. Whether or not, at the fact-finding conference in May
12 2007, Plaintiff testified she said to Mr. Smith on April 9,
13 2006, "they let peoples like you in here." (This is relevant
14 to all claims, specifically as to whether Defendant's stated
15 reasons for Plaintiff's termination are false.)

16 12. Whether or not Mr. Smith prepared a memorandum
17 recording the details of the conversation, which he recalls
18 preparing that same day as the incident on April 9, 2006.
19 (This is relevant to all claims, specifically as to whether
20 Defendant's stated reasons for Plaintiff's termination are
21 false.)

22 13. Whether or not Mr. Smith later sent a copy to Ms.
23 Brown because he wanted to let Brown know of the incident as
24 she was Plaintiff's supervisor and because Plaintiff worked in
25 the EEO office. (This is relevant to all claims, specifically
26 as to whether Defendant's stated reasons for Plaintiff's

1 termination are false.)

2 14. Whether or not, after learning about the incident,
3 Ms. Brown counseled Plaintiff on the inappropriate remark,
4 finding her explanation not credible and nonsensical. (This is
5 relevant to all claims, specifically as to whether Defendant's
6 stated reasons for Plaintiff's termination are false.)

7 15. Whether or not, in June 2006, Plaintiff received a
8 performance evaluation from her supervisor, Linda Brown. In
9 this evaluation, Plaintiff received an overall rating of
10 "Successful," with no rating less than "Successful" in any of
11 the six subcategories. In the evaluation, Ms. Brown commented,
12 "Roslyn does an excellent job of staying on top of several
13 projects at the same time. Roslyn is always looking for a
14 better, faster, easier way to complete assignments. (This is
15 relevant to all claims, specifically as to whether Defendant's
16 stated reasons for Plaintiff's termination are false. This is
17 also relevant to Plaintiff's damages, specifically whether she
18 would have been promoted and/or retained by Defendant absent
19 a discriminatory or retaliatory termination.)

20 16. Whether or not Ms. Brown met with both Ms. Dwyer and
21 Plaintiff together, and asked them again who it was that set
22 up the volunteer meeting given that they both claimed credit
23 it. (This is relevant to all claims, specifically as to whether
24 Defendant's stated reasons for Plaintiff's termination are
25 false.)

26 17. Whether or not Ms. Dwyer indicated that it was her

1 idea, and Plaintiff remained silent for a long period, and
2 Plaintiff again remain silent when Ms. Brown asked her directly
3 why she claimed credit for work that Ms. Dwyer was claiming
4 credit for. (This is relevant to all claims, specifically as
5 to whether Defendant's stated reasons for Plaintiff's
6 termination are false.)

7 18. Whether or not, thereafter, Ms. Brown decided to
8 terminate Plaintiff's employment during the probationary
9 period. (This is relevant to all claims, specifically as to
10 whether Defendant's stated reasons for Plaintiff's termination
11 are false.)

12 19. Whether or not Plaintiff's position would not
13 automatically convert to a permanent position at the end of
14 that term. (This is relevant to all claims, specifically as to
15 whether Defendant's stated reasons for Plaintiff's termination
16 are false. This is also relevant to Plaintiff's damages,
17 specifically whether she would have been promoted and/or
18 retained by Defendant absent a discriminatory or retaliatory
19 termination.)

20 20. Whether or not Ms. Brown stopped proofreading
21 Plaintiff's work product at some point prior to the termination
22 of Plaintiff's employment unless Plaintiff requested that Ms.
23 Brown review Plaintiff's work. (This is relevant to all
24 claims, specifically as to whether Defendant's stated reasons
25 for Plaintiff's termination are false.)

26 21. Whether or not Plaintiff and Ms. Dwyer testified that

1 they were treated similarly by Ms. Brown, as did some of the
2 Special Emphasis Program Managers who had interactions with Ms.
3 Brown. (This is relevant to all claims, specifically as to
4 whether Defendant's stated reasons for Plaintiff's termination
5 are false, whether Plaintiff was discriminated against, and
6 whether Plaintiff was retaliated against. This is also
7 relevant to Ms. Brown's alleged animus, and whether she treated
8 similarly situated employees differently.)

9 22. Whether or not, a few months after Plaintiff's
10 termination, Ms. Brown proposed that Ms. Dwyer's employment be
11 terminated as well. (This is relevant to all claims,
12 specifically as to whether Defendant's stated reasons for
13 Plaintiff's termination are false, whether Plaintiff was
14 discriminated against, and whether Plaintiff was retaliated
15 against. This is also relevant to Ms. Brown's alleged animus,
16 and whether she treated similarly situated employees
17 differently.)

18 23. Whether or not Ms. Dwyer is disabled. (This is
19 relevant to all claims, specifically as to whether Defendant's
20 stated reasons for Plaintiff's termination are false, whether
21 Plaintiff was discriminated against, and whether Plaintiff was
22 retaliated against. This is also relevant to Ms. Brown's
23 alleged animus, and whether she treated similarly situated
24 employees differently.)

25 24. Whether or not Ms. Brown ever inquired of Plaintiff
26 or Ms. Dwyer as to what was said in the meeting with Ms.

1 Richert on August 9, 2006. This is relevant to all claims,
2 specifically as to whether Defendant's stated reasons for
3 Plaintiff's termination are false, whether Plaintiff was
4 discriminated against, and whether Plaintiff was retaliated
5 against. This is also relevant to Ms. Brown's alleged animus,
6 and whether _____ retaliated against Plaintiff for making a
7 complaint.)

8 DISPUTED FACTUAL ISSUES RELEVANT TO PLAINTIFF'S EMPLOYMENT
9 DISCRIMINATION BASED ON DISABILITY CLAIM

10 1. Whether or not Plaintiff's disability was a
11 motivating reason for Ms. Brown's decision to terminate her.
12 (This is relevant to whether Plaintiff's disability contributed
13 to the decision to terminate Plaintiff's employment.)

14 2. Whether or not Ms. Brown told a co-worker in July or
15 August 2005, that Plaintiff was not of average intelligence,
16 nor could she read or write, or words to that effect. (This
17 is relevant to whether Plaintiff's disability contributed to
18 the decision to terminate Plaintiff's employment.)

19 3. Whether or not Ms. Brown referred to Plaintiff in
20 July or August 2005, as "mentally handicapped." (This is
21 relevant to whether Plaintiff's disability contributed to the
22 decision to terminate Plaintiff's employment.)

