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20 UNITED STATES DISTRICT COURT
21 EASTERN DISTRICT OF WASHINGTON

22 REBECCA STUART,)
)
Plaintiff,)
)
vs.)
)
TOM VILSACK, in his official capacity)
as the Secretary of the United States)
Department of Agriculture,)
)
Defendant.)
_____)

NO. 2:14-CV-00416-SMJ

AMENDED COMPLAINT OF
DISCRIMINATION AND
VIOLATION OF THE
PRIVACY ACT

JURY DEMANDED

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 with
4 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 and
10 retaliation against the employee on account of the same. The USDA hired Rebecca
11 Stuart, a GS-12 Tribal Liaison, in February 2011. In January 2012 Ms. Stuart’s then
12 (now-ex) husband tried to kill her. Ms. Stuart suffered anxiety and Post Traumatic
13 Stress Disorder (PTSD) as a result of that event. The anxiety and PTSD affected her
14 ability to attend certain out-of-town meetings. Ms. Stuart’s supervisors were well
15 aware of her disabilities. Indeed, in July 2012, August 2012, September 2012,
16 December 2012, January 2013, and February 2013 Ms. Stuart informed three
17 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 viability
2 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 **II. PARTIES**

11 4. Plaintiff Rebecca Stuart (“Plaintiff” or “Ms. Stuart”) is a single woman
12 and a resident of the State of Washington. Ms. Stuart was employed for nearly two
13 years as a Tribal Liaison with the United States Department of Agriculture in
14 Spokane, Washington, until her employment was terminated on February 8, 2013.
15

16 5. Defendant Tom Vilsack is the Secretary of the United States
17 Department of Agriculture. He is sued in his official capacity only.

18 **III. JURISDICTION AND VENUE**

19 6. This action arises under federal law, including the Rehabilitation Act
20 of 1973, 29 U.S.C. § 791 et seq., and the Americans with Disabilities Act, 42 U.S.C.
21 §12111 et seq., the Privacy Act, 5 U.S.C. §552a, and the Back Pay Act 5 U.S.C.
22

1 §5596. This Court has jurisdiction pursuant to 28 U.S.C. §1331 and 28 U.S.C.
2 §1343.

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

6 8. Venue is appropriate under 28 U.S.C. §1391(b) because the events
7 giving rise to this Complaint occurred in this district. Venue is also appropriate
8 under the special venue provision of 42 U.S.C. §2000e-5(f)(3) because Spokane
9 County is where the unlawful employment practice is alleged to have been
10 committed, where the employment records relevant to such practice are maintained
11 and administered, and where Plaintiff would be working but for the alleged unlawful
12 employment practice.
13

14 **IV. FACTS**

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

17 10. Gina Kerzman (the “Area Conservationist”) and Roylene Rides at the
18 Door (the “State Conservationist”) served as Ms. Stuart’s first line and second line
19 supervisors respectively.
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1 11. In December 2011 timeframe Ms. Stuart informed her husband, Frank
2 Toupal, that she wanted a divorce.

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

9 13. On or about January 17, 2012, Ms. Stuart informed Ms. Kerzman and
10 USDA Human Resources Officer, Eileen Jackson, of the January 13, 2012, incident.

11 14. On or about January 18, 2012, Ms. Rides at the Door, having heard of
12 the January 13, 2012, incident called Ms. Stuart to her (Rides at the Door) office in
13 order to discuss the same.

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

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

20 17. In March 2012, with the anxiety worsening, Ms. Stuart had an informal
21 meeting with her neighbor, Laura Flynn, a mental health provider. Ms. Stuart
22

1 described the events of January 2012, and her subsequent mental difficulties. Ms.
2 Flynn diagnosed Ms. Stuart with Post Traumatic Stress Disorder.

3 18. Within one week of the above-referenced meeting, Ms. Stuart informed
4 Ms. Kerzman of what Ms. Flynn said regarding the PTSD diagnosis. That
5 conversation took place in the late-morning/early-afternoon in Ms. Kerzman's
6 office. During the conversation Ms. Stuart's co-worker Jeff Kuhlmann appeared,
7 witnessed Ms. Stuart inform Ms. Kerzman of the PTSD diagnosis, and then
8 participated in the conversation. Mr. Kuhlmann informed Ms. Kerzman that based
9 on his (Kuhlmann's) experience as a volunteer firefighter, he (Kuhlmann) agreed
10 that Ms. Stuart had PTSD.
11

12 19. Ms. Rides at the Door also admits to recognizing Ms. Stuart's
13 heightened anxiety following the January 2012 event. Ms. Rides at the Door stated,
14 in internal USDA documents, that "[s]he [Stuart] became very anxious at leadership
15 team meetings"... "you could feel she was uncomfortable."
16

17 20. On April 9, 2012, Ms. Stuart received a "Fully Successful" mid-year
18 performance review.

