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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

KELLY O’KELL,

Plaintiff,

v.

DAVID BERNHARDT, in his
official capacity as Secretary of the
U.S. Department of the Interior,

Defendant.

NO. 2:18-CV-279-SAB

PLAINTIFF’S LR 56.1
STATEMENT OF FACTS
AND COUNTER
STATEMENT OF FACTS

Plaintiff Kelly O’Kell by and through her attorneys hereby submits his Statement of Facts (SOF ¶1-188) Counter Statement of Facts (CSOF ¶1-23) pursuant to Local Rule 56.1(a). The CSOF begins on page 56 of this document.

The Declaration of Matthew Crotty, filed herewith, contains excerpts of the Dawn Weidmeier, Clyde Lay, Kathy Hernandez, Gina Hoff, Clint Wertz, Sarah Maciel, John Brooks, Kip Stover, Mark Manyard, Karissa Fromm, Carolyn Chad,

1 and Louella DuBois depositions. The Declaration of Matthew Crotty also contains
2 the Defendant’s responses to Plaintiff’s Interrogatories and Requests for
3 Production, as well as discovery documents. This response is also supported by the
4 Declarations of Kelly O’Kell, Louella DuBois, Stephon Rodgers, and Deborah
5 Diamond.
6

7 **FACTS IN SUPPORT OF PLAINTIFF’S OPPOSITION TO**
8 **DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

9 **A. The players.**

10 1. Lorri Gray f/k/a Lee. Ms. Lee is the Department of Interior (hereinafter
11 “DOI” or “Agency”) Pacific Northwest Regional Director for the Bureau of
12 Reclamation.¹ Ms. Lee authored a document May 9, 2018 acknowledging rampant
13 discrimination and retaliation that occurred in the Agency region that Ms. Lee led.
14 (Crotty Decl. at Ex. A *citing* USA 4527) On at least two occasions Ms. O’Kell
15 complained directly to Ms. Lee about the age discrimination and retaliation she
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17

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19 _____
20 ¹ See Lorri J. Lee *available at* [https://www.doi.gov/sites/doi.gov/files/uploads/17-](https://www.doi.gov/sites/doi.gov/files/uploads/17-01174ci.pdf)
21 [01174ci.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/17-01174ci.pdf) (*last visited* February 23, 2020)(Ms. Lee’s biography is available at .pdf
22 page 472 of the 596 page document). In lieu of placing the entire document in the
23 record Ms. O’Kell requests that the Court take judicial notice of page 472 and its
24 contents. FRE 201.
25

1 experienced at work. (O’Kell Decl. ¶ 34, 58, 68) Ms. Lee did not meaningfully return
2 Ms. O’Kell’s cries for help. (O’Kell Decl. ¶ 90) The Agency refuses to allow Ms.
3 O’Kell’s attorney to depose Ms. Lee in this lawsuit. (Crotty Decl. ¶18)

4 2. Dawn Weidmeier. Ms. Weidmeier is the Agency’s Area Manager.
5 (Crotty Decl. at Ex. B *citing* Weidmeier Dep. 9:9-12) Ms. O’Kell complained to Ms.
6 Weidmeier about the age discrimination Ms. O’Kell experienced in being passed
7 over for promotion to Project Manager. (O’Kell Decl. ¶89) Ms. Weidmeier never
8 meaningfully responded to Ms. O’Kell’s pleas for help, perhaps because Ms.
9 Weidmeier was ultimately in charge of the Project Manager selection process.
10 (O’Kell Decl. ¶89; Crotty Decl at Ex. C *citing* Wertz Dep. 31:10-17) The Agency
11 claims that Ms. Weidmeier is the person who made the decision to fire Ms. O’Kell.
12 (Crotty Decl. at Ex. D *citing* Agency Response to Interrogatory No. 2)

13 3. Kip Stover. Mr. Stover works as the Agency’s Human Resources. *See*
14 *infra*. Mr. Stover worked hand-in-hand with Ms. Weidmeier and Ms. O’Kell’s local
15 supervisors (Clyde Lay, Clint Wertz, and Mark Maynard) to discipline and then fire
16 Ms. O’Kell. *See infra*. Mr. Stover, in violation of well-established HR norms,
17 investigated Ms. O’Kell’s complaints of age discrimination and retaliation while, at
18 the same time, assisted management in disciplining and then firing Ms. O’Kell. *See*
19 *infra*.

1 4. Kathy Hernandez. Ms. Hernandez was the EO officer who processed
2 Ms. O’Kell’s complaints of age discrimination and retaliation. *See infra*.

3 5. Clint Wertz. Mr. Wertz supervised the Agency’s field office in Ephrata,
4 Washington (hereinafter the Ephrata Field Office (“EFO”). (Wertz Dep. 15:13-15)
5 Mr. Wertz’s boss is Ms. Weidmeier. (Wertz Dep. 17:25; 18:1) At deposition Mr.
6 Wertz stated that he could “not recall” 57 times. (Wertz Dep. 10:1-3; 25:5-9; 33:20-
7 23; 42:2-9; 43:1-2; 44:10-13; 46:23-25; 47:1-25; 48:1-3; 49:1-3; 50:20-25; 51:5-6;
8 52:12-14; 54:18-25; 55:11-12; 55:20-23; 56:2-6; 56:12-19; 57:11-16 & 25; 58:1-9;
9 59:16-18; 61:9-11; 62:13-14; 63:8-25; 64:1-3; 66:5-8; 67:17-24; 69:12-22; 70:5-8;
10 71:9-18; 73:5-10; 74:14-17 & 20-25; 75:1-3; 80:2-8; 80:21-25; 82:4-15; 88:2-22;
11 91:1-5; 92:23-25; 93:1-5 & 17-25; 94:1; 95:7-25; 96:1-6; 98:13-25; 99:3-14)

12 6. Clyde Lay. Mr. Lay worked in the EFO as the Deputy Field Office
13 Manager. (Crotty Decl. at Ex. E *citing* Lay Dep. 15:21-25; 16:1-18) Mr. Lay cannot
14 recall any of the 40 hours of EEO training he received. (Lay Dep. 22:7-12)

15 7. Mark Maynard. Mr. Maynard replaced Mr. Wertz as the EFO Field
16 Office Manager. (Crotty Decl. at Ex. O *citing* Maynard Dep. 26:22-25; 27:1-4) Mr.
17 Maynard cannot recall “specific conversations” he had with Mr. Lay about Ms.
18 O’Kell or other inter-office dynamics at the time he assumed Mr. Lay’s duties in
19 February 2018. (Maynard Dep. 21:10-17; 30:18-29) In fact, Mr. Maynard testified
20 that he received “a lot of unsolicited suggestion or advice from a number of people”
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1 regarding Ms. O’Kell’s firing but conveniently “don’t recall at this point in time”
2 who those people were. (Maynard Dep. 29:25; 30:1-9) Mr. Stover assisted Mr.
3 Maynard in firing Ms. O’Kell. (Maynard Dep. 24:2-13) Mr. Maynard never even
4 read Ms. O’Kell’s rebuttal to his (Maynard’s) written “proposal” to terminate her
5 employment. (Maynard Dep. 26:16-18) Mr. Maynard, in contradiction to the
6 Agency’s Interrogatory responses, claims that he, as opposed to Dawn Weidmeier,
7 “made this decision” to fire Ms. O’Kell. (*Compare* Crotty Decl. Ex. D *citing* Defense
8 Response to Plaintiff Interrogatory No. 2(a) (Weidmeier decided to terminate
9 O’Kell’s employment) *with* Maynard Dep. 29:25; 30:1-6 (“I made this decision
10 independently and on my own.”))
11
12

