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21 UNITED STATES DISTRICT COURT
22 EASTERN DISTRICT OF WASHINGTON

23 REBECCA STUART,)
24)
25 Plaintiff,)
26)
27 vs.)
28)
29 TOM VILSACK, in his official capacity)
30 as the Secretary of the United States)
31 Department of Agriculture,)
32 Defendant.)

NO.

COMPLAINT OF
DISCRIMINATION AND
VIOLATION OF THE PRIVACY
ACT AND DEMAND FOR TRIAL
BY JURY

1 **I. INTRODUCTION**

2 1. Our Federal Government must serve as the “model employer” of
3 individuals with disabilities by, among other things, accommodating employees
4 with mental or physical disabilities, not discriminating against those employees on
5 account of their disabilities, and not retaliating against those employees when they
6 assert their rights under the law.
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8 2. This case involves the U.S. Department of Agriculture’s (USDA)
9 failure to accommodate an employee’s disability and subsequent discrimination
10 and retaliation against the employee on account of the same. The USDA hired
11 Rebecca Stuart, a GS-12 Tribal Liaison, in February 2011. In January 2012 Ms.
12 Stuart’s then (now-ex) husband tried to kill her. Ms. Stuart suffered anxiety and
13 Post Traumatic Stress Disorder (PTSD) as a result of that event. The anxiety and
14 PTSD affected her ability to attend certain out-of-town meetings. Ms. Stuart’s
15 supervisors were well aware of her disabilities. Indeed, in July 2012, August 2012,
16 September 2012, December 2012, January 2013, and February 2013 Ms. Stuart
17 informed three separate USDA managers of those disabilities and asked that simple
18 accommodations relating to reduced out-of-area travel and supervisor feedback be
19 made. No accommodations were given. And, although required to do so under the
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1 law, the USDA did not engage in the interactive process so as to explore the
2 viability of the reasonable accommodations Ms. Stuart requested.

3 3. Instead the USDA discriminated against Ms. Stuart based on her
4 disability by failing to make reasonable accommodations for her known mental
5 limitations and when it terminated her employment. The USDA then retaliated
6 against Ms. Stuart for asserting her rights under the law, all acts in violation of the
7 Rehabilitation Act. Ms. Stuart seeks all remedies available under the law, including
8 reemployment with the USDA.
9

10 4. Ms. Stuart demands a jury trial and to be awarded full compensation
11 for all injury and damages she has suffered along with reasonable attorney fees,
12 costs, interest, and negative tax consequences of any award.

13 **II. PARTIES**

14 5. Plaintiff Rebecca Stuart (“Plaintiff” or “Ms. Stuart”) is a single
15 woman and a resident of the State of Washington. Ms. Stuart was employed for
16 nearly two years as a Tribal Liaison with the United States Department of
17 Agriculture in Spokane, Washington, until her employment was terminated on
18 February 8, 2013.
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20 6. Defendant Tom Vilsack is the Secretary of the United States
21 Department of Agriculture. He is sued in his official capacity only.
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III. JURISDICTION AND VENUE

7. This action arises under federal law, including the Rehabilitation Act of 1973, 29 U.S.C. § 791 et seq., and the Americans with Disabilities Act, 42 U.S.C. §12111 et seq., and the Privacy Act, 5 U.S.C. §552a. This Court has jurisdiction pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1343.

8. Plaintiff exhausted her administrative remedies. Ms. Stuart brings this action within 30 days of receiving a final agency decision and is authorized to file this Complaint under 29 C.F.R. §1614.310(a).

9. Venue is appropriate under 28 U.S.C. §1391(b) because the events giving rise to this Complaint occurred in this district. Venue is also appropriate under the special venue provision of 42 U.S.C. §2000e-5(f)(3) because Spokane County is where the unlawful employment practice is alleged to have been committed, where the employment records relevant to such practice are maintained and administered, and where Plaintiff would be working but for the alleged unlawful employment practice.

IV. FACTS

10. The USDA employed Rebecca Stuart as a Tribal Liaison GS 401-12 in Spokane, Washington from February 13, 2011, to February 8, 2013.