19 21. In the May-June 2012 timeframe Ms. Stuart received a Cultural
20 Resources Certificate from Ms. Rides as the Door and Ms. Kerzman. Ms. Stuart
21 received the certificate because of her work on culture resource reviews: work that
22

1 allowed a significant amount of backlogged projects -- some of which dated to 2004
2 -- to proceed.

3 22. In the June 2012 timeframe Ms. Stuart received a \$500.00 work
4 performance bonus regarding the above-referenced cultural resource work.

5 23. In July 2012 Ann Swannack temporarily replaced Ms. Kerzman as Ms.
6 Stuart's supervisor. Ms. Stuart informed Ms. Swannack of the events of January 13,
7 2012, how Mr. Toupal's July 2012 release from jail was exacerbating her anxiety,
8 and asked that Ms. Swannack assist in lessening Ms. Stuart's anxiety by providing
9 Ms. Stuart work-related feedback so as to enable Ms. Stuart to do her work better.
10 Ms. Swannack dismissively told Ms. Stuart that she "didn't want to hear about" Ms.
11 Stuart's anxiety and stress. Instead Ms. Swannack told Ms. Stuart that she didn't
12 "trust" her; but, when pressed, refused to provide a basis for her feeling. During the
13 meeting, Ms. Swannack indicated she did not want to hear about or discuss Ms.
14 Stuart's difficulties by looking away, fidgeting, and trying to change the subject.
15

16 24. Ms. Swannack's accusations further increased Ms. Stuart's anxiety.
17

18 25. Thereafter Ms. Stuart, in furtherance of the feedback accommodation
19 she requested, emailed Ms. Swannack, Ms. Rides at the Door, and Ms. Kerzman and
20 asked for workplace feedback. Ms. Stuart's email requests went unanswered.
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1 26. In August 2012 Ms. Stuart, asked Ms. Rides at the Door to limit the
2 back-to-back trips Ms. Stuart was required to attend because the effect those short
3 notice back-to-back trips were having on her anxiety. Although on notice of Ms.
4 Stuart's anxiety and requested accommodation, Ms. Rides as the Door did not
5 accommodate Ms. Stuart, explore alternative accommodations, or conduct any steps
6 commensurate with the interactive process. In the fall 2012 timeframe (after Mr.
7 Toupal was released from parole supervision) Ms. Stuart informed Ms. Kerzman of
8 how extended work-related travel was negatively affecting Ms. Stuart's anxiety. Ms.
9 Stuart stated that her anxiety was increasing because of her ex-husband's release
10 from parole, requested, as an accommodation, that her work related travel schedule
11 be lessened so as to decrease the effect said travel had on her anxiety. Ms. Kerzman
12 acknowledged Ms. Stuart's request for assistance but neither Ms. Kerzman, nor any
13 member of the USDA, engaged in the interactive process with Ms. Stuart so as to
14 discuss Ms. Stuart's duties, Ms. Stuart's responsibilities, and whether Ms. Stuart
15 could accomplish those tasks given her anxiety.
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18 27. On October 19, 2012, Ms. Stuart received a "fully successful" annual
19 performance evaluation. Ms. Kerzman gave Ms. Stuart her performance counseling.
20 During that counseling session Ms. Kerzman stated words to the effect of "be careful
21 Rebecca, your PTSD could be used against you" by some at the USDA's state office.
22

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

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

9 30. In January 2013 Ms. Stuart asked Ms. Rides at the Door, in writing,
10 whether her job was in jeopardy due to the government sequestration efforts. Ms.
11 Stuart informed Ms. Rides at the Door that she needed to know that question for the
12 purposes of her ongoing domestic relations dispute with Mr. Toupal as her future
13 employment with the USDA would affect her divorce settlement.