13 8. Anthony Ortiz. Mr. Ortiz served as Ms. O’Kell’s direct supervisor until
14 his tragic death in July 2017. (O’Kell Decl. ¶6, 55)
15

16 **B. The Department of Interior hires Ms. O’Kell in July 2014 as a GS-**
17 **11 Realty Specialist and Ms. O’Kell works without incident through May 25,**
18 **2016.**

19 9. In July 2014, the Agency hired Ms. O’Kell as a Realty Specialist.
20 (O’Kell Decl. ¶2)

21 10. Ms. O’Kell worked in the Ephrata Field Office (EFO). (O’Kell Decl. ¶
22 2)
23

24 11. From July 2014 through May 25, 2016, Ms. O’Kell received no
25 discipline. (O’Kell Decl. ¶3)

1 12. From July 2014 through May 25, 2016, Ms. O’Kell was, to the best of
2 her knowledge, never informed by any supervisor, co-worker, or subordinate that
3 she (O’Kell) was creating a “hostile environment” or likewise causing any mischief,
4 trouble, or the like at work. (O’Kell Decl. ¶4)

5
6 13. From July 2014 through May 25, 2016, Ms. O’Kell was never told by
7 her supervisors that her emails were inappropriate. (O’Kell Decl. ¶5)

8 14. During the April 2016 timeframe Anthony Ortiz served as Ms. O’Kell’s
9 direct supervisor, Clyde Lay served as Ms. O’Kell’s second level manager, and
10 Clinton Wertz served as the Ephrata Field Office’s Manager. (O’Kell Decl. ¶6)

11
12 15. During the April 2016 timeframe Ms. O’Kell, at age 56, applied for a
13 GS-12 Project Manager job opening because Mr. Lay and Mr. Wertz told her that
14 she was the only person in that office qualified for that position. (O’Kell Decl. ¶9)

15
16 **C. The environment in which Ms. O’Kell works is littered with**
17 **numerous allegations of age discrimination made by Ms. O’Kell’s co-workers**
18 **against the same Agency management who disciplined and then fired Ms.**
19 **O’Kell, supported by a Human Resources officer (Kip Stover) with whom the**
20 **Agency’s EO officer reported significant conflict of interest concern, and**
21 **littered with ageist comments and attitudes brought on by the same individuals**
22 **who passed over Ms. O’Kell for promotion.**

23 16. On April 24, 2015, Agency employee Deno Morrow filed an age
24 discrimination and retaliation complaint against Dawn Wiedmeier—the person to
25 whom Ms. O’Kell would later complain of age discrimination and the person who

1 would ultimately fire Ms. O’Kell.² (Crotty Decl. at Ex. F *citing* EEO No.176; Crotty
2 Decl. at Ex. C *citing* Defense Response to Interrogatory No. 2)

3 17. Incredibly, Ms. Weidmeier cannot recall the outcome of Mr. Morrow’s
4 complaint or whether the complaint was even investigated. (Weidmeier Dep. 42:1-
5 20 & Ex. 13)

7 18. On April 29, 2015, Agency employee Olive McCreary filed an EEO
8 complaint for age discrimination, disability discrimination, and reprisal regarding
9 events occurring at the Ephrata Field Office. (Crotty Decl. at Ex. F *citing* EEO No.
10 82)

12 19. On June 17, 2015, Agency employee Stephanie Utter filed a race and
13 retaliation claim against Ms. Wiedmeier. (Crotty Decl. at Ex. F *citing* EEO No. 182)

15 20. Incredibly, Ms. Weidmeier professes ignorance as to the basis of Ms.
16 Utter’s complaint or the complaint’s outcome. (Weidmeier Dep. 39:4-25: 40:1-5)

17 21. On May 16, 2016 Agency employee Beverly Diehl filed an EEOC age
18 discrimination and FMLA interference complaint regarding events occurring at the
19 Ephrata Field Office. (Crotty Decl. at Ex. F *citing* EEO 063-064)

22 ² When asked under oath if she recalled being interviewed about the Deno Morrow
23 complaint, Ms. Weidmeier responded, twice, “I can’t recall.” (Weidmeier Dep.
24 42:1-20)

1 22. On October 20, 2016, Gina M. Hoff filed an age and disability
2 discrimination complaint against Clint Wertz and others at the Ephrata Field Office
3 referencing events beginning March 2016, including leave restrictions, denial of
4 training, and the clear message from Mr. Wertz “not to apply for any of the jobs
5 coming open in the office because [she] would not even be considered” (Crotty
6 Decl. at Ex. F *citing* EEO 069; EE0 076)
7

8 23. On January 7, 2018, Dawn Morrow filed an EEO complaint
9 implicating Jonathon Brooks, Clyde Lay and others in creating a hostile work
10 environment and failing to provide reasonable accommodation. (Crotty Decl. at Ex.
11 F *citing* EEO 215)
12

13 24. Kathy Hernandez, the Agency’s former EEO Specialist for Bureau of
14 Reclamations for the Boise office, testified that she completed fact finding on more
15 than 100 complaints about discriminatory and retaliatory conduct, including 30
16 complaints from the Ephrata Field Office alone. (Crotty Decl. at Ex. G *citing*
17 Hernandez Dep. 21:9-24; 24:3-7) Asked if she was concerned about the number of
18 discrimination, harassment, and retaliation complaints she said, “Yes, that is a
19 concern. Concern to me, concern to my supervisor.” (Hernandez Dep. 49:1-10)
20
21

22 25. EEO Specialist Hernandez further testified, from the safety of
23 retirement, about her own concerns with observed conflicts of interest wherein
24 managers [read: Kip Stover, Clyde Lay] charged with *investigating* an employee’s
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1 discrimination and retaliation complaints were also simultaneously involved with
2 *disciplining* the same employee. (Hernandez Dep. 29:9-22; 45:6-25)

3 26. EEO Specialist Hernandez expressed concern that Clyde Lay, who Ms.
4 O’Kell had charged with discrimination, harassment, and retaliation, was the one
5 who proposed the 2017 three-day suspension that led to Ms. O’Kell’s 2018
6 termination. (Hernandez Dep. 44:18-25; 45:1-5; 39:1-11)

7
8 27. EEO Specialist Ms. Hernandez testified that she specifically reported
9 concerns about Mr. Stover’s conflicts of interest to the EEO Manager, Bret
10 Salisbury. (Hernandez Dep. 46:2-11)