23 4. Whether or not Ms. Brown stated in July or August
24 2005, that each of her employees was "handicapped by one form
25 of stupidity or another." (This is relevant to whether
26 Plaintiff's disability contributed to the decision to terminate

1 Plaintiff's employment.)

2 5. Whether or not Ms. Brown expressed anger and
3 resentment about the time and effort she had to give her own
4 daughter, who Plaintiff claims Ms. Brown referred to as
5 "mentally retarded" or "mentally ill." (This is relevant to
6 whether Plaintiff's disability contributed to the decision to
7 terminate Plaintiff's employment.),

8 6. Whether or not Ms. Brown concluded she could not
9 trust Plaintiff's judgment or her candor because of Plaintiff's
10 two allegedly false statements in August 2006, coupled with
11 Plaintiff's earlier allegedly racially offensive statement to
12 Mr. Smith in April 2006.

13 7. Whether or not Ms. Brown terminated Plaintiff's
14 probationary employment due to Ms. Brown's alleged lack of
15 trust in Plaintiff's judgment and her candor.

16 8. Whether or not Ms. Brown followed correct government
17 procedure in disciplining Plaintiff and whether government EEO
18 officials followed correct procedure in addressing Plaintiff's
19 complaints.

20 9. Whether or not Plaintiff and Ms. Dwyer testified that
21 they were treated similarly by Ms. Brown, as did some of the
22 Special Emphasis Program Managers who had interactions with Ms.
23 Brown.

24 10. Whether or not, a few months after Plaintiff's
25 termination, Ms. Brown proposed that Ms. Dwyer's employment be
26 terminated as well.

1 11. Whether or not Ms. Dwyer is disabled.

2 DISPUTED FACTUAL ISSUES RELEVANT TO PLAINTIFF'S RETALIATION
3 CLAIM

4 1. Whether or not Plaintiff raised concerns about a
5 hostile work environment and/or disability discrimination
6 during Plaintiff's meeting with Ms. Richert in August 2006.
7 (This is relevant to the issue of whether Plaintiff engaged in
8 protected activity.)

9 2. Whether or not Ms. Brown became upset with Plaintiff
10 for "going over Ms. Brown's head" by talking to a member of
11 Human Resources about Plaintiff's position description in May
12 or June 2006. (This is relevant to Plaintiff's retaliation
13 claim because it relates to whether Ms. Brown harbored
14 retaliatory animus.)

15 3. Whether or not Ms. Brown told Plaintiff that "if she,
16 [Ms. Brown] were any other supervisor" Plaintiff would have
17 been fired. (This is relevant to Plaintiff's retaliation claim
18 because it relates to whether Ms. Brown harbored retaliatory
19 animus.)

20 4. Whether or not, prior to Ms. Brown's decision to
21 terminate Plaintiff's probationary employment, Ms. Brown knew
22 that Plaintiff had allegedly complained about a hostile work
23 environment and disability discrimination during the August 9,
24 2006 meeting with Chief of Staff Richert. (This is relevant
25 to whether Plaintiff's alleged protected activity contributed
26 to the decision to terminate Plaintiff.

1 **V. NON-DISCOVERY MOTIONS TO THE COURT AND RESOLUTION**

2 Plaintiff moved for IFP status, which was granted and
3 appointment of counsel, which was denied. Plaintiff moved for
4 a default judgment, which was denied, and the Army Corps moved
5 to dismiss the First Amended Complaint, which was mooted by
6 plaintiff filing an Amended Complaint omitting the Army Corps,
7 and naming only McHugh, Secretary of the Army, as defendant.
8 Defendant moved to dismiss the Declaratory Judgment claim of
9 the Second Amended Complaint, which was granted with prejudice,
10 and to strike and dismiss the Third Amended Complaint, which
11 was granted. Defendant moved for summary judgment, which was
12 granted as to compensatory damages for the retaliation claim,
13 and otherwise denied.

14 The plaintiff now claims that later Ninth Circuit
15 determinations suggest that the court's original ruling was
16 erroneous. Despite the fact that law and motion has been cut
17 off, the court will grant the plaintiff fifteen (15) days to
18 file a motion for reconsideration and the court will hear the
19 matter on December 5, 2011 at 10:00 a.m.

20 **VI. DISPUTED EVIDENTIARY ISSUES**

21 Plaintiff intends to move in limine, pursuant to Fed. Rule
22 of Evidence 403, to exclude evidence of the details of the
23 comment made by Plaintiff to A.R. Smith on April 7, 2006 and
24 to limit references to such comment to the phrase:
25 "inappropriate comment." The phrase "inappropriate comment" is
26 the phrase used by Linda Brown in Plaintiff's notice of

1 Termination. The details of the comment were not stated in the
2 Notice of termination and the danger of prejudice associated
3 with these comments substantially outweighs their probative
4 value.

5 Plaintiff anticipates that issues regarding production of
6 evidence during discovery, document retention, and compliance
7 with document retention policies will also constitute
8 evidentiary issues to be addressed. Plaintiff anticipates
9 addressing these issues through jury instructions.
10 Plaintiff anticipates that Defendant will move to exclude
11 testimony related to Plaintiff's emotional distress,
12 specifically, witnesses who will testify about their
13 observations of Plaintiff before and after her termination.
14 Plaintiff suggests that this issue be resolved by motion in
15 limine.

16 The Secretary will move to exclude any expert opinion
17 testimony to be offered on behalf of Plaintiff, including
18 testimony by her mother, Lois McCoy, her son, Jonathan McCoy,
19 and her friend, Polly Baumbauer, and by any other individual
20 identified on Plaintiff's Witness List [D.E. 85], as well as
21 exhibits containing similar evidence. See Pltf's Proposed
22 Exhibits 76 and 80. Plaintiff had at one point identified her
23 mother, son, and friend as potentially providing expert witness
24 testimony but failed to present any reports for them under Rule
25 26(a)(2). After the Secretary objected, Plaintiff withdrew the
26 designations for Lois McCoy and Polly Baumbauer, and also

1 failed to produce a report for Jonathan McCoy. Accordingly,
2 Plaintiff is barred from eliciting expert testimony or opinions
3 from these individuals at trial. See Fed.R.Civ.P. 26(a)(2);
4 Fed.R.Civ.P. 37(c)(1).

5 The Secretary will move to exclude or otherwise limit
6 Plaintiff's testimony regarding emotional distress to her
7 stipulation that she suffered "garden variety" emotional
8 distress. In particular, in response to the Secretary's notice
9 that he would be seeking an independent medical (physiological)
10 examination, Plaintiff conceded she is only seeking garden
11 variety emotional distress. She also did not oppose summary
12 judgment on this point. Accordingly, the jury should be
13 instructed that she is seeking only "garden variety" emotional
14 distress, and Plaintiff should be limited to only her own
15 testimony on this point.