14 31. Ms. Rides at the Door did not respond to Ms. Stuart’s request. In
15 contrast, Ms. Rides at the Door’s subsequent acts - - such as sending Ms. Stuart on
16 out-of-area work related assignments and discussing the need for Ms. Stuart to attend
17 an upcoming three week out-of-state training course - - made clear that Ms. Stuart’s
18 job was not in jeopardy.
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1 32. In early-January 2013, and after exhausting her efforts with the EAP,
2 Ms. Stuart arranged an appointment, set for February 5, 2013, with Erika Klossner,
3 a licensed mental health care provider, so she could obtain the diagnosis Ms. Jackson
4 requested.

5 33. In mid-January 2013 Ms. Stuart informed Ms. Rides at the Door that
6 Ms. Stuart had scheduled the above-referenced PTSD-related appointment.

7 34. In January 2013 Ms. Stuart informed her acting supervisor, Ed Teel,
8 that overnight travel was exacerbating her anxiety. At no time did Mr. Teel engage
9 in the interactive process. Instead, Mr. Teel required Ms. Stuart to travel, overnight,
10 to western Washington that same month.
11

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

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

9 38. On February 8, 2013, Ms. Jackson instructed Ms. Stuart to report to Ms.
10 Jackson's office. A meeting ensued in which Ms. Jackson presented Ms. Stuart with
11 a letter (dated February 8, 2013) and terminated Ms. Stuart's employment. The
12 USDA's February 8, 2013, termination letter lists two specific reasons for the
13 termination: Ms. Stuart's alleged refusal to meet with co-worker Les Hannemann
14 and Ms. Stuarts' alleged improper behavior in a meeting with USDA employees
15 Peter Bautista and David Brower.
16

17 39. The February 8, 2013, termination letter also contains a vague "catch
18 all" phrase that references "other" workplace performance complaints involving Ms.
19 Stuart. During the February 8, 2013, termination meeting Ms. Stuart asked Ms.
20 Jackson to give examples of other workplace misconduct. Ms. Jackson could not
21 articulate any specific examples.
22

1 40. Following the February 8, 2013, termination meeting two armed federal
2 security officers escorted Ms. Stuart from her workplace.

3 41. Employers rarely, if ever, admit to terminating an employee on account
4 of that employee's disability, or other protected status. The USDA is no different in
5 this case. As such, Courts allow employees like Ms. Stuart to establish their claim
6 through circumstantial evidence. Such evidence includes (a) the proximity in time
7 between the employee asserting her rights under the law and the adverse
8 employment action, (b) the employer's inconsistencies with regard to its stated
9 reasons for termination, (c) the employer's different treatment of similarly situated
10 employees, (d) the employer's changing reasons for its termination action, and (e)
11 the employer's violation of policy and the law.

12 42. As to point (a), Ms. Stuart informed Ms. Jackson on February 5, 2013,
13 that she had been diagnosed with PTSD. On February 8, 2013, the USDA terminated
14 her employment.
15

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

20 44. Indeed, Mr. Brower states in a declaration made during the course of
21 the investigation regarding Ms. Stuart's termination, that after the June 2012 incident
22

1 that “Peter [Bautista] and Rebecca were able to work together after that point” and
2 that Mr. Bowers and Ms. Stuart “did a lot of good work together” after the June 2012
3 event.

4 45. And as to the May 2012 event involving Les Hannemann, Jeffery
5 Kuhlmann, a co-worker of Ms. Stuart who witnessed the May 2012 event, describes
6 Mr. Hannemann’s Stuart-critical recount of the event as “fictitious.”

7 46. As to point (c), Ms. Stuart informed Ms. Kerzman of the June 2012
8 incident involving Mr. Bautista. During that conversation Ms. Kerzman admitted
9 that Mr. Bautista previously yelled at Ms. Kerzman. However, upon information
10 and belief, Mr. Bautista was not admonished for that conduct – as well as Mr.
11 Bautista’s violation of the Privacy Act (*see infra*) - whereas Ms. Stuart lost her job
12 because of two alleged co-worker conflicts that occurred over seven months pre-
13 termination.
14

15 47. As to point (d), Ms. Stuart, per Agency policy, filed a discrimination
16 complaint. During the complaint investigation process the USDA took the position
17 that Ms. Stuart was *also* terminated because of her inability to get along with tribes
18 with whom she served as liaison. Yet at no time during her employ with the USDA
19 was Ms. Stuart informed that her customers had issue with her. Indeed, there is no
20 mention on Ms. Stuart’s performance evaluations of such incidents.
21
22

1 48. As to point (e), the USDA subsequently violated internal policy and the
2 Privacy Act by informing Ms. Stuart's ex-husband that Ms. Stuart had lost her job.