1 11. Gina Kerzman (the “Area Conservationist”) and Roylene Rides at the
2 Door (the “State Conservationist”) served as Ms. Stuart’s first line and second line
3 supervisors respectively.

4 12. In December 2011 timeframe Ms. Stuart informed her husband, Frank
5 Toupal, that she wanted a divorce.

6 13. On January 13, 2012, Ms. Stuart returned to her home following a
7 lengthy overnight work-related trip. Upon returning home Mr. Toupal ambushed
8 Ms. Stuart, stuck a loaded gun in her face, and threatened to pull the trigger. Mr.
9 Toupal was arrested that evening, ultimately pled guilty to those acts, and spent
10 from January 13, 2012 to early-July 2012 in jail.

11 14. On or about January 17, 2012, Ms. Stuart informed Ms. Kerzman and
12 USDA Human Resources Officer, Eileen Jackson, of the January 13, 2012,
13 incident.
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15 15. On or about January 18, 2012, Ms. Rides at the Door, having heard of
16 the January 13, 2012, incident called Ms. Stuart to her (Rides at the Door) office in
17 order to discuss the same.
18

19 16. Following the events of January 13, 2012, Ms. Stuart began
20 experiencing significant anxiety.

21 17. In March 2012 Ms. Stuart met with the Whitman County, Washington
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1 prosecutor and Mr. Toupal's defense attorney in preparation for Mr. Toupal's
2 anticipated criminal trial. These events further exacerbated Ms. Stuart's anxiety.

3 18. In March 2012, with the anxiety worsening, Ms. Stuart had an
4 informal meeting with her neighbor, Laura Flynn, a mental health provider. Ms.
5 Stuart described the events of January 2012, and her subsequent mental difficulties.
6 Ms. Flynn diagnosed Ms. Stuart with Post Traumatic Stress Disorder.

7 19. Within one week of the above-referenced meeting, Ms. Stuart
8 informed Ms. Kerzman of what Ms. Flynn said regarding the PTSD diagnosis.
9 That conversation took place in the late-morning/early-afternoon in Ms. Kerzman's
10 office. During the conversation Ms. Stuart's co-worker Jeff Kuhlmann appeared,
11 witnessed Ms. Stuart inform Ms. Kerzman of the PTSD diagnosis, and then
12 participated in the conversation. Mr. Kuhlmann informed Ms. Kerzman that based
13 on his (Kuhlmann's) experience as a volunteer firefighter, he (Kuhlmann) agreed
14 that Ms. Stuart had PTSD.
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16 20. Ms. Rides at the Door also admits to recognizing Ms. Stuart's
17 heightened anxiety following the January 2012 event. Ms. Rides at the Door stated,
18 in internal USDA documents, that "[s]he [Stuart] became very anxious at
19 leadership team meetings"... "you could feel she was uncomfortable."
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21 21. On April 9, 2012, Ms. Stuart received a "Fully Successful" mid-year
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1 performance review.

2 22. In the May-June 2012 timeframe Ms. Stuart received a Cultural
3 Resources Certificate from Ms. Rides as the Door and Ms. Kerzman. Ms. Stuart
4 received the certificate because of her work on culture resource reviews: work that
5 allowed a significant amount of backlogged projects -- some of which dated to
6 2004 -- to proceed.

7 23. In the June 2012 timeframe Ms. Stuart received a \$500.00 work
8 performance bonus regarding the above-referenced cultural resource work.

9 24. In July 2012 Ann Swannack temporarily replaced Ms. Kerzman as
10 Ms. Stuart's supervisor. Ms. Stuart informed Ms. Swannack of the events of
11 January 13, 2012, how Mr. Toupal's July 2012 release from jail was exacerbating
12 her anxiety, and asked that Ms. Swannack assist in lessening Ms. Stuart's anxiety
13 by providing Ms. Stuart work-related feedback so as to enable Ms. Stuart to do her
14 work better. Ms. Swannack dismissively told Ms. Stuart that she "didn't want to
15 hear about" Ms. Stuart's anxiety and stress. Instead Ms. Swannack told Ms. Stuart
16 that she didn't "trust" her; but, when pressed, refused to provide a basis for her
17 feeling. During the meeting, Ms. Swannack indicated she did not want to hear
18 about or discuss Ms. Stuart's difficulties by looking away, fidgeting, and trying to
19 change the subject.
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1 25. Ms. Swannack's accusations further increased Ms. Stuart's anxiety.