16 The Secretary will move to limit Plaintiff's compensatory
17 damages to "garden variety" emotion distress, and to exclude
18 any other form of compensatory damages, based on her
19 stipulation to that effect and based on the absence of any
20 competent testimony or evidence with respect to any other
21 compensatory damages. This includes Plaintiff's apparent
22 intention to claim as damages certain dental expenses, as
23 indicated by proposed exhibits identified on Plaintiff's
24 Exhibit List [DE 84]. See, e.g., Pltff's Proposed Exhibits 61,
25 62. The Secretary previously objected to Plaintiff's
26 designation of her dentist as an expert, and Plaintiff

1 subsequently withdrew that designation and has failed to
2 designate any expert or provide an expert report with respect
3 to any alleged dental harm caused by the alleged discriminatory
4 termination. Accordingly, Plaintiff has no admissible evidence
5 showing any causal connection and such evidence must be
6 excluded.

7 The Secretary will move to exclude testimony from Helen
8 Warren and Elaine Woodhall, both of whom are listed as
9 witnesses on Plaintiff's Witness List. See DE 85, at Nos. 16
10 and 18. The Secretary propounded discovery on Plaintiff to
11 identify individuals with knowledge of facts relevant to
12 Plaintiff's claims. Neither of these individuals was ever
13 identified as a potential witness by Plaintiff in her discovery
14 responses nor in any supplemental responses. Plaintiff's
15 failure to timely disclose the identities of these individuals
16 during discovery forecloses their appearance at trial. See
17 Fed.R.Civ.P.33; Fed.R.Civ.P. 37(c)(1). Further, Ms. Warren
18 appears to relate to the declaratory relief claim for a
19 different administrative complaint; the subject of which was
20 dismissed from this action by the Court's order. See DE 62.
21 Accordingly, Ms. Warren's proffered testimony is irrelevant.

22 Plaintiff has identified numerous documents that do not
23 reference a Bates number. Until the Secretary has the
24 opportunity to determine whether these documents have
25 previously been produced by Plaintiff in response to the
26 Secretary's discovery requests, or were otherwise made

1 available to the Secretary through discovery or were part of
2 the administrative record, the Secretary reserves the right to
3 object to any documents or evidence that was not previously
4 produced to the Secretary in discovery. See Fed.R.Civ.P.34;
5 Fed.R.Civ.P. 37(c)(1).

6 Plaintiff has identified the entirety of the testimony
7 before the Administrative Law Judge, as well as affidavits or
8 statements from various individuals that Plaintiff has also
9 identified as her witnesses. See Plaintiff's Proposed Exhibit
10 List [DE 84], at Ex. Nos. 58, 59, 78, 79, 81-82. The Secretary
11 reserves the right to object to any particular testimony or
12 affidavit by Plaintiff's witnesses on the basis of hearsay or
13 any other applicable evidentiary basis prior to or at the time
14 of trial.

15 Plaintiff has identified a significant number of witnesses
16 that appear to be character witnesses only and/or related to
17 the issue of Plaintiff's emotional state, and will not testify
18 to any percipient knowledge about the alleged discrimination
19 and retaliation in connection with her termination. See
20 Plaintiff's Witness List [DE 85], Nos. 1, 4, 8, 9, 21, 15, 17.
21 The Secretary reserves the right to challenge all or some of
22 these witnesses on the basis of the relevance of their
23 testimony as well as that their testimony will be cumulative
24 and unduly burdensome.

25 Plaintiff has identified as potential exhibits letters of
26 recommendation unrelated to any issues in the case, including

1 her initial appointment, and letters to employers subsequent
2 to her termination. See Plaintiff's Proposed Exhibit List [DE
3 84], at Ex. Nos. 34, 35, 37, 38, and 39. The Secretary will
4 move to exclude these documents as hearsay and irrelevant.

5 The Secretary will move to exclude and have Plaintiff
6 destroy or return all copies of an attorney-client privileged
7 document that was inadvertently produced to Plaintiff in
8 discovery. The Secretary had previously identified the
9 document, and withheld it from discovery, but another copy was
10 inadvertently produced. On September 21, 2011, the Secretary
11 informed Plaintiff of this issue after reviewing Plaintiff's
12 exhibit list, and requested Plaintiff destroy or return the
13 document. Plaintiff has not responded to date. Plaintiff's
14 possession and use of the document is foreclosed. See
15 Fed.R.Evid. 702; Fed.R.Civ.P. 26(b)(5)(B).

16 The parties shall file cross motions in limine to be heard
17 on the same date as the motion to reconsider.

18 **VII. SPECIAL FACTUAL INFORMATION**

19 None.

20 **VIII. RELIEF SOUGHT**

21 Plaintiff seeks:

- 22 1. Back pay,
- 23 2. Compensatory damages,
- 24 3. Injunctive relief, including sanitization of
25 plaintiff's personnel file and a request for a
26 positive referral,

1 4. Attorneys' fees, costs of suit and interest.

2 Defendant seeks judgment in its favor and costs.

3 IX. POINTS OF LAW

4 (a) The elements, standards, and burdens of proof for
5 making a federal Rehabilitation Act claim.

6 (b) The elements, standards, and burdens of proof for
7 making a retaliation claim under the federal Rehabilitation
8 Act.

9 (c) The legal standard for awarding compensatory damages
10 (on the discrimination claim), and back pay.

11 ANY CAUSES OF ACTION OR AFFIRMATIVE DEFENSES NOT
12 EXPLICITLY ASSERTED IN THE PRETRIAL ORDER UNDER POINTS OF LAW
13 AT THE TIME IT BECOMES FINAL ARE DISMISSED, AND DEEMED WAIVED.

14 X. ABANDONED ISSUES

15 None.

16 XI. WITNESSES

17 Plaintiff anticipates calling the following witnesses:

18 See attachment "A".

19 Defendant anticipates calling the following witnesses:

20 See attachment "B".

21 Each party may call a witness designated by the other.

22 A. No other witnesses will be permitted to testify
23 unless:

24 (1) The party offering the witness demonstrates that
25 the witness is for the purpose of rebutting evidence which

26 ////

1 could not be reasonably anticipated at the Pretrial Conference,
2 or

3 (2) The witness was discovered after the Pretrial
4 Conference and the proffering party makes the showing required
5 in "B" below.