11
12 28. EEO Specialist Ms. Hernandez generally described her hesitation to
13 interact with Kip Stover: “I asked a lot of questions and they didn’t like that ... He
14 would never return my calls. He would—I don’t know, I did not feel like speaking
15 to him, I just didn’t.” (Hernandez Dep. 47:1-8)

16
17 29. EEO Specialist Ms. Hernandez testified to her specific concern about
18 Kip Stover’s retention of special files collected upon certain field office manager’s
19 requests; these were separate from formal EOPF files and to her knowledge
20 contained communication from the supervisor about an employee. (Hernandez
21 Dep. 66:14-25; 67:1-25; 68:1-25; 69:1-12; 98:15-25; 99:1-9) Ms. Hernandez said
22 the files concerned her because they violated the employee’s right to know what
23 was in their personnel file. *See id.*

1 30. Ms. Hernandez further testified that Kip Stover’s involvement in Ms.
2 O’Kell’s mediation was not “normal protocol.” (Hernandez Dep. 76:18-25; 77:1-7)

3 31. Ms. Hernandez, the EEO Counselor assigned to Ms. O’Kell’s case,
4 believed Ms. O’Kell always told her the truth, though it was not her position to put
5 that in the report. (Hernandez 97:22-24)
6

7 32. Ms. Hernandez noted that Ms. O’Kell’s EEO complaint took place
8 during a time period (2016-17) when turnaround for EEO Counseling reports were
9 abnormally delayed, with up to eight month gaps in response time: “We were short,
10 well, Denver was short in staff and some of that work (read: the processing of EEO
11 complaints) fell behind, ... not just Kelly’s but others, the deadline was past on
12 those.” (Hernandez Dep. 38:21-25; 39:1-11)
13

14 33. The prevalence of hostile work cultures within the DOI during this
15 time period was so problematic, it prompted DOI Secretary Sally Jewell to send a
16 September 14, 2016 agency wide email to all DOI employees expressly
17 acknowledging how “recent examples of lapses in judgment and misconduct that
18 reflect poorly on the Department.” (Hernandez Dep.79:13-25; 80:1-25; 81:1-7).
19
20

21 34. The Agency’s hostile work culture was so concerning that Ms. Lee,
22 Regional Director, felt compelled to reaffirm her “unequivocal commitment to
23 eliminating harassing behavior” via a letter reporting a January-March 2017, survey
24 wherein “31% of Reclamation survey takers experienced some form of harassment,
25

1 62% said it happened more than once, and 70.5% said they did not make a formal
2 complaint.” (Crotty Decl. at Ex. A *citing* USA 00004527)

3 35. In early 2017, Mr. Wertz told Ms. O’Kell that he would never hire a
4 female over 50 years old. (O’Kell Decl. ¶8)

5
6 36. In mid-May 2016 Mr. Ortiz told Ms. O’Kell that she should apply for
7 “telework” because at “[Ms. O’Kell’s] age it is hard to get into the office every
8 day.” (O’Kell Decl. ¶12)

9
10 37. Additionally, throughout the 2016 timeframe, Mr. Ortiz asked Ms.
11 O’Kell when she was “planning on retiring” to which Ms. O’Kell replied, “I have
12 to work another 15-20 years; please stop asking me that.” (O’Kell Decl. ¶12)

13 38. Louella DuBois, a retired employee of the DOI BOR, Ephrata Office,
14 and 31-year government employee, also recalled Mr. Wertz saying: “This office
15 needs new people, new blood.” (DuBois Second Dec. ¶5) Mr. Wertz complained to
16 Ms. DuBois that old people “Don’t want to go with the flow.” *Id.* “Old people are
17 set in their ways.” *Id.* On numerous occasions, Mr. Wertz looked Ms. DuBois in the
18 eye and asked: “When are you going to retire?” *Id.* Mr. Wertz could not recall
19 making those statements to Ms. DuBois. (Wertz Dep. 50:20-25; 51:5-17) Ms.
20 DuBois noted how other younger hires, Harmony Green, Jennifer McConnell, and
21 Nasha Flores received preferential treatment from Mr. Wertz and Mr. Lay. (DuBois
22 Second Dec.¶ 16, 18; Crotty Decl. at Ex. H *citing* Hoff Dep. 82:1-6)

1 39. Ms. DuBois further recalled how Mr. Wertz, as a newcomer to
2 Ephrata, repeatedly talked to Ms. DuBois about his single dating status. (DuBois
3 Second Dec. ¶ 7-8) Mr. Wertz revealed he used dating apps, was lonely, and
4 “looking for someone younger to enjoy his life/time with.” *Id.* Mr. Wertz cannot
5 recall telling Ms. DuBois whether he joined an online dating app but denies telling
6 Ms. DuBois that he was lonely, but admits to telling Ms. DuBois he was single.
7 (Wertz Dep. 55:5-15)
8

9 40. Mr. Wertz could not recall going out with 20-30 year old female co-
10 workers after work. (Wertz Dep. 53:7-10) Tellingly, Mr. Wertz could not recall
11 going out to drinks with Ms. Davidson or Nasha Flores, another young employee
12 of the EFO. (Wertz Dep. 54:18-20) Nor could Mr. Wertz recall telling Ms. DuBois
13 that he was happy Ms. Davidson was hired because she “fit the mold.” (Wertz Dep.
14 55:20-23)
15
16

17 41. Ms. DuBois retired from the Agency in July 2016 because she feared
18 she would ultimately be fired for “not being the right fit” and lose everything.
19 (DuBois Second Dec. ¶ 19) She believed that Mr. Wertz and Mr. Lay were “capable
20 of firing anyone under pretense and didn’t want to endure the stress and indignity
21 of the pair making up a reason to have her fired.” *Id.*
22

23 42. Ms. Gina Hoff, a GS-12.6 water quality specialist and full time
24 employee in the Ephrata Field Office since 2009, described the cultural climate of
25

1 discrimination and retaliation as follows: “certain people can do this [read: lose
2 their temper, have an affair with a supervisor] in our office and not get in trouble,
3 but if [others] say one wrong thing and have maybe a personality conflict, [they’re]
4 in the wrong. And you cannot have freedom of speech in this office. If you try to
5 speak up, it's a no-no. As a matter of fact, I tried whistle-blowing and no fear and
6 guess what I got. I got in trouble myself and got suspended for two weeks.” (Hoff
7 Dep. 47: 23-25). Hoff later clarified, “if you disagree with something that's being
8 done and you even do it in a respectful way, they [read: Clyde Lay, Clint Wertz,
9 Jon Brooks] don't like that. So yeah, freedom of speech is a no-no.” (Hoff Dep.
10 113:13-16)

13 43. Ms. Hoff recalled “six women in [the Ephrata] office all over the age
14 of 40 who went bye-bye without any logic or reasoning” (Hoff Dep. 48:10-12). Ms.
15 Hoff identified those older female employees as Alicia Fields, Barbara Diehl, Luella
16 DuBois, Lynette Nelson, Bobbi X, and Beverly Diehl. (Hoff Dep. 48:12-19; 54:21-
17 25; 55:1-20; 56:1-14; 58:8-23; 59:10-25; 60:1-14)