2 26. Thereafter Ms. Stuart, in furtherance of the feedback accommodation
3 she requested, emailed Ms. Swannack, Ms. Rides at the Door, and Ms. Kerzman
4 and asked for workplace feedback. Ms. Stuart's email requests went unanswered.

5 27. In August 2012 Ms. Stuart asked Ms. Rides at the Door to limit the
6 back-to-back trips Ms. Stuart was required to attend because the effect those short
7 notice back-to-back trips were having on her anxiety. Although on notice of Ms.
8 Stuart's anxiety and requested accommodation, Ms. Rides at the Door did not
9 accommodate Ms. Stuart, explore alternative accommodations, or conduct any
10 steps commensurate with the interactive process. In the fall 2012 timeframe (after
11 Mr. Toupal was released from parole supervision) Ms. Stuart informed Ms.
12 Kerzman of how extended work-related travel was negatively affecting Ms.
13 Stuart's anxiety. Ms. Stuart stated that her anxiety was increasing because of her
14 ex-husband's release from parole. As a result, Ms. Stuart requested, as an
15 accommodation, that her work related travel schedule be lessened so as to decrease
16 the effect said travel had on her anxiety. Ms. Kerzman acknowledged Ms. Stuart's
17 request for assistance but neither Ms. Kerzman, nor any member of the USDA,
18 engaged in the interactive process with Ms. Stuart so as to discuss Ms. Stuart's
19 duties, Ms. Stuart's responsibilities, and whether Ms. Stuart could accomplish
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1 those tasks given her anxiety.

2 28. On October 19, 2012, Ms. Stuart received a “fully successful” annual
3 performance evaluation. Ms. Kerzman gave Ms. Stuart her performance
4 counseling. During that counseling session Ms. Kerzman stated words to the effect
5 of “be careful Rebecca, your PTSD could be used against you” by some at the
6 USDA’s state office.

7 29. In December 2012 Ms. Stuart informed Ms. Jackson of her PTSD
8 diagnosis and, again, asked that an accommodation be made with regard to
9 lessening her workplace travel. Ms. Jackson stated that Ms. Stuart needed to
10 provide “some documentation” of the PTSD so the USDA could “deal with it.”

11 30. Ms. Stuart subsequently contacted the USDA’s Employee Assistant
12 Program (EAP) but, after a lengthy delay on the EAP’s part, was told that the EAP
13 “did not cover” PTSD. Indeed, the EAP could not provide reference to a mental
14 health professional with a medical degree who could diagnosis PTSD.
15

16 31. In January 2013 Ms. Stuart asked Ms. Rides at the Door, in writing,
17 whether her job was in jeopardy due to the government sequestration efforts. Ms.
18 Stuart informed Ms. Rides at the Door that she needed to know that question for
19 the purposes of her ongoing domestic relations dispute with Mr. Toupal as her
20 future employment with the USDA would affect her divorce settlement.
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1 32. Ms. Rides at the Door did not respond to Ms. Stuart's request. In
2 contrast, Ms. Rides at the Door's subsequent acts - - such as sending Ms. Stuart on
3 out-of-area work related assignments and discussing the need for Ms. Stuart to
4 attend an upcoming three week out-of-state training course - - made clear that Ms.
5 Stuart's job was not in jeopardy.

6 33. In early-January 2013, and after exhausting her efforts with the EAP,
7 Ms. Stuart arranged an appointment, set for February 5, 2013, with Erika Klossner,
8 a licensed mental health care provider, so she could obtain the diagnosis Ms.
9 Jackson requested.
10

11 34. In mid-January 2013 Ms. Stuart informed Ms. Rides at the Door that
12 Ms. Stuart had scheduled the above-referenced PTSD-related appointment.