6 B. Upon the post-Pretrial discovery of witnesses, the
7 attorney shall promptly inform the court and opposing parties
8 of the existence of the unlisted witnesses so that the court
9 may consider at trial whether the witnesses shall be permitted
10 to testify. The evidence will not be permitted unless:

11 (1) The witnesses could not reasonably have been
12 discovered prior to Pretrial;

13 (2) The court and opposing counsel were promptly
14 notified upon discovery of the witnesses;

15 (3) If time permitted, counsel proffered the
16 witnesses for deposition;

17 (4) If time did not permit, a reasonable summary of
18 the witnesses' testimony was provided opposing counsel.

19 **XII. EXHIBITS, SCHEDULES AND SUMMARIES**

20 Plaintiff contemplates the following by way of exhibits:

21 See attachment "C".

22 Defendant contemplates the following by way of exhibits:

23 See attachment "D".

24 A. No other exhibits will be permitted to be introduced
25 unless:

26 ////

1 (1) The party proffering the exhibit demonstrates
2 that the exhibit is for the purpose of rebutting evidence which
3 could not be reasonably anticipated at the Pretrial Conference,
4 or

5 (2) The exhibit was discovered after the Pretrial
6 Conference and the proffering party makes the showing required
7 in paragraph "B," below.

8 B. Upon the post-Pretrial discovery of exhibits, the
9 attorneys shall promptly inform the court and opposing counsel
10 of the existence of such exhibits so that the court may
11 consider at trial their admissibility. The exhibits will not
12 be received unless the proffering party demonstrates:

13 (1) The exhibits could not reasonably have been
14 discovered prior to Pretrial;

15 (2) The court and counsel were promptly informed of
16 their existence;

17 (3) Counsel forwarded a copy of the exhibit(s) (if
18 physically possible) to opposing counsel. If the exhibit(s)
19 may not be copied, the proffering counsel must show that he has
20 made the exhibit(s) reasonably available for inspection by
21 opposing counsel.

22 As to each exhibit, each party is ordered to exchange
23 copies of the exhibit not later than fourteen (14) days from
24 the date of this Pretrial Order. Each party is then granted
25 fourteen (14) days to file with the court and serve on opposing
26 counsel any objections to said exhibits. In making said

1 objections, the party is to set forth the grounds for the
2 objection. As to each exhibit which is not objected to, it
3 shall be marked and received into evidence and will require no
4 further foundation. Each exhibit which is objected to will be
5 marked for identification only.

6 In addition to electronically filing said objections, if
7 any, the objections must be submitted by email, as an
8 attachment in Word or WordPerfect format, to:
9 arivas@caed.uscourts.gov.

10 The attorney for each party is directed to appear before
11 and present an original and one (1) copy of said exhibit to Ana
12 Rivas, Deputy Courtroom Clerk, not later than 10:30 a.m. on the
13 date set for trial. All exhibits shall be submitted to the
14 court in binders. Plaintiff's exhibits shall be listed
15 numerically. Defendant's exhibits shall be listed
16 alphabetically. The parties shall use the standard exhibit
17 stickers provided by the court: pink for plaintiff and blue
18 for defendant.

19 **XIII. DISCOVERY DOCUMENTS**

20 Discovery documents to be used in the case-in-chief:

21 Pursuant to Local Rule 281(b)(12), Plaintiff designates
22 the following answers to interrogatories and responses to
23 requests for admissions to be offered at trial:

24 Defendants' Answers to Interrogatories Nos. 1, 2, 3, 4, 6,
25 8, 9, 11, 17, 18, 21.

26 ////

1 Defendants' Requests for Admissions Response Nos. 3, 4,
2 5, 6, 7, 8, 17, 19, 20, 21, 22.

3 Defendants' Request for Production of Documents Responses
4 Nos. 7, 8, 55.

5 United States Discovery Documents:

6 The United States intends to use at trial the following
7 discovery:

8 Plaintiffs' responses to admissions nos. 5, 6, 7, 11, 12,
9 16, 30, 31, 32, 34, 35, 51, .

10 Plaintiffs' response to interrogatory nos. 3, 4, 5.

11 **XIV. FURTHER DISCOVERY OR MOTIONS**

12 None, save and except for the permission to bring a motion
13 to reconsider relative to compensatory damages under the
14 Rehabilitation Act.

15 **XV. STIPULATIONS**

16 The parties have agreed that the plaintiff's mother will
17 be permitted to testify as to her perceptions of the
18 plaintiff's emotional upset but will not be permitted to
19 testify as to any medical condition, despite the fact she is
20 a psychologist. The jury will also not be informed that she
21 is a psychologist.

22 In light of this stipulation, the defendants will withdraw
23 exhibit 3(a).

24 **XVI. AMENDMENTS/DISMISSALS**

25 None.

26 ////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

XVII. FURTHER TRIAL PREPARATION

A. Counsel are directed to Local Rule 285 regarding the contents of and the time for filing trial briefs.

B. Counsel are informed that the court has prepared a set of standard jury instructions. In general, they cover all aspects of the trial except those relating to the specific claims of the complaint. Accordingly, counsel need not prepare instructions concerning matters within the scope of the prepared instructions. A copy of the prepared instructions is given to the parties at the Pretrial Conference.

C. Counsel are further directed that their specific jury instructions shall be filed fourteen (14) calendar days prior to the date of trial. As to any instructions counsel desires to offer, they shall be prepared in accordance with Local Rule 163(b)(1) which provides:

"Two copies of the instructions shall be submitted. One copy shall be electronically filed as a .pdf document and shall contain each instruction on a separate page, numbered and identified as to the party presenting it. Each instruction shall cite the decision, statute, ordinance, regulation or other authority supporting the proposition stated in the instruction."

The second copy ("jury copy") shall be submitted by e-mail to lkorders@caed.uscourts.gov.

////

1 In addition, counsel shall provide copies of proposed
2 forms of verdict, including special verdict forms, at the time
3 the proposed jury instructions are filed with the court.

4 D. It is the duty of counsel to ensure that any
5 deposition which is to be used at trial has been filed with the
6 Clerk of the Court. Counsel are cautioned that a failure to
7 discharge this duty may result in the court precluding use of
8 the deposition or imposition of such other sanctions as the
9 court deems appropriate.

10 E. The parties are ordered to file with the court and
11 exchange between themselves not later than one (1) week before
12 the trial a statement designating portions of depositions
13 intended to be offered or read into evidence (except for
14 portions to be used only for impeachment or rebuttal).