1 44. When asked if any of the younger women in the office dressed in what
2 would be described as a “kind of risqué manner, shorter skirts, higher heels” Ms.
3 Hoff described the Project Manager who replaced Charity Davidson: “Jennifer
4 McConnell... want to talk about elevation, I saw that girl go from a GS-5 to a GS-
5 12, and I’m still sitting where I am.” (Hoff Dep. 107:4-15)
6



17 *See Jen McConnell available at*

18 <https://www.facebook.com/photo.php?fbid=10161062555575615&set=pb.513555>
19 [614.-2207520000..&type=3&theater](https://www.facebook.com/photo.php?fbid=10161062555575615&set=pb.513555614.-2207520000..&type=3&theater) (*last visited* February 20, 2020).
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1 45. Ms. Hoff also described the verbal abuse and threats of retaliation she
2 faced after taking family medical leave under Bruce Loranger during the early days
3 of Clyde Lay’s leadership: “My husband had a gastrointestinal issue, spent 42 days
4 in Harborview in ICU, died nearly four times, and went through seven major
5 surgeries. So when I walked back into the office on the 7th of January, I’ll never
6 forget it because Bruce [Loranger] is standing there telling me *If you hadn’t showed*
7 *up today, I was putting the papers in to fire your ass*, and that was how it was said.”
8
9 (Hoff Dep. 47:23-25; 61:14-21)

10
11 46. Several Agency employees testified to the inadequacy of training in
12 discrimination issues and the general dysfunction of the agency’s Boise-based EEO
13 office. (Hoff Dep. 83:4-9) For example, Ms. Hoff described after more than a
14 decade working in Ephrata, “I’m still not completely sure how all those [EEO]
15 processes worked. I tried to file a second one and I filed it and never heard anything
16 else back, so I think it’s worthless if you ask me. I want that on the record EEO is
17 worthless.” *Id.*

18
19 47. Ms. Hoff further noted the complete absence of human resources
20 personnel in Ephrata and described the human resources office in Boise as readily
21 biased towards management: “We call human resources ‘management’ resources
22 because when we try to get some help, they don’t really want to help us, but if
23
24
25

1 management has an issue with us, boom, they are on that like flies on poo poo.”
2 (Hoff Dep 137:1-7)

3 48. Mr. Wertz could not recall saying that he was “trying to bring a new
4 generation” into the EFO. (Wertz Dep. 66:5-8)

5
6 49. On May 15, 2017 Rolland Mitchell filed an age discrimination
7 complaint against Clint Wertz, Clyde Lay, and Kip Stover. (EEO 166; Wertz Dep.
8 94:5-16) Shockingly, Kip Stover does not recall Mr. Mitchell’s complaint of age
9 discrimination against him (Stover). (Crotty Decl. at Ex. L *citing* Stover Dep. 64:23-
10 25; 65:1-16) Mr. Lay supervised Mr. Mitchell. (Lay Dep. 8:16-25; 9:1-7)

11
12 **D. The Qualifying Incident of Age Discrimination: Clint Wertz,**
13 **Ephrata Field Office Manager rigs the hiring process to select Charity**
14 **Davidson, a slender blonde, less than 40 years of age, despite Ms. O’Kell’s equal**
15 **qualification and local experience.**

16 50. On or about April 25, 2016 Dawn Weidmeier and Clint Wertz received
17 the certificate for a vacant Project Manager position based from the Ephrata Field
18 Office. (Crotty Decl. at Ex. A *citing* USA 725)

19 51. Ms. O’Kell, at age 56, applied for that job. (O’Kell Decl. ¶9)

20 52. In April-May of 2016, Mr. Wertz circumvented protocol, covertly
21 removing and replacing individuals on the Project Manager hiring panel to ensure
22 he could hire Charity Davidson, who, according to Ms. DuBois “fit the mold” of
23 someone with whom Mr. Wertz might pursue for a romantic relationship. (DuBois
24
25

1 Second Dec.¶ 7-8; Crotty Decl. at Ex. C *citing* Wertz Dep. Ex.1)



13 Charity Davidson *available at* [https://www.wenatcheeworld.com/business/your-](https://www.wenatcheeworld.com/business/your-business-local-business-achievements-milestones/article_d5ceebe4-03f9-576f-b382-3c3fe45b935e.html)
14 [business-local-business-achievements-milestones/article_d5ceebe4-03f9-576f-](https://www.wenatcheeworld.com/business/your-business-local-business-achievements-milestones/article_d5ceebe4-03f9-576f-b382-3c3fe45b935e.html)
15 [b382-3c3fe45b935e.html](https://www.wenatcheeworld.com/business/your-business-local-business-achievements-milestones/article_d5ceebe4-03f9-576f-b382-3c3fe45b935e.html) (*last visited* February 27, 2020).

17 53. To that end, in late April 2016, Mr. Wertz rearranged the Project
18 Manager interview panel to include just himself, Sarah Maciel, and Tina Turner.
19 (Wertz Dep. Ex.1)

21 54. The change of plans with the interview panel was questioned via email
22 by both Mr. Ortiz and Ms. Turner, who originally thought she would lead the Project
23 Manager hiring panel and, on April 27, 2016, Mr. Wertz explained the change of
24 plan to Ms. Turner: **“Kelly was on the list too, so that swayed my decision...”** *Id.*

1 On Wednesday April 27, Mr. Ortiz wrote to Mr. Wertz: “Sir, I thought Nasha was
2 going to do that. You would rather have Sarah?” *Id.* And Mr. Wertz responded: “I
3 changed my mind for confidential reason.” (Wertz Dep. 27:5-15 & Ex.1)

4 55. After one brief email of hesitation, Mr. Ortiz politely supported his boss
5 Mr. Wertz’s request to use Ms. Maciel to collect Ms. O’Kell’s references *despite his*
6 *express knowledge* of a workplace altercation which had taken place between Ms.
7 O’Kell and Ms. Maciel on April 19, 2016. (Crotty Decl. at Ex. I *citing* Maciel Dep.
8 57:2-21; Wertz Dep. Ex.1 USA 1192-93)

9 10 56. When Mr. Wertz selected Ms. Maciel for the re-arranged hiring
11 committee of three, she was approximately 36 years old, had significantly less
12 experience than applicant Ms. O’Kell, had worked for the agency less than 6 months,
13 was a GS09 tasked with serving on a hiring panel for a GS12 position, and had never
14 served on a hiring panel. (Maciel Dep 17:15-16; 18:15-17; 38:8-23)

15 16 57. Ms. Maciel testified to the unusually informal process of the hiring
17 panel which interviewed just two applicants and used no formal scoring matrix nor
18 official ranking (Maciel Dep. 84:9-25; 85:1-3). Ms. Maciel also described how Clint
19 Wertz alone made the choice to hire Charity Davidson. *Id.* In short, a hiring panel
20 was convened, but the decision was made by Mr. Wertz. *Id.*

21 22 58. Describing the Charity Davidson hiring process, Mr. Wertz claimed he
23 wanted nonbiased panelists due to the internal hire; however, when it came time to
24 25

1 make his choice for Ms. Davidson he did not consult Ms. Turner or Ms. Maciel (his
2 supposedly nonbiased panelists). (Wertz Dep. 36:11-12; Maciel Dep. 84:9-25; 85:1-
3 3).