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

17
18
19 50. The USDA, in documents revealed *after* the Agency completed its
20 internal investigation of Ms. Stuart's termination, claims that it made the decision to
21 terminate Ms. Stuart's employment in November 2012.
22

1 51. Upon information and belief, the USDA did not make such a
2 determination in November 2012. Again if the USDA had decided to terminate Ms.
3 Stuart in November 2012 then why wasn't she terminated at that time? If the USDA
4 had already intended to terminate Ms. Stuart's employment in November 2012 then
5 why didn't it tell Ms. Stuart of that in January 2013 when Ms. Stuart asked whether
6 her job was at stake given the sequestration efforts?
7

8 **V. LEGAL CLAIMS**

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

10 52. The Rehabilitation Act of 1973 (29 U.S.C. § 791) prohibits Federal
11 Government employers from discriminating against disabled employees. In fact, the
12 Rehabilitation Act requires the federal government to serve as a "model employer"
13 of individuals with disabilities. 29 C.F.R. § 1614.203(a).
14

15 53. Toward this end, the employment discrimination provisions of the
16 Rehabilitation Act are interpreted in the same manner as the counterpart provisions
17 of the Americans with Disabilities Act (ADA). 29 U.S.C. § 791(g); 29 C.F.R. §
18 1614.203(b).

19 54. To state a prima facie case of disability discrimination under the
20 Rehabilitation Act a plaintiff must prove that she is a qualified individual with a
21 disability who suffered an adverse employment action because of her disability.
22

1 55. Ms. Stuart's anxiety and PTSD qualified her a disabled under the
2 Rehabilitation Act. The USDA's termination of Ms. Stuart's employment
3 constitutes an adverse employment action. The USDA terminated Ms. Stuart
4 because of her disability for the reasons set out above.

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

11 57. Ms. Stuart's PTSD and anxiety constitute disabilities under the
12 Rehabilitation Act.
13

14 58. Ms. Rides at the Door and Ms. Kerzman admit, in internal USDA
15 documents, that Ms. Stuart is qualified to perform the essential functions of the
16 Tribal Liaison job.
17

18 59. The interactive process is triggered either by a request for
19 accommodation by a disabled employee or by the employer's recognition of the need
20 for such an accommodation. In requesting an accommodation, an employee need
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1 only use “plain English” and is not required to mention the ADA or use the phrase
2 “reasonable accommodation.”

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

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18 61. In the July 2012 timeframe Ms. Stuart requested accommodations
19 relating to workplace feedback so as to lessen the effects of her anxiety. In August
20 2012 Ms. Stuart requested, first of Ms. Rides at the Door and then of Ms. Kerzman,
21 that her work-related travel be curtailed because of the effect it was having on her
22

1 anxiety. In December 2012 and January 2013 Ms. Stuart asked Ms. Jackson for the
2 same travel related accommodation.

3 62. At no time did the USDA enter into a meaningful interactive process
4 with Ms. Stuart. Instead, the USDA terminated Ms. Stuart's employment within
5 three days of her reporting Ms. Klosser's PTSD diagnosis.

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

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

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

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

7
8 66. The USDA maintains a system of records in which an employee's
9 confidential personnel records are stored. That system of records has a "System of
10 Records Number (SORN) OP-1. SORN OP-1 contains employee "Personnel
11 Folders", "disciplinary" and "retention lists", including, but are not limited to,
12 information relating to whether an employee was terminated from the USDA.

13 67. The USDA admits it told Mr. Toupal that it fired Ms. Stuart.

14 68. Upon information and belief, USDA employee Peter Bautista accessed
15 the USDA's system of records, obtained information about Ms. Stuart's firing, and
16 transmitted that information to Mr. Toupal, Mr. Bautista's former colleague.
17

18 69. Additionally, on February 21, 2013, USDA employee Kellie Green
19 informed Rob Whitlam that Ms. Stuart had been fired from her USDA job.

20 70. Additionally, on February 22, 2013, USDA employee Kellie Green
21 informed Guy Moura, of the Colville Tribe, of Ms. Stuart's firing.
22

1 71. Kellie Green's disclosure of the above-referenced information
2 regarding Ms. Stuart's employment termination to Mr. Moura or Mr. Whitlam did
3 not constitute a "routine use" for SORN OP-1 or any system of records containing
4 Ms. Stuart's employee termination information. Ms. Green did not have the authority
5 to inform Mr. Moura or Mr. Whitlam that Ms. Stuart's employment with the USDA
6 had ended.