15 F. The parties are ordered to file with the court and
16 exchange between themselves not later than one (1) week before
17 trial the portions of answers to interrogatories which the
18 respective parties intend to offer or read into evidence at the
19 trial (except portions to be used only for impeachment or
20 rebuttal).

21 G. The court has extensive audiovisual equipment
22 available. Any counsel contemplating its use shall contact the
23 court's Telecommunications Manager, Andre Carrier, at (916)
24 930-4223, at least two weeks in advance of trial to receive the
25 appropriate training.

26 ////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

XVIII. SETTLEMENT NEGOTIATIONS

A Settlement Conference is SET before the Honorable Dale A. Drozd, United States Magistrate Judge, on January 12, 2012 at 10:00 a.m. Counsel are directed to submit settlement conference statements to the settlement judge not later than seven (7) days prior to the conference and shall be e-mailed to: dadorders@caed.uscourts.gov. At counsel's option, such statements may be submitted in confidence pursuant to Local Rule 270(d).

Each party is directed to have a principal capable of disposition at the Settlement Conference or to be fully authorized to settle the matter on any terms and at the Settlement Conference.

XIX. TRIAL EXHIBITS

Plaintiff reserves the right to use trial presentation software.

XX. SEPARATE TRIAL OF ISSUES

None.

XXI. IMPARTIAL EXPERTS/LIMITATION OF EXPERTS

None.

XXII. ATTORNEYS' FEES

Plaintiff will seek attorney's fees pursuant to the statute.

XXIII. MISCELLANEOUS

None.

////

1 **XXIV. ESTIMATE OF TRIAL TIME/TRIAL DATE**

2 Jury trial is set for March 20, 2012, at 10:30 a.m. in
3 Courtroom No. 4. The parties represent in good faith that
4 the trial will take approximately five (5) days.

5 Counsel are to call Ana Rivas, Courtroom Deputy, at
6 (916) 930-4133, one week prior to trial to ascertain status
7 of trial date.

8 **XXV. OBJECTIONS TO PRETRIAL ORDER**

9 Each party is granted fourteen (14) days from the
10 effective date of this Pretrial Order [Tentative] to object
11 to or augment same. Each party is also granted seven (7)
12 days thereafter to respond to the other party's objections.
13 If no objections or additions are made, the Tentative
14 Pretrial Order will become final without further order of
15 the court.

16 The parties are reminded that pursuant to Federal Rule
17 of Civil Procedure 16(e), this order shall control the
18 subsequent course of this action and shall be modified only
19 to prevent manifest injustice.

20 **XXVI. OTHER**

21 All time limits and dates that refer to the Pretrial Order
22 refer to the date this Pretrial Order [Tentative] is filed and
23 not the date an amended order, if any, is filed.


24 IT IS SO ORDERED.

25 ////

26 ////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED: October 7, 2011.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

1 John Ota (SBN 195532)
LAW OFFICES OF JOHN OTA
2 1720 Broadway
Alameda, CA 94501
3 T. 510.521.7047
johnota@sbcglobal.net

4 LAWRENCE A. ORGAN (SBN 175503)
5 BARBARA E. FIGARI (SBN 251942)
EQUALITY LAWYERS LLP
6 407 San Anselmo Avenue, Suite 201
San Anselmo, CA 94960
7 T. 415.453.4740
F. 415.963.4301
8 larry@equalitylawyers.com
barbara@equalitylawyers.com

9 Attorneys for Plaintiff ROSLYN G. MCCOY

10
11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF CALIFORNIA
14 (SACRAMENTO DIVISION)

15
16
17 ROSLYN G. McCOY,
18 Plaintiff,

19 vs.

20 JOHN MCHUGH, SECRETARY OF
21 THE ARMY, collectively,

22 Defendants.
23
24
25
26
27
28

CASE NO: 2:09-CV-01973 LKK-CMK

**PLAINTIFF ROSLYN McCOY'S
WITNESS LIST**

Pretrial Conference: September 6, 2011
Time: 1:30 p.m.
Trial Date: December 6, 2011
Judge: Hon. Lawrence K. Karlton

ATTACHMENT "A"

PLAINTIFF ROSLYN McCOY'S WITNESS LIST

Case No. 2:09-CV-01973 LKK-CMK

1 Pursuant to Local Rule 281(b)(10) Plaintiff Roslyn McCoy intends to call the following
2 witnesses at trial:

3 1. Polly Bambauer

4 2060 Butte St.

5 Redding, CA 96001

6 2. Linda Brown – Employee of Defendant

7 1325 J Street, Room 840

8 Sacramento CA, 95814

9 3. Penelope Cross

10 1325 J Street, Room 1440

11 Sacramento, CA 95814

12 4. Deanna D. Cooper

13 404 East Lake Street

14 Mt. Shasta, CA 96067

15 5. Barbara Dwyer

16 1325 J Street

17 Sacramento CA, 95814

18 6. John Esparza

19 3041 Pebble Beach Circle

20 Fairfield, CA 94534

21 7. Jason Faridi

22 9707 Almond Wood Drive

23 Oakdale, CA 95361

24 8. Jonathan McCoy

25 404 East Lake Street

26 Mt. Shasta, CA 96067

27 9. Lois E. McCoy

28 1327 Tipperary St.

1 Boulder, CO 80303

2 10. Roslyn McCoy - Plaintiff

3 404 East Lake Street

4 Mt. Shasta, CA 96067

5 11. Debora Richert – Former Chief of Staff, USACOE, Sacramento District

6 204 Lee Avenue

7 Fort Meyer, VA 22211

8 12. Katherine E. Sawyer

9 1325 J Street

10 Sacramento CA, 95814

11 13. Arthur R. Smith

12 2100 Bridgeway Boulevard

13 Sausalito, CA 94965

14 14. Ted Surratt – Employee of Defendant

15 1325 J Street, Room 840

16 Sacramento CA, 95814

17 15. Robert Taylor

18 Last known address:

19 1325 J Street

20 Sacramento, CA 95814

21 16. Helen Warren

22 Civilian Personnel Management Service

23 Investigations and Resolutions Division

24 P.O. Box 135

25 Roseville, CA 95678

26 17. Keiko Wilson

27 1325 J Street

28 Sacramento, CA 95814

1 18. Elaine Woodhall – Employee of Defendant

2 1325 J Street

3 Sacramento CA, 95814

4
5
6 Respectfully submitted,

7 DATED: September 19, 2011

8 **EQUALITY LAWYERS, LLP**

9
10 */s/ Barbara E. Figari*

11 _____
12 LAWRENCE A. ORGAN, ESQ.
13 BARBARA E. FIGARI, ESQ.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. Roslyn McCoy
Plaintiff
404 East Lake Street
Mt. Shasta, CA 96067