4 59. During Spring 2016 time period, Mr. Wertz discouraged a different
5 older female applicant, Gina Hoff, from applying for the Project Manager position.
6 (Hoff Dep 75:5-15). At the time Ms. Hoff already possessed a PM (Project
7 Manager) certification along with the GS12 rank required for the PM position. *Id.*
8 Ms. Hoff testified: “I was going to apply for the position and Clint Wertz flat out
9 told me, ‘Don't even bother, you won't be considered.’” (Hoff Dep 72:22-25).
10
11

12 60. Mr. Wertz denied any recollection of Ms. Hoff's interest in the position.
13 (Wertz Dep 47:6-15)
14

15 61. Describing his unilateral decision to hire Charity Davidson, Mr. Wertz
16 declared that Ms. Davidson “just had a better mix of experience and background”
17 for the Project Manager position despite knowledge that Ms. Davidson had never
18 worked for the federal government, nor had she worked as a realty specialist; in fact,
19 she had no realty experience. (Wertz Dep. 40:23-25; 41:1-2) Mr. Wertz claimed he
20 hired Ms. Davidson due to her direct experience with the Potholes project, but
21 nothing in his interview notes nor reference check notes describes Ms. Davidson's
22 familiarity with that project. *Id.*
23
24
25

1 62. Mr. Wertz “could not recall” being acquainted with Ms. Davidson
2 before the Project Manager hiring process began. (Wertz Dep. 33:20-23; 38:9-12)
3 Ms. DuBois, however, testified under oath that Mr. Wertz told her that he knew Ms.
4 Davidson from before—testimony that Mr. Wertz disputes. (Dubois Dep. 44:5-16;
5 Wertz Dep. 69:1-11; 70:16-25; 71:1-8)

7 63. Tellingly, Mr. Wertz did not tell Ms. O’Kell any of the above reasons
8 for his decision to hire Ms. Davidson; the first time Ms. O’Kell learned of this
9 information was after she complained of age discrimination. (O’Kell Decl. ¶14)

11 64. Mr. Wertz failed to hire Ms. O’Kell despite several excellent
12 recommendations and a glowing internal reference from Mr. Ortiz submitted May
13 13, 2016. Mr. Ortiz indicated during the reference check that Ms. O’Kell had
14 “Excellent ability [to represent the agency to partners], very professional demeanor.”
15 Asked if he had ever experienced performance or conduct issues with Ms. O’Kell he
16 said, “no.” (Crotty Decl. at Ex. A at USA-848) When asked if he would re-hire, Ms.
17 O’Kell he indicated, yes “b/c she is [his] go-to” and “any level difficulty of project
18 [he] can go to her. [He] knows she can handle it, get it done on time, and it will be
19 a quality product.” *Id.*

22 65. During the May 2016 hiring process, Ms. O’Kell received three other
23 extremely positive reference checks. For example, Teresa Hartman at the Wyoming
24 Dept of Game & Fish described Ms. O’Kell as “very personable, worked well with
25

1 others, positive attitude, cheerful.” She went on, “The office was a difficult office
2 to work in. Kelly handled things well. Refreshing to have someone to go to who
3 handled things professionally and respectfully.” (Crotty Decl. at Ex. A 00000838-
4 851)

5
6 66. Ms. DuBois’ testimony recalled several conversations with Mr. Wertz
7 and Mr Lay about Ms. O’Kell’s competence in her position during the time period
8 of the hiring. (DuBois Second Dec. ¶15) Both Wertz and Lay commented that Ms.
9 O’Kell understood her job quite well, and was amenable to work with, without
10 hostility nor insubordination. *Id.*

11
12 67. Both candidates (Ms. Davidson and Ms. O’Kell) had minor problematic
13 elements in their reference checks, specifically referencing their mutual potential to
14 engage with other problematic employees. (Crotty Decl. at Ex. A *citing* USA 824 –
15 837; 838-851)

16
17 68. Ms. DuBois noted the oddity of Mr. Wertz hiring Ms. Davidson
18 because Ms. Davidson lived in the Wenatchee at the time and was permitted to
19 telework extensively despite the duties/responsibilities of the Project Manager
20 position which required a physical presence in Ephrata. (DuBois Second Dec. ¶ 7-
21 8) Ms. Davidson did, however, also work in the EFO. (Lay Dep. 27:4-11)

22
23
24 **E. Ms. O’Kell learns that she was not selected for the Reality Manager
25 position because she was not “young and perky” i.e. because of her age.**

1 69. On May 19 or 20, 2016, Clyde Lay called GS-11 Realty Specialist
2 Kelly O’Kell to tell her she was not selected for a GS-12 Project Manager position.
3 (Wertz Dep. 41:12-21)

4 70. On May 19, 2016, Mr. Wertz signed a “Star ‘Special Thanks for
5 Achievement Award’” for Ms. O’Kell.
6

7 **JUSTIFICATION**

8 Summary of Accomplishments/Contributions Being Recognized by Award

9 Kelly has demonstrated a complete knowledge of each facet of Realty and has taken on Waiver Valuation
10 training for eventual certification. Kelly works with other groups within EFO, Area and Region to find customer
11 solutions. Kelly has been working successfully in conjunction with operations area to develop and implement
improved processes (SOP) between EFO inter office groups and water districts. The SOP development will
benefit all of EFO and could possibly be a template for other offices in the Region. Kelly is an asset to the
Realty Group and remains an example of knowledge, quality, and extra effort for all.

12 That same evening, May 19, 2016, Sarah Maciel (who sat on the hiring panel for the
13 Project Manager position) told Ms. O’Kell that although Ms. O’Kell and Ms.
14 Davidson were “pretty equal” in qualifications, Deputy Manager Clyde Lay selected
15 Ms. Davidson because she was “young and perky” and would bring new energy to
16 the office.” (O’Kell Dec. ¶10; Wertz Dep. 76:1-23)

17 71. Neither Ms. Maciel nor Mr. Gentzler disputed the “young and perky”
18 hiring rationale presented by Ms. Maciel to Ms. O’Kell at the Red Robin dinner in
19 Boise, Idaho where Ms. O’Kell first heard the rationale. (Crotty Decl. at Ex. A *citing*
20 USA 561-562)
21
22
23
24
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1 72. Rather, in an affidavit signed under oath on December 15, 2017, Ms.
2 Maciel claimed that she “did not recall” reporting on Mr. Wertz’s “young and perky”
3 comment to Ms. O’Kell. (Crotty Decl. at Ex. A *citing* USA 404, 407)

4 73. However, years later, in a November 7, 2019, deposition Ms. Maciel,
5 still an employee of the Agency now being sued in federal court for age
6 discrimination and retaliation, denied saying (in 2019) what she couldn’t recall
7 saying (in 2017)—aka: the “young and perky” comment. (Maciel Dep. 84:1-11;
8 85:8-20)