7 72. The USDA's disclosure of the above-referenced information regarding
8 Ms. Stuart's employment termination to Frank Toupal did not constitute a "routine
9 use" for SORN OP-1 or any system of records containing Ms. Stuart's employee
10 termination information.
11

12 73. Mr. Bautista's disclosure of the above-referenced information
13 regarding Ms. Stuart's employment termination did not constitute a "routine use"
14 for SORN OP-1 or any system of records containing Ms. Stuart's employee
15 termination information.
16

17 74. On August 26, 2013, Ms. Stuart informed the USDA's EEOC
18 investigator of Mr. Bautista's suspected Privacy Act violation. But, upon
19 information and belief, the USDA took no disciplinary action against Mr. Bautista
20 or the individual who disclosed the protected information.
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1 75. The USDA’s disclosure of Ms. Stuart’s confidential information
2 caused Ms. Stuart pecuniary economic damages in an amount to be proven at trial.

3 **(Violation of the Back Pay Act, 5 U.S.C. §5596 et seq.)**

4 76. The Back Pay Act allows a federal government employee to recovery
5 back pay if it is “found by appropriate authority under applicable law, rule,
6 regulation or collective bargaining agreement [that the federal employee had] been
7 affected by an unjustified or unwarranted personnel action which has resulted in the
8 withdrawal or reduction of all or part of the pay, allowances, or differentials of the
9 employee.” 5 U.S.C. §5596(b)(1).
10

11 77. “To be entitled to relief under the Back Pay Act, an employee must
12 show that (1) he has suffered an unjustified or unwarranted personnel action as
13 determined by an appropriate authority, and (2) the action resulted in a withdrawal
14 or reduction of all or part of the employee's pay, allowances or differentials.” *Maney*
15 *v. Dep't of Health & Human Servs.*, 637 F. Supp. 1128, 1129 (D.D.C. 1986).
16

17 78. As to point (1), this Court is the “appropriate authority” to determine
18 whether the USDA’s stated reason for terminating Ms. Stuart (her inability to get
19 along with others) was “unjustified or unwarranted.” *Ward v. Brown*, 22 F.3d 516,
20 521 (2d Cir. 1994).
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1 79. The USDA's firing of Ms. Stuart was "unjustified or unwarranted"
2 under "applicable law" and "regulation."

3 80. As to the "regulation," at issue in this claim, Ms. Stuart's employment
4 was governed by 5 CFR §315.709.

5 81. 5 CFR §315.709 states: An employee appointed under §213.3102(u) of
6 this chapter may have his or her appointment converted to a career or career-
7 conditional appointment when he or she: (1) Completes 2 or more years of
8 satisfactory service, without a break of more than 30 days, under a nontemporary
9 under §213.3102(u); (2) Is recommended for such conversion by his or her
10 supervisor; (3) Meets all requirements and conditions governing career and career-
11 conditional appointment except those requirements concerning competitive
12 selection from a register and medical qualifications; and (4) Is converted without a
13 break in service of one workday.
14

15 82. 5 CFR §315.709 also states: A person whose employment is converted
16 to career or career-conditional employment under this section acquires competitive
17 status automatically on conversion.
18

19 83. Ms. Stuart satisfied the requirements of 5 CFR §315.709 as she
20 completed two years of "satisfactory service" with the USDA.
21
22

1 84. Under 5 C.F.R. §315.709(a)(2), Ms. Stuart should have been
2 recommended for competitive status by her supervisor and Ms. Stuart's appointment
3 in the excepted service should have been permanent with no expiration date.

4 85. As to the "law", at issue in this claim, the 9th Circuit Court of Appeals
5 in *Humphrey v. Mem'l Hospitals Ass'n*, 239 F.3d 1128, 1139-40 (9th Cir. 2001),
6 holds that "conduct resulting from a disability is considered to be part of the
7 disability, rather than a separate basis for termination."
8

9 86. Here the USDA violated *Humphrey* by terminating Ms. Stuart for
10 "inability to get along with others" - - - a symptom the federal government
11 undisputedly recognizes as a PTSD symptom.

12 87. For example, the federal government, *see e.g.* 38 C.F.R. §4.130,
13 recognizes an "inability to establish and maintain effective relationships" as a mental
14 disorder symptomatic of PTSD.