1 John Ota (SBN 195532)
LAW OFFICES OF JOHN OTA
2 1720 Broadway
Alameda, CA 94501
3 T. 510.521.7047
johnota@sbcglobal.net

4 LAWRENCE A. ORGAN (SBN 175503)
5 BARBARA E. FIGARI (SBN 251942)
EQUALITY LAWYERS LLP
6 407 San Anselmo Avenue, Suite 201
San Anselmo, CA 94960
7 T. 415.453.4740
F. 415.963.4301
8 larry@equalitylawyers.com
barbara@equalitylawyers.com

9 Attorneys for Plaintiff ROSLYN G. MCCOY

10
11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF CALIFORNIA
14 (SACRAMENTO DIVISION)
15

16
17 ROSLYN G. McCOY,
18 Plaintiff,
19 vs.

20 JOHN MCHUGH, SECRETARY OF
21 THE ARMY, collectively,
22 Defendants.
23
24

CASE NO: 2:09-CV-01973 LKK-CMK

**PLAINTIFF ROSLYN McCOY'S
EXHIBIT LIST**

Pretrial Conference: October 3, 2011
Time: 1:30 p.m.
Trial Date: December 6, 2011
Judge: Hon. Lawrence K. Karlton

25
26
27
28
ATTACHMENT "C"

PLAINTIFF ROSLYN McCOY'S EXHIBIT LIST

Case No. 2:09-CV-01973 LKK-CMK

Pursuant to Local Rule 281(b)(11) Plaintiff Roslyn McCoy submits the following list of exhibits she intends to proffer at trial:

Exhibit No.	Description	Bates Number
1	Notice of Termination and accompanying Memoranda for Record	USACOE-1303 – 1311
2	Plaintiff's Performance Counseling Worksheet dated 12-19-05	USACOE-1449 – 1450
3	Plaintiff's Performance Counseling Worksheet dated 2-23-06	USACOE-1460
4	Plaintiff's Base System Civilian Evaluation Report – June 2006	USACOE-1451 – 1456
5	September 5, 2006 email from Ted Surratt to Linda Brown. Subject: Sample Termination Letter during Probationary Period	USACOE-1141 – 1142
6	September 5, 2006 email from Larry Rinetti to Linda Brown. Subject: FW: Temp Termination Ltr	USACOE-1143
7	Plaintiff's 2005 Student Info Report	USACOE-0090
8	August 4, 2005 Email to Linda Brown. Subject: CPOL Resume Builder	USACOE-0299 – 300
9	Email chain between Plaintiff, John Esparza, Barbara Dwyer and Linda Brown dated April 13, 2006 – May 3, 2006	USACOE-0154 - 0160
10	August 3- 4, 2005 Email chain between Linda Brown and Ted Surratt. Subject: RE: Roslyn	USACOE-0107
11	August 31, 2005 Email from Nicholas J. Applegate to Plaintiff, Linda Brown, Ted Surratt. Subject: Excepted Service Appointment	USACOE-0127
12	June – July 2006 Emails between Linda Brown and Ted Surratt. Subject: Roslyn McCoy	USACOE-0108 – 0109
13	Document Titled: RM CONTINUATION	USACOE-0126
14	Notice of Personnel Action effective date: 05-31-2005	USACOE-0142
15	Notice of Personnel Action effective date: 01-08-2006	USACOE-0140
16	Notice of Personnel Action effective date: 06-11-2006	USACOE-0141
17	Request for Personnel Action proposed effective date: 09-16-2006	USACOE-0143 – 0145
18	September 6, 2006 Email chain between Linda Brown and LTC James A. Porter. Subject: Roslyn McCoy – LDP Tier 2 Recommendation	USACOE – 1150
19	November 18, 2005 Email chain between Roslyn McCoy and Linda Brown. Subject: Correction of official listings	USACOE-0086, USACOE-0438

1	20	Emails and flyers regarding Diversity Jubilee	USACOE-1108 – 1112
2	21	August 30, 2006 Email from Linda Brown to Debora C. Reichert. Subject: Doctor's Appointment/EEO Teambuilding Session	USACOE-1131
3	22	Email chain between Plaintiff, Barbara Dwyer, Linda Brown. Subject: Diversity Jubilee Update	USACOE-1132 – 1133; USACOE-1169
4	23	Plaintiff's Civilian Leave Earnings Statements from 7/09/05 through 9/30/06	N/A
5	24	Plaintiff's Individualized Plan for Employment	RM0044 – 56
6	25	Plaintiff's Plan to Achieve Self-Support	RM0616 – 639
7	26	September 14, 2006 Email chain between Patricia Hawkins, Linda Brown and Larry Rinetti. Subject: Roslyn	USACOE-1164
8	27	Email chain between Jason Faridi, John Esparza, Plaintiff, Katrina Chow, Barbara Dwyer. Subject: SEPM meeting	USACOE-1444 – 1446
9	28	Email Chain between Plaintiff, Barbara Dwyer and Jason Faridi dated October 4 – 5, 2005.	USACOE-1653-1654
10	29	Email chain between Plaintiff and Keiko Wilson dated August 23, 2006	No Bates Number
11	30	Letter from Katherine E. Sawyer to Col. Light dated September 11, 2006	No Bates Number
12	31	USACOE District Organization Chart	USACOE-0050
13	32	Calculation Worksheet for Student Pay & Benefits 2005 Summer Hire Program for Students with Disabilities	USACOE-0181
14	33	Plaintiff's Summer Job Authorization Form	USACOE-0180
15	34	Letter of Recommendation from Karen Ziegler to Hiring Committee regarding Plaintiff dated February 3, 2005	No Bates Number
16	35	Letter of Recommendation from Ralph D. McFarland regarding Plaintiff dated February 3, 2005	No Bates Number
17	36	Letter from Lankford S. Satterfield of the Safety and Occupational Health Office regarding Plaintiff dated September 14, 2006	No Bates Number
18	37	Letter of Recommendation from Katherine E. Sawyer regarding Plaintiff dated September 14, 2006	No Bates Number
19	38	Letter of Recommendation from Barbara Dwyer regarding Plaintiff dated September 23, 2006	No Bates Number
20	39	Letter of Recommendation from Jim Arack, PhD regarding Plaintiff dated October 12, 2006	No Bates Number
21	40	Email from A.R. Smith to Plaintiff dated September 13, 2006 and attachment	RM0113 - 114
22	41	Email chain between Plaintiff and Frederick Royer regarding voice assistive software dated June 15,	No Bates Number