9 74. On or about May 23, 2016, Ms. O’Kell confronted Mr Wertz, asking
10 about whether he had hired Ms. Davidson because she was “young and perky and
11 going to bring new energy to the office.” (O’Kell Decl. ¶14) Mr. Wertz admitted
12 he had selected the other candidate because she was “young and perky and going to
13 bring new energy to the office,” but that he would make it up to her in the future. *Id.*

14 75. Mr. Wertz claims he told Ms. O’Kell that she was not hired because
15 Ms. Davidson “was a better fit.” (Wertz Dep. 42:18-25)

16 76. Mr. Wertz does not recall telling Ms. DuBois that Ms. Davidson was
17 hired because she “fit the mold”, i.e. was younger. (Wertz Dep. 69:12-18)

18 77. Mr. Wertz, in a December 7, 2017, affidavit claimed that he “could not
19 recall” stating that Ms. Davidson was hired because she was “young and perky.”
20
21
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23
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1 (Wertz Dep. Ex. 13 *citing* 000387-388) Mr. Wertz further could not recall, at
2 deposition, claiming that Ms. Davidson was hired because she was young. To quote
3 “*I don’t recall that—specifically that. She was energetic.*” (Wertz Dep. 48:24-25;
4 49:1-4)

5
6 78. On or about May 23, 2016, Mr Lay told Ms. O’Kell about he felt bad
7 about his role in discriminatory actions, and they planned to create another GS-12
8 position for her. (O’Kell Decl. ¶16)

9
10 79. During this meeting Mr. Lay told Ms. O’Kell that she was not hired
11 because she was “not a good fit” for the position. (Lay Dep. 43:17-25; 44:1-25; 45:1-
12 7) Mr. Lay recalls little else from that conversation. *Id.*

13
14 80. Mr. Lay and Mr. Wertz contend Ms. O’Kell was “not a good fit” for the
15 Project Manager position and was not hired for that reason. (Lay Dep. 30:2-7 &19-
16 24: 31:1-6) Mr. Lay claims the Agency’s “EEO...folks” tells management to use
17 “not a good fit” as justification for an employment decision. (Lay Dep. 30:8-18)

18
19 81. When Mr. Lay talked to Mr. Wertz about Ms. O’Kell’s non-hire all Mr.
20 Wertz said was that Ms. O’Kell was not hired because she was “not a good fit.” (Lay
21 Dep. 34:15-21)

22
23 82. On or about May 23, 2016, Mr Ortiz ordered Ms. O’Kell into his office
24 and informed her that Mr. Wertz, Ms. Maciel, and Mr. Lay had all admitted that Ms.
25

1 O’Kell was passed over because the other candidate was “young and perky.” (O’Kell
2 Decl. ¶17) Mr Ortiz repeatedly asked if Ms. O’Kell planned to sue Mr. Wertz. *Id.*

3 **F. The first protected activity. Ms. O’Kell complains of age**
4 **discrimination beginning May 25, 2016.**

5 83. On or about May 23, 2016, Ms. O’Kell initiated (May 23) and then filed
6 (May 25) an informal EEO complaint related to her non-selection, alleging disparate
7 treatment based on sex and age (over 40) and EEO Counselor Katheryn Hernandez
8 did counseling intake. (O’Kell Decl. ¶15)

10 84. Ms. O’Kell’s EEO complaint implicated Mr. Lay and Mr. Wertz,
11 among others. (ECF No. 001 ¶22)

13 85. The Agency admits in its answer to Ms. O’Kell’s complaint that
14 Messrs. Lay, Wertz, and Ortiz learned of Ms. O’Kell’s EEO activity on May 23,
15 2016. (ECF No. 006 ¶21)

17 **G. The Agency retaliates against Ms. O’Kell because of her EEO**
18 **complaint.**

19 86. On May 26, 2016, Sarah Maciel, a member of the Davidson hiring
20 committee, filed a statement to Realty Supervisor Anthony Ortiz claiming that Ms.
21 O’Kell had engaged in inappropriate conduct on April 19, 2016 and May 19, 2016.
22 (Crotty Decl. at Ex. A *citing* USA 561-562)

23 87. On May 31, 2016, Mr. Ortiz ordered Nasha Flores to write a statement
24 critical of Ms. O’Kell. Ms. Flores refused, only to be told by Anne Veditti, Agency
25

1 HR who works with Kip Stover, that “you do not have the ‘option’ to refuse that
2 request.” (Crotty Decl. at Ex. A *citing* USA00007678.06; Stover Dep. 68:5-7)

3 88. On or about June 2, 2016, Mr. Ortiz suspended Ms. O’Kell’s
4 teleworking arrangement. (O’Kell Decl. ¶29) Mr. Lay cannot recall speaking with
5 Mr. Ortiz about this. (Lay Dep. 50:23-25; 51:1-4)
6

7 89. Later, on June 2, 2016, Ms. O’Kell complained by email to Dawn
8 Wiedmeier that the suspension of telework, along with other behaviors, were clearly
9 retaliatory: “Next thing I know they are coming after me. I am so afraid of these
10 people. I have a lawyer and an EEO ready to file. I just want a good reference and
11 will leave. If I am falsely disciplined tomorrow I will have to stay and fight. I really
12 don’t want to.” (Crotty Decl. at Ex. B *citing* Wiedmeier Dep. Ex. 3) Ms. O’Kell also
13 asked Ms. Weidmeier to exercise a chain of command intervention: “Would you be
14 willing to substitute for my supervisor for this position? ... I really need help here.”
15
16
17 *Id.*

18 90. On June 2, 2016, the same day Ms. Weidmeier received Ms. O’Kell’s
19 call for help, Ms. Weidmeier wrote Mr. Wertz indicating she would delay returning
20 Ms. O’Kell’s call and asking for suggestions before visiting with her about the
21 retaliation/change of command concerns. (Wiedmeier Dep. Exh. 3)
22

23 91. On June 30, 2016 Mr. Wertz met with Ms. O’Kell to discuss reasons
24 for non-selection and at that meeting Mr. Wertz did not deny that Ms. Davidson was
25

1 given the job because she was “young and perky” nor did Mr. Wertz give Ms. O’Kell
2 any objective explanation as to why Ms. Davidson was hired other than she was the
3 “right fit.” (O’Kell Decl. ¶32) Mr. Wertz has no recollection of this conversation or
4 any conversation regarding Ms. O’Kell expressing concerns to Mr. Wertz about age
5 discrimination. (Wertz Dep. 88:2-10)
6

7 92. On July 19, 2016 Ms. O’Kell reported that Ms. Maciel repeatedly called
8 her “grandma.” (Crotty Decl. at Ex. K *citing* ROI pg. 209)
9

10 93. On or about July 20, 2016, the Agency accused Ms O’Kell of being
11 AWOL. (O’Kell Decl. ¶36)

12 94. Ms. O’Kell’s “AWOL” was because Ms. O’Kell left the EFO to appeal
13 to her chain of command and seek guidance by traveling to the Agency’s office to
14 complain about the ongoing retaliation. (O’Kell Decl. ¶36)
15