15 88. The PTSD symptomology of being "unable to get along with others"
16 has been repeatedly acknowledged by federal government agencies, such as the
17 Department of Veterans Affairs. For example, the VA, as part of VA Decision
18 citation # 1300549, January 8, 2013; VA Decision citation # 100321, January 22,
19 2010; VA Decision citation # 0924169, June 26, 2009; and VA Decision citation #
20
21
22

1 1414605, April 3, 2014, increased PTSD-diagnosed veterans disability ratings, in
2 part, on said individuals' "inability to get along with others."

3 89. The USDA knew Ms. Stuart's ex-husband attempted to kill her and
4 knew, at least as of February 5, 2013 if not months earlier, that Ms. Stuart was
5 diagnosed with PTSD.

6 90. Following Mr. Toupal's attempted killing of Ms. Stuart, the
7 Department of Agriculture's supervisors and Human Resource personnel perceived
8 Ms. Stuart as having a mental impairment, particularly that of anxiety.

9 91. Based on Ms. Stuart's appointment, Ms. Stuart was eligible for
10 competitive status after the completion of two years with the recommendation of her
11 supervisor.
12

13 92. Ms. Stuart was not recommended for conversion by her supervisor even
14 though Ms. Stuart's pre-termination performance evaluations reflect satisfactory job
15 performance.
16

17 93. Ms. Stuart's supervisor withheld approval (and ultimately terminated
18 Ms. Stuart's employment with the USDA) based on Ms. Stuart's mental impairment
19 manifesting itself as "an inability to get along with others." The USDA's Final
20 Agency Determination (FAD) upheld Ms. Stuart's termination based on her inability
21 to get along with others.
22

1 94. The Department of Agriculture violated 5 U.S.C. §5596 by relying
2 solely on Ms. Stuart's impairment symptomology to deny Ms. Stuart's conversion
3 to permanent status.

4 95. Barring Ms. Stuart's supervisor's illegal action - - firing Ms. Stuart for
5 PSTD related symptomology in violation of *Humphrey* - - Ms. Stuart met all
6 requirements of 5 CFR §315.709.

7 96. The Department of Agriculture employee Shelli Moore sent an email
8 on January 25, 2013 entitled, "Moving forward on Rebecca Stuart."

9 97. The email stated in pertinent part:

10
11 Because the employee is being terminated during her
12 trial period, and **her appointment in the excepted**
13 **service is permanent (no expiration date, etc.)**, the
14 termination must be based on performance or conduct
15 rather than just a decision not to convert her to the
16 competitive service upon her eligibility. With that, we
17 are required to prove her cited misconduct with
written documentation (written statements, emails,
counseling memos, supervisor's notes, etc.) so that the
action can be defended in front of a third party.
(emphasis added)

18 98. Despite the permanence of her position, and the satisfied terms of 5
19 CFR §315.709, Ms. Stuart was terminated on February 8, 2013.

20 99. This termination was done on the basis of Ms. Stuart, "not getting along
21 with others."
22

1 100. The basis used by the Department of Agriculture does not comply with
2 5 CFR §315.709 as acknowledged by Shelli Moore days before Ms. Stuart's
3 termination.

4 101. "Not getting along with others" also cannot be utilized in terminating
5 Ms. Stuart pursuant to 5 CFR §315.709 and *Humphrey*.

6 102. The Department of Agriculture by its actions violated 5 U.S.C. §5569
7 5 U.S.C. acting in an unwarranted and unjustified manner.

8 103. Ms. Stuart seeks all damages, interest, attorneys' fees allowed under 5
9 U.S.C. §5569.
10

11 **VI. PRAYER FOR RELIEF**

12 Plaintiff respectfully prays that this Honorable Court enter an Order providing
13 Ms. Stuart all remedies available to her by law, including, but not limited, to an
14 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, and Back Pay Act t to
18 include, but not limited to, back pay, front pay, and all attendant benefits, with
19 interest and penalties;

20 (b) the sum of \$300,000 in compensatory damages suffered by Plaintiff as
21 a result of discrimination and retaliation;
22

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

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

4 DATED this 16th day of February, 2016.

5
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CERTIFICATE OF SERVICE

1
2 I certify that on February 16, 2016 I electronically filed the foregoing with the Clerk
3 of the Court using the CM/ECF system, which will send notification of such filing
4 to those attorneys of record registered on the CM/ECF system. All other parties, if
5 any, shall be served in accordance with the Federal Rules of Civil Procedure.
6

7 Dated this February 16, 2016.

8
9 /s Matthew Crotty
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