1		2006	
2	42	Email chain between Plaintiff and Frederick Royer. Subject: requesting upgrade dated July 19, 2006	No Bates Number
3		Email from Plaintiff to Frederick Royer. Subject: grammar checker accommodation. Dated August 28,	
4	43	2006	No Bates Number
5	44	Handwritten Notes marked: "Roslyn 2 May 0950	USACOE-0094
6	45	Letter from Plaintiff to EEO/Civil Rights Office dated October 5, 2009	No Bates Number
7	46	Email from Sandra L. Olivares to Plaintiff, Kenneth Manning, Carl Korman dated February 20, 2009	No Bates Number
8	47	Photographs of 1325 J Street Sacramento, CA and adjacent parking lot.	No Bates Number
9	48	Email from Merle Heard to Linda Brown dated August 3, 2005	USACOE-0298
10	49	Memorandum For Record dated 12 June 2006	USACOE-1338
11	50	Memorandum for Record Dated 21 April 2006	USACOE-1341-43
12	51	Notice of Termination and Accompanying Documentation (signed versions)	USACOE-1461 - 1470
13		Relevant Excerpts of Army Regulation 690-600 Civilian Personnel Equal Employment Opportunity	
14	52	Discrimination Complaints	No Bates Number
15		Pertinent Agency and Local Guidelines Concerning Excepted Appointments Under the Authority	
16	56	Supporting Complainant's Appointment.	No Bates Number
17		Pertinent Agency and Local Guidelines Regarding Disciplinary and Adverse Actions in Effect at the	
18	57	time of the Action at Issue	No Bates Number
19		A.R. Smith Declaration from EEO Investigation and email to A.R. Smith from Marie Robichau Subject:	
20	58	Draft - Declaration for the Investigation on Ms. Roslyn McCoy	No Bates Number
21		Ted Surratt Declaration from EEO Investigation and email to Ted Surratt from Marie Robichau Subject:	
22	59	Formal EEO Investigation - Ms. Roslyn McCoy	No Bates Number
23	60	Flow Chart of EEO Complaint Process	No Bates Number
24	61	Plaintiff's Delta Dental Policy Information	No Bates Number
25	62	Plaintiff's Dental Bills	RM793 - 800; 802 - 806; 810 - 838
26	63	Plaintiff's Plan to Achieve Self-Support	RM0659 - 694
27	64	Plaintiff's Business Plan for Social Security Administration	RM0644 - 658
28	65	Job Description County of Siskiyou Behavioral Health Clinician I/II	RM0701
	66	Job Description Behavioral Health Services Specialist II	RM0702 - 705

1	67	Letter to Plaintiff from College Siskiyous Human Resources dated January 29, 2007	RM0697
2	68	Informational Freedom Profit and Loss	No Bates Number
3	69	Fictitious Business Name Statement for Informational Freedom Consultant	No Bates Number
4	70	Informational Freedom Profit & Loss	No Bates Number
5	71	Crew Agreement dated 8-1-07, W-9 and hours log	No Bates Number
6	72	Out Reach Notice Posted 8/8/06 – Pacific Southwest Region 5 Shasta-Trinity National Forest and Outreach Response Form dated August 22, 2006	No Bates Number
7	73	Plaintiff's Paystubs from IHSS	No Bates Numbers
8	74	Position Description for Equal Employment Opportunity Assistant (Office Automation)	No Bates Numbers
9	75	Plaintiff's Continuation, Rehabilitation Program Report	RM0688 - 691
10	76	Letter To Whom It May Concern from Polly Bambauer regarding Plaintiff	RM0732
11	77	Receipt from College of the Siskiyous for Fall 2008	RM0693
12	78	Statement from Penelope Ann Cross dated January 30, 2009	RM0284 - 286
13	79	Statement from Deanna Dawn Cooper regarding Plaintiff	RM0729 - 730
14	80	Letter from Lois E. McCoy titled Indications of psychological pain and mental suffering	RM0953 - 954
15	81	Transcript of Hearing Vol. 1, pages 1 to 241, February 25, 2009 from EEOC Hearing in EEOC Case Number 550-2007-00381X, Roslyn G. McCoy v. Pete Geren, Secretary, Department of the Army (Army Corps of Engineers)	Pages 1 to 241
16	82	Transcript of Hearing Vol. 2, pages 242 to 252, March 12, 2009 from EEOC Hearing in EEOC Case Number 550-2007-00381X, Roslyn G. McCoy v. Pete Geren, Secretary, Department of the Army (Army Corps of Engineers)	Pages 242 to 252

//

//

//

//

//

//

1 Plaintiff reserves the right to introduce as exhibits any exhibits not listed here but that appear
2 on Defendant's exhibit list.

3
4 Respectfully submitted,

5 DATED: September 19, 2011

6 **EQUALITY LAWYERS, LLP**

7
8 */s/ Barbara E. Figari*

9
10

LAWRENCE A. ORGAN, ESQ.
BARBARA E. FIGARI, ESQ.

Attachment B to Secretary's Pretrial Conference Statement

Secretary's Proposed Exhibit List

	Description	Reference
A.	Excerpts of Transcript of Deposition of Roslyn McCoy	Deposition of Roslyn McCoy, Volumes I and II, June 29-30, 2010
B.	Excerpts of Videotape of Deposition of Roslyn McCoy	Deposition of Roslyn McCoy, Volumes I and II, June 29-30, 2010
C.	Excerpts of Transcript of Administrative Hearing Testimony	Transcript of Hearing, Volumes 1 and 2, February 25, 2009, and March 12, 2009
D.	Excerpts of Fact-Finding Conference	Fact-Finding Conference Conducted by EEO Investigator, March 15, 2007
E.	Resume of Roslyn McCoy	Exhibit 1 to Deposition of Roslyn McCoy; Bates No. RM0641-43
F.	Email correspondence between Roslyn McCoy and Linda Brown, November 18, 2005	Exhibit 2 to Deposition of Roslyn McCoy; USACOE-86-87
G.	Email correspondence between Roslyn McCoy and Barbara Dwyer, September 15, 2006	RM182-86
H.	Email correspondence between Roslyn McCoy and Barbara Dwyer, Subject "Memorandum For Record," September 30, 2006	Exhibit 8 to Deposition of Roslyn McCoy; Bates No. RM0460
I.	Email correspondence between Roslyn McCoy and Barbara Dwyer, Subject: "going over evidence," May 8, 2007	Exhibit 9 to Deposition of Roslyn McCoy; Bates No. RM0427
J.	Email correspondence between Roslyn McCoy and Anthony Copeland, Subject: "EEO Complaint," dated September 8, 2007	Exhibit 10 to Deposition of Roslyn McCoy; Bates No. RM0187
K.	Quarterly Performance Counseling Worksheet, 2-23-2006	Exhibit 11 to Deposition of Roslyn McCoy; USACOE-1460
L.	Email correspondence between Roslyn McCoy and Margaret Hellwege, Subject: "Roslyn McCoy EEO Complaint," September 22, 2006	Exhibit 14 to Deposition of Roslyn McCoy; Bates No. RM0479-81
M.	Email correspondence between Roslyn McCoy and Barbara Dwyer, Subject: "Roslyn McCoy," October 5, 2006	Exhibit 15 to Deposition of Roslyn McCoy; Bates Nos. RM0458-59
N.	Roslyn McCoy's Responses to Discovery in Administrative	No Bates Number; Part of Administrative Record