13 35. In January 2013 Ms. Stuart informed her acting supervisor, Ed Teel,
14 that overnight travel was exacerbating her anxiety. At no time did Mr. Teel engage
15 in the interactive process. Instead, Mr. Teel required Ms. Stuart to travel,
16 overnight, to western Washington that same month.
17

18 36. On January 25, 2013, Ms. Rides at the Door informed Ms. Jackson of
19 Ms. Stuart's suspected PTSD and Ms. Stuart's request for accommodation vis-à-
20 vis the travel restrictions. Ms. Jackson, the Human Resources Officer, did not
21 engage in the interactive process with Ms. Stuart. Instead Ms. Jackson, on January
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1 28, 2013, sent an unsolicited email to Jennifer Coleson, a co-worker of Ms. Stuart
2 who allegedly had difficulty with Ms. Stuart in 2011, and requested that Ms.
3 Coleson write up a statement regarding Ms. Stuart.

4 37. On February 5, 2013, Ms. Klossner diagnosed Ms. Stuart with PTSD.

5 38. On February 5, 2013, Ms. Stuart informed Ms. Jackson of Ms.
6 Klossner's PTSD diagnosis. Ms. Jackson stated that Ms. Stuart needed to provide
7 paperwork that set out what Ms. Stuart could and could not do. Ms. Jackson ended
8 the conversation with a cautionary instruction by stating words to the effect of
9 "what is said in that paperwork could be used to terminate" Ms. Stuart's
10 employment. Ms. Jackson's demeanor during the February 5, 2013, conversation
11 was angry, off putting, and confrontational.
12

13 39. On February 8, 2013, Ms. Jackson instructed Ms. Stuart to report to
14 Ms. Jackson's office. A meeting ensued in which Ms. Jackson presented Ms. Stuart
15 with a letter (dated February 8, 2013) and terminated Ms. Stuart's employment.
16 The USDA's February 8, 2013, termination letter lists two specific reasons for the
17 termination: Ms. Stuart's alleged refusal to meet with co-worker Les Hannemann
18 and Ms. Stuart's alleged improper behavior in a meeting with USDA employees
19 Peter Bautista and David Brower.
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21 40. The February 8, 2013, termination letter also contains a vague "catch
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1 all” phrase that references “other” workplace performance complaints involving
2 Ms. Stuart. During the February 8, 2013, termination meeting Ms. Stuart asked Ms.
3 Jackson to give examples of other workplace misconduct. Ms. Jackson could not
4 articulate any specific examples.

5 41. Following the February 8, 2013, termination meeting two armed
6 federal security officers escorted Ms. Stuart from her workplace.

7 42. Employers rarely, if ever, admit to terminating an employee on
8 account of that employee’s disability, or other protected status. The USDA is no
9 different in this case. As such, Courts allow employees like Ms. Stuart to establish
10 their claim through circumstantial evidence. Such evidence includes (a) the
11 proximity in time between the employee asserting her rights under the law and the
12 adverse employment action, (b) the employer’s inconsistencies with regard to its
13 stated reasons for termination, (c) the employer’s different treatment of similarly
14 situated employees, (d) the employer’s changing reasons for its termination action,
15 and (e) the employer’s violation of policy and the law.
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18 43. As to point (a), Ms. Stuart informed Ms. Jackson on February 5, 2013,
19 that she had been diagnosed with PTSD. On February 8, 2013, the USDA
20 terminated her employment.