16 95. On July 21, 2016, Mr. Ortiz issued Ms. O’Kell a Letter of Reprimand,
17 presumably drafted by Kip Stover, and describing Ms. O’Kell’s alleged
18 inappropriate conduct around Sarah Maciel on April 19, 2016 and May 19, 2016.
19 The complaints in the letter curiously contradicted Mr. Ortiz’s own highly positive
20 recommendation of Ms. O’Kell recorded on May 3, 2016. (Crotty Decl. at Ex. A
21 *citing* USA 558-560)
22
23
24
25

1 96. But more to the point, the July 21, 2016, letter of reprimand
2 reprimanded Ms. O’Kell for opposing age discrimination, specifically by calling out
3 Ms. Maciel and Mr. Wertz. *Id.*

4 97. On July 27, 2016 Ms. O’Kell sent Anthony Ortiz her lengthy objections
5 to the Letter of Reprimand, reasserting her recollection of the night of the May 19
6 “young and perky” comment and describing her concern that Maciel and Guentzler
7 had been coerced to complain about her: “Sarah Maciel should not have told me the
8 reason I was passed over for project manager. Had she followed the rules of
9 interview then none of this would be happening. Sarah is trying to make me look
10 bad to deflect the issue from her to me” ... “She is trying to build her allies and she
11 is spreading the lies about me.” (Crotty Decl at Ex. A. *citing* USA 536-547)

12 98. On or about August 3, 2016, Ms O’Kell learned her DOI Learn
13 transcript had been altered which, in turn, affected Ms. O’Kell’s ability to manage
14 her career by making it look like Ms. O’Kell was not up on her current training
15 requirements. (O’Kell Decl. ¶40)

16 99. August 8, 2016, interview notes from the EEO counselor report reflect
17 that Mr. Ortiz was told by an unnamed management official at the EFO to “punish
18 certain individuals” but that Mr. Ortiz was “unable to disclose the name of the
19 individual.” (Crotty Decl. at Ex. A *citing* USA 7680.021 attachment N *citing*
20 7680.075)

1 100. On August 24, 2016 Anthony Ortiz acknowledged receiving Ms.
2 O’Kell’s factual counter-evidence. Mr. Ortiz did provided no detailed response, but
3 instead re-asserted the validity of his letter of reprimand in an official document
4 presumably penned by Mr. Stover. (Crotty Decl. at Ex A *citing* USA 535)

5
6 101. August 24, 2016, interview notes from the EEO counselor report reflect
7 that Ms. Fromm reported numerous instances of hostility by Ms. Maciel to Ms.
8 O’Kell. (Crotty Decl. at Ex. A *citing* USA 7680.021 *citing* Attachment K 7680.064)

9
10 102. On August 25, 2016, Ms. O’Kell filed a formal EEO complaint against
11 the Agency. (*Compare* ECF No. 001 ¶25 *with* ECF No. 006 ¶25) Following this Mr.
12 Ortiz told Ms. O’Kell that she was on Mr. Lay’s “hit list” and once you get on that
13 “hit list” you “never get off.” (O’Kell Decl. ¶43) A few days later (August 31, 2016)
14 Mr. Stover offered to downgrade Ms. O’Kell’s July 2016 reprimand if she dropped
15 her EEO claim. (O’Kell Decl. ¶45)

16
17 **H. Nothing happens from August 2016 until mid-August 2017.**

18 103. From August 2016 through August 8, 2017, Ms. O’Kell continued to
19 receive pay raises, positive performance reviews, and, to Ms. O’Kell’s knowledge
20 no co-worker, superior, or subordinate accused her of creating a “hostile work
21 environment” nor did any of her leadership threaten her with discipline for sending
22 “inappropriate” emails. (O’Kell Decl. ¶54)

1 104. Mr. Lay did not recall discussing, with Mr. Ortiz, failing Ms. O’Kell on
2 her EPAP because of her EEO complaint. (Lay Dep. 82:89-24) *See infra* ¶126.

3 105. During the first week of July 2017, Mr. Ortiz and Ms. Jackson are both
4 killed in tragic accidents within one week of another. (O’Kell Decl. ¶55)

5
6 106. Following the tragic death of Ms. Jackson and Mr. Ortiz, tensions in the
7 office naturally escalated due to grief reactions; and, with Mr. Ortiz gone, leadership
8 dynamics in the office also changed, to Ms. O’Kell’s detriment—as notwithstanding
9 Mr. Ortiz’s “yes man” tendencies to support Wertz and Lay’s directives during the
10 May – August 2016 timeframe, Mr. Ortiz, in Ms. O’Kell’s mind, “did his best to
11 stand up for O’Kell,” effectively buffering her from the retaliation (O’Kell Decl.
12 ¶55)

13
14
15 107. In late July 2017, Mr. Lay approached Ms. O’Kell stating words to the
16 effect of “I’ve got you now.” (O’Kell Decl. ¶55-56) The implication was that with
17 the protection of Mr. Ortiz gone, he would now be able to terminate Ms. O’Kell. *Id.*

18
19 **H. The second and third protected activities. The Agency’s EEO office,**
20 **on August 9, 2017, hires an investigator to investigate the allegations contained**
21 **in Ms. O’Kell’s May 2016/August 2016 EEO complaints and Ms. O’Kell, on**
22 **August 14, 2017, again complains of retaliation to Agency head Lorri Gray.**

23 108. On August 3, 2017, Ms. Weidmeier forwarded to Mr. Lay “per [his]
24 request” an email Ms. O’Kell sent to Agency colleagues Steve Wake and Stephanie
25 Balzarini. (Crotty Decl. at Ex A *citing* USA 2286) The July 20, 2017 email

1 complained about the age discrimination Ms. O’Kell had felt due to her removal
2 from the City of Quincy Project: “I was removed from the project after 3 years
3 because they want the license finished by you two not me. Now I do not have any
4 good projects left. I have the crap of the crap. Only the young and perky are capable
5 of being on the good projects. This is so wrong.” *Id.* This email, composed within
6 three weeks of the sudden loss of her supervisor and ally Mr. Ortiz, was later used
7 as cornerstone in the effort to first suspend then terminate Ms. O’Kell. *See infra.*

9
10 109. On August 9, 2017, the Agency, after great delay, commissions EEO
11 contract investigator Michael Brown to investigate Ms. O’Kell’s summer 2016 EEO
12 complaints. (Crotty Decl. at Ex. K *citing* Report of Investigation pg. H-1) Mr. Lay
13 does not recall that the Agency authorized Mr. Brown to begin investigating Ms.
14 O’Kell’s age complaint on August 9, 2017. (Lay Dep. 75:10-25)

16 110. Although requested in discovery, the Agency did not produce copies
17 of Agency phone records from August 2017; thus, Ms. O’Kell has no way of
18 knowing whether Mr. Lay, Mr. Wertz, or Mr. Stover were apprised of the beginning
19 of the official investigation into Ms. O’Kell’s August 2016 EEO complaint. (Crotty
20 Decl at Ex. D *citing* Request for Production No. 25)