	Proceedings	
O.	Psychological Evaluation Performed by Anita Kemp, Ph.D.	Exhibit 22 to Deposition of Roslyn McCoy; RM0060-66
P.	Letter from Roslyn McCoy to Henry McClain, dated November 24, 2006	No Bates Number; Part of Administrative Record
Q.	Memorandum for Record Re Defamatory Statement, April 7, 2006	Exhibit A to Deposition of A.R. Smith; USACOE-1464
S.	Email exchange between Roslyn McCoy and Penelope Cross	Bates No. RM0325
T.	Email exchange between Roslyn McCoy and Penelope Cross	Bates No. RM0365
U.	Email exchange between Roslyn McCoy and Penelope Cross	Bates No. RM0373
V.	Memorandum for Record, Subject "Defamatory Statement" made by Ms. Roslyn McCoy, 2 May 2006	Exhibit A to Declaration of Linda Brown [DE 67-8]; USACOE-1463
W.	Handwritten Note, 2 May 2006	USACOE 0094
X.	Memorandum for Record, Subject: Meeting with Ms. Debora Richert Regarding Entertainment Schedule for Diversity Jubilee, 22 August 2006 and documents	Exhibit B to Declaration of Linda Brown [DE 67-8]; USACOE-1465-67
Y.	Memorandum for Record, Subject: Ms. Roslyn McCoy Making False Statements to Supervisory Official, 24 August 2006	Exhibit C to Declaration of Linda Brown [DE 67-8]; USACOE 1469
Z.	Memorandum for Record, Subject: Meetings with Volunteers for Diversity Jubilee, 24 August 2006	Exhibit D to Declaration of Linda Brown [DE 67-8]; USACOE 1468
1A.	Memorandum for Ms. Roslyn G. McCoy, Subject: Notice of Termination, 7 September 2006	Exhibit E to Declaration of Linda Brown [DE 67-8]; USACOE 1470
2A.	Sworn Affidavit of Penelope Cross dated January 30, 2009.	Attached as Exhibit A to Secretary's Reply Index of Evidence [DE 76-4].
3A.	Declaration of Penelope Cross, dated May 6, 2011.	Attached as Exhibit 13 In Opposition to Plaintiff's Opposition to Defendant's Motion to Dismiss [DE 71-3].
4A.	Declaration of Roslyn McCoy In Opposition to Defendant's Motion for Summary Judgment, dated May 8, 2011	Docket Entry 70.
5A.	Email correspondence between Linda	USACOE-108-09

	Brown and Ted Surratt, Subject: Roslyn McCoy, June 7-July 5, 2006	
6A.	Notice of Personnel Action, dated June 11, 2006	USACOE-0141
7A.	Email correspondence between Roslyn McCoy and John Esparza	USACOE-154-160
8A.	August 29, 2007 medical record of Checkup re Asthma, Dennis Hentrich, PAC	Medical Record Produced by Roslyn McCoy in Administrative Proceedings
9A.	May 17, 2007 medical record of Checkup re Asthma, Dennis Hentrich, PAC	Medical Record Produced by Roslyn McCoy in Administrative Proceedings
10A.	March 13, 2007 medical record of Checkup re Asthma, Dennis Hentrich, PAC	Medical Record Produced by Roslyn McCoy in Administrative Proceedings
11A.	February 16, 2007, medical record re visit for asthma, cat allergy, rosacea, dyslexia with homeopathic medicine, Dennis Hentrich, PAC.	Medical Record Produced by Roslyn McCoy in Administrative Proceedings
12A.	February 13, 2007 record re visit for asthma, Denis Hentrich, PAC	Medical Record Produced by Roslyn McCoy in Administrative Proceedings
13A.	Email correspondence between Roslyn McCoy and Linda Brown, April 20-May 3, 2006	USACOE-0033
14A.	Email correspondence between Roslyn McCoy and Linda Brown, May 22, 2006	USACOE-0981
15A.	Email correspondence between Linda Brown, Deborah Richert, and Barbara Dwyer, May 19, 2006	USACOE-01005-1006
16A.	Email correspondence between Linda Brown and Roslyn McCoy, May 22, 2006	USACOE-0985-86
17A.	Email correspondence between Linda Brown and Roslyn McCoy, June 26, 2006	USACOE-1050-52
18A.	Email correspondence between Linda Brown and Tony Coepland, June 26, 2006	USACOE-1053-55
19A.	Email correspondence between Linda Brown, Susan Bayless, and Roslyn McCoy, July 10, 2006	USACOE-1096-97
20A.	Email correspondence between Linda	USACOE-1127

	Brown and Roslyn McCoy, August 28, 2006	
21A.	Email correspondence between Linda Brown and Deborah Richert, August 30, 2011	USACOE-1131
22A.	Linda Brown calendar entries, August 23-24, 2006	USACOE-1437, 1439
23A.	Linda Brown's calendar entry, May 2, 2006	USACOE-1419
24A.	Email correspondence between Roslyn McCoy and Jason Faridi, October 4-5, 2005	USACOE-1653
25A.	Formal Complaint of Discrimination filed by Roslyn McCoy, Oct. 10, 2006	Part of Administrative Record; Attached as Exhibit D to Declaration of Sandra Olivares [DE 67-6]
26A.	5 C.F.R. § 315.803	5 C.F.R. § 315.803
27A.	Notice of Personnel Action, effective Oct. 1, 2005	Attached as Exhibit B to Declaration of Sandra Olivares [DE 67-5]