21 44. As to point (b), the USDA’s stated reasons for Ms. Stuart’s
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1 termination are a pretext designed to mask unlawful discrimination. First, the
2 incidents involving Mr. Hannemann and Mr. Bautista occurred on May 16, 2012
3 (Hannemann) and the first week of June 2012 (Bautista). Following those
4 instances the USDA awarded Ms. Stuart a \$500.00 performance bonus, awarded
5 Ms. Stuart the cultural resource certificate, and gave her a satisfactory performance
6 evaluation (in which neither event was mentioned). If those incidents were firing-
7 worthy events then why wasn't Ms. Stuart fired in May or June 2012? Second, at
8 no time did the USDA inform Ms. Stuart of those incidents or that those incidents
9 would be grounds for non-renewal of her Tribal Liaison position. Third, in mid-
10 January 2013 Ms. Stuart asked Ms. Rides at the Door as to whether her Tribal
11 Liaison position was in jeopardy given the government sequestration efforts. Ms.
12 Rides at the Door did not respond to Ms. Stuart's query. Instead, she continued to
13 schedule Ms. Stuart for work travel and training: acts a reasonable government
14 agency would not undertake with regard to an employee it intended to fire,
15 especially during a time when that agency was subject to financially debilitating
16 sequestration measures. Fourth, Mr. Brower, the witness to the June 2012 event
17 involving Mr. Bautista and Ms. Stuart, was asked by Ms. Jackson **on February 6,**
18 **2013** – the day after Ms. Stuart informed Ms. Jackson of her PTSD diagnosis - to
19 provide a written statement regarding the June 2012 meeting. That Ms. Jackson
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1 the Human Resources Officer would wait seven months to request documentation
2 regarding such an allegedly crucial event constitutes after-the-fact conduct
3 designed to mask discriminatory animus.

4 45. Indeed, Mr. Brower states in a declaration made during the course of
5 the investigation regarding Ms. Stuart's termination, that after the June 2012
6 incident that "Peter [Bautista] and Rebecca were able to work together after that
7 point" and that Mr. Bowers and Ms. Stuart "did a lot of good work together" after
8 the June 2012 event.

9
10 46. And as to the May 2012 event involving Les Hannemann, Jeffery
11 Kuhlmann, a co-worker of Ms. Stuart who witnessed the May 2012 event,
12 describes Mr. Hannemann's Stuart-critical recount of the event as "fictitious."

13 47. As to point (c), Ms. Stuart informed Ms. Kerzman of the June 2012
14 incident involving Mr. Bautista. During that conversation Ms. Kerzman admitted
15 that Mr. Bautista previously yelled at Ms. Kerzman. However, upon information
16 and belief, Mr. Bautista was not admonished for that conduct – as well as Mr.
17 Bautista's violation of the Privacy Act (*see infra*) - whereas Ms. Stuart lost her job
18 because of two alleged co-worker conflicts that occurred over seven months pre-
19 termination.
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21 48. As to point (d), Ms. Stuart, per Agency policy, filed a discrimination
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1 complaint. During the complaint investigation process the USDA took the position
2 that Ms. Stuart was *also* terminated because of her inability to get along with tribes
3 with whom she served as liaison. Yet at no time during her employ with the
4 USDA was Ms. Stuart informed that her customers had issue with her. Indeed,
5 there is no mention on Ms. Stuart's performance evaluations of such incidents.

6 49. As to point (e), the USDA subsequently violated internal policy and
7 the Privacy Act by informing Ms. Stuart's ex-husband that Ms. Stuart had lost her
8 job.
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10 50. Although Ms. Jackson delivered the February 8, 2013, termination
11 notice, Ms. Rides at the Door was the USDA employee who made the termination
12 decision. Ms. Rides at the Door admits that a factor she took into consideration in
13 deciding to terminate Ms. Stuart's employment was that Ms. Stuart did not furnish
14 her documentation regarding Ms. Stuart's PTSD. Further, Ms. Rides at the Door
15 admits that Ms. Stuart was well qualified to do the technical aspects of the Tribal
16 Liaison job; but, instead, admits to firing Ms. Stuart for her alleged inability to get
17 along with people - - - all factors influenced by the heightened anxiety of which
18 Ms. Rides at the Door was well aware. To the extent the USDA relies on its "Ms.
19 Stuart couldn't get along with people" defense, that defense fails as a matter of law
20 as an employee's conduct arising out of a disability cannot justify an employer's
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1 termination decision. *Humphrey v. Mem'l Hospitals Ass'n*, 239 F.3d 1128, 1139-40
2 (9th Cir. 2001) (“[C]onduct resulting from a disability is considered to be part of
3 the disability, rather than a separate basis for termination.”).

4 51. The USDA, in documents revealed *after* the Agency completed its
5 internal investigation of Ms. Stuart’s termination, claims that it made the decision
6 to terminate Ms. Stuart’s employment in November 2012.

7 52. Upon information and belief, the USDA did not make such a
8 determination in November 2012. Again if the USDA had decided to terminate
9 Ms. Stuart in November 2012 then why wasn’t she terminated at that time? If the
10 USDA had already intended to terminate Ms. Stuart’s employment in November
11 2012 then why didn’t it tell Ms. Stuart of that in January 2013 when Ms. Stuart
12 asked whether her job was at stake given the sequestration efforts?
13

14 **V. LEGAL CLAIMS**

15 **(Violation of the Rehabilitation Act, 29 U.S.C. § 791, et seq.)**

16 53. The Rehabilitation Act of 1973 (29 U.S.C. § 791) prohibits Federal
17 Government employers from discriminating against disabled employees. In fact,
18 the Rehabilitation Act requires the federal government to serve as a “model
19 employer” of individuals with disabilities. 29 C.F.R. § 1614.203(a).
20

21 54. Toward this end, the employment discrimination provisions of the
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1 Rehabilitation Act are interpreted in the same manner as the counterpart provisions
2 of the Americans with Disabilities Act (ADA). 29 U.S.C. § 791(g); 29 C.F.R. §
3 1614.203(b).

4 55. To state a prima facie case of disability discrimination under the
5 Rehabilitation Act a plaintiff must prove that she is a qualified individual with a
6 disability who suffered an adverse employment action because of her disability.

7 56. Ms. Stuart's anxiety and PTSD qualified her as disabled under the
8 Rehabilitation Act. The USDA's termination of Ms. Stuart's employment
9 constitutes an adverse employment action. The USDA terminated Ms. Stuart
10 because of her disability for the reasons set out above.

11 57. To establish a prima facie case for failure to accommodate under the
12 Rehabilitation Act the employee must show that "(1) [s]he is disabled within the
13 meaning of the ADA; (2) [s]he is a qualified individual able to perform the
14 essential functions of the job with reasonable accommodation; and (3) [s]he
15 suffered an adverse employment action because of [her] disability." *Samper v.*
16 *Providence St. Vincent Med. Ctr.*, 675 F.3d 1233, 1237 (9th Cir. 2012).
17

18 58. Ms. Stuart's PTSD and anxiety constitute disabilities under the
19 Rehabilitation Act.
20

21 59. Ms. Rides at the Door and Ms. Kerzman admit, in internal USDA
22

1 documents, that Ms. Stuart is qualified to perform the essential functions of the
2 Tribal Liaison job.

3 60. The interactive process is triggered either by a request for
4 accommodation by a disabled employee or by the employer's recognition of the
5 need for such an accommodation. In requesting an accommodation, an employee
6 need only use "plain English" and is not required to mention the ADA or use the
7 phrase "reasonable accommodation."
8

9 61. Where an employer rejects an employee's suggested accommodation,
10 it is not the employee's burden to suggest another accommodation, but rather it is
11 the employer's affirmative duty to explore further methods of accommodation
12 before terminating the employee. An "employer fails to engage in the interactive
13 process as matter of law where it rejects the employee's proposed accommodations
14 by letter and offers no practical alternatives." *Humphrey v. Memorial Hospitals*
15 *Association*, 239 F.3d 1128, 1137-38 (9th Cir. 2001), *cert. denied*, 535 U.S. 1011
16 (2002) (holding, *as a matter of law*, that an employer who had failed to engage in
17 good faith in the interactive process, and in turn failed to provide an employee a
18 leave of absence as a reasonable accommodation, violated the ADA's reasonable
19 accommodation requirement). Employers who fail to engage in the interactive
20 process in good faith face liability under the Rehabilitation Act if a reasonable
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1 accommodation would have been possible. *Id.*

2 62. In the July 2012 timeframe Ms. Stuart requested accommodations
3 relating to workplace feedback so as to lessen the effects of her anxiety. In August
4 2012 Ms. Stuart requested, first of Ms. Rides at the Door and then of Ms.
5 Kerzman, that her work-related travel be curtailed because of the effect it was
6 having on her anxiety. In December 2012 and January 2013 Ms. Stuart asked Ms.
7 Jackson for the same travel related accommodation.
8

9 63. At no time did the USDA enter into a meaningful interactive process
10 with Ms. Stuart. Instead, the USDA terminated Ms. Stuart's employment within
11 three days of her reporting Ms. Klosser's PTSD diagnosis.

12 64. To establish a prima facie case of retaliation under Rehabilitation Act,
13 an employee must show that: (1) he or she engaged in a protected activity; (2)
14 suffered an adverse employment action; and (3) there was a causal link between
15 the two. *Pardi v. Kaiser Found. Hospitals*, 389 F.3d 840, 849 (9th Cir. 2004).
16

17 65. Ms. Stuart informed Ms. Jackson of her Ms. Klosser's PTSD
18 diagnosis on February 5, 2013. That communication constitutes protected activity
19 in which Ms. Stuart informed management of her health care provider's diagnosis
20 and that diagnosis' effect on Ms. Stuart's work. Within three days of Ms. Stuart
21 making that communication the USDA terminated Ms. Stuart's employment. The
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1 temporal proximity between the February 5, 2013, report and February 8, 2013,
2 termination are sufficient to establish causation in the 9th Circuit. *Miller v.*
3 *Fairchild Indus., Inc.*, 797 F.2d 727, 731 (9th Cir. 1986)(“Causation sufficient to
4 establish a prima facie case of unlawful retaliation may be inferred from the
5 proximity in time between the protected action and the allegedly retaliatory
6 discharge.”).

7
8 **(Violation of the Privacy Act, 5 U.S.C. § 552a, et seq.)**

9 66. To state a claim under the Privacy Act a plaintiff must show (1) the
10 agency disclosed information contained within a system of records; (2) the
11 disclosure was improper; (3) the disclosure was intentional or willful; and (4) the
12 plaintiff was adversely affected by the disclosure. *Tungjunyatham v. Johanns*, 500
13 F. App'x 686, 689 (9th Cir. 2012).

14 67. The USDA maintains a system of records in which an employee's
15 confidential personnel records are stored.

16 68. Such confidential personnel records include, but are not limited to,
17 information relating to whether an employee was terminated from the USDA.

18 69. Approximately seven weeks after Ms. Stuart's termination, Mr.
19 Toupal sent an email to seven individuals informing them of Ms. Stuart's firing.

20 70. Upon information and belief, USDA employee Peter Bautista
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1 accessed the USDA's system of records, obtained information about Ms. Stuart's
2 firing, and transmitted that information to Mr. Toupal, Mr. Bautista's former
3 colleague.

4 71. On August 26, 2013, Ms. Stuart informed the USDA's EEOC
5 investigator of the aforementioned Privacy Act violation. But, upon information
6 and belief, the USDA took no disciplinary action against Mr. Bautista or the
7 individual who disclosed the protected information.
8

9 72. The USDA's disclosure of Ms. Stuart's confidential information
10 caused Ms. Stuart pecuniary economic damages in an amount to be proven at trial.

11 **VI. PRAYER FOR RELIEF**

12 Plaintiff respectfully prays that this Honorable Court enter an Order
13 providing Ms. Stuart all remedies available to her by law, including, but not
14 limited, to an award of:
15

16 (a) pecuniary losses suffered as result of the wrongful termination of
17 Plaintiff's employment and violation of the Privacy Act, to include, but not limited
18 to, back pay, front pay, and all attendant benefits, with interest;

19 (b) the sum of \$300,000 in compensatory damages suffered by Plaintiff as
20 a result of discrimination and retaliation;

21 (c) costs and reasonable attorneys' fees incurred with this lawsuit with
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1 interest thereon; and

2 (d) such other and further relief as the Court deems just or equitable.

3 DATED this 31st day of December, 2014.

4 CROTTY & SON LAW FIRM, PLLC

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