22 111. On August 14, 2017, Ms. O’Kell approached Mr. Lay and asked that
23 Mr. Lay remove the July 2016 reprimand from her file so as to facilitate Ms. O’Kell’s
24 desire to leave the EFO and find work elsewhere. (O’Kell Decl. ¶57)

1 112. On August 14, 2017, Ms. O’Kell emailed Ms. Lee and again
2 complained of age discrimination and retaliation. (Crotty Decl. at Ex. A *citing* USA
3 3171-3173)

4 **I. The retaliation continues. The Agency tells Ms. O’Kell that it will**
5 **remove the July 2016 letter of reprimand from her file if she quits and when**
6 **Ms. O’Kell refuses the Agency immediately digs up dirt on her and uses that to**
7 **justify her three-day suspension and ultimate firing.**

8 113. On August 14, 2017, Mr. Lay forwarded, to Kip Stover, Agency HR
9 located in Boise, Idaho at least eight “**FYI Kelly**” emails, building his case against
10 Ms. O’Kell. (Lay Dep. 66:8-25; 67:1-8; 69:8-25; 70:1 & 21-25; 71:1-3; 74:5-8;
11 75:3-6 & Exs. 11, 12, 13, 14, 15, 16, 17, 18)

12 114. Mr. Stover “does not recall” why Mr. Lay forwarded those emails to
13 him (Stover) on August 14, 2017. (Crotty Decl. at Ex. L *citing* Stover Dep. 84:18-
14 22; 89:1-13) In fact, when pressed Mr. Stover claimed he had no explanation, at all,
15 as to why Mr. Lay all of a sudden started bombarding him with numerous emails
16 regarding Ms. O’Kell. (Stover Dep. 85:1-11)

17 115. Many of those emails involved conduct by Ms. O’Kell that occurred
18 well before August 14, 2017; however, at no time prior to Ms. O’Kell’s August 14,
19 2017, protected activity was Ms. O’Kell ever told that any of those emails were
20 grounds for discipline. (O’Kell Decl. ¶59)

1 116. Mr. Lay claims that he began drafting discipline for Ms. O’Kell on
2 August 14, 2017, “[d]ue to the ongoing irrational and unprofessional email-
3 communications that Kelly O’Kell sent out.” (Lay Dep. 76:5-25; 77:1-8)

4 117. One of the documents Mr. Lay used to justify his discipline of Ms.
5 O’Kell was a compliant Ms. O’Kell made regarding age discrimination, a la, the
6 “young and perky” only getting assigned the good jobs at the EFO. (Lay Dep.
7 112:14-25; 113:1-15)

8 118. Mr. Lay says that the particular trigger for choosing the August 14,
9 2017 date to begin disciplining Ms. O’Kell was that he “talked to Kip and indicated
10 that I wanted to propose disciplinary action.” (Lay Dep. 77:15-25)

11 119. On August 14, 2017, Mr. Lay emailed Ms. O’Kell and demanded the
12 following: “I would remove the [July 2016 letter of reprimand] from your file if you
13 were to accept a job outside of this office. You would need to bring me a signed
14 acceptance letter and I would have the letter of reprimand removed before you were
15 transferred to another agency or resigned to take employment with a private
16 employer or a state government.” (Crotty Decl. at Ex. A *citing* USA 3173)

17 120. Ms. O’Kell refused that offer. (O’Kell Decl. ¶57)

18 121. EEO Specialist Ms. Hernandez described Mr. Lay’s August 14, 2017
19 extortion by email as “Unacceptable”:
20
21
22
23
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1 A: I have never seen this [letter from Lay] before... but that is
unacceptable.

2 Q: Why is it unacceptable as an EEOC specialist?

3 A: To me, that would be considered **retaliation**. Why would he tell her
4 he would remove that letter if she were to take another job? (Hernandez
Dep.69:15-25; 70:1-24)

5
6 122. On the same day, August 14, 2017, Kip Stover drafted a letter for Clyde
7 Lay proposing removal of O’Kell for inappropriate emails. (Lay Dep. 76:11-17)
8 Originally, Mr. Lay wanted to fire Ms. O’Kell outright. (Lay Dep. 80:13-25; 81:1-9
9 91:5-25; 92:1-9 & Ex. 20)

10
11 123. Mr. Stover could not recall what he thought on/about August 14, 2017,
12 upon learning that Ms. O’Kell had accused Mr. Lay of discrimination and retaliation
13 and that Mr. Lay was now proposing to fire Ms. O’Kell. (Stover Dep. 86:6-17)

14
15 124. Mr. Stover conveniently recalls no discussion with Mr. Lay regarding
16 Ms. O’Kell’s proposed firing. (Stover Dep. 87:18-20)

17
18 125. On September 13-14, 2017 Kip Stover and Nate Shimatsu visit Ephrata
19 to interview Kelly O’Kell and witnesses regarding O’Kell’s August 14, 2017
20 allegations of ongoing retaliation, conduct over 12 interviews, but (notwithstanding
21 the below paragraph) **do not ask a single interviewee any question about age
22 discrimination or retaliation for complaining about age discrimination.** (Crotty
23 Decl. at Ex. A *citing* USA 3671 – 3691 (Susan White); 3461-3470 (Ben Martin);
24 3579-3586 (Dawn Morrow); 3749-3762 (Toni Turner); 3474-3486 (Davidson);
25

1 3205 – 3214 (Dinkleman); 3493 – 3510 (Wertz); 3516 – 3556 (Lay); 3565 – 3575
2 (Stosling); 3591 – 3599 (Hoff); 3603 – 3620 (Brooks); 3627-3639 (Fromm); 3661 –
3 3668 (Rodgers))

4 126. The one instance of retaliation that did come up in the interviews was
5 when Ms. Turner was asked if she heard Mr. Ortiz tell Ms. O’Kell that she was to
6 be failed on her April 2017 EPAP for making an EEO complaint and Ms. Turner did
7 not dispute Ms. O’Kell’s contention that Mr. Ortiz told her on April 28, 2017, that
8 Mr. Wertz ordered Mr. Ortiz to fail Ms. O’Kell on her EPAP because she filed an
9 EEO complaint. (Crotty Decl. at Ex. A *citing* USA 3753) Nor did Mr. Wertz recall
10 telling Mr. Ortiz that he was to fail Ms. O’Kell on her April 2017 EPAP. (*Id.* at USA
11 3495-96) There is no evidence that Messrs. Stover or Shimatsu followed up on this
12 “don’t recall” testimony nor evidence that those individual’s credited Ms. O’Kell’s
13 contention that it happened even though Ms. O’Kell documented this event near the
14 time of its occurrence and swore, under oath, that it happened. (Crotty Decl. at Ex.
15 A *citing* USA 2011-2013; Crotty Decl. at Ex. K *citing* ROI Ex. F-1 pg. 31 of 55)
16
17
18
19

20 127. On September 14, 2017, the very same day Mr. Stover interviews Mr.
21 Lay he (Lay) issues Ms. O’Kell a proposed three-days-suspension letter based in
22 part upon Ms. O’Kell’s referencing “young and perky” in an email. (Crotty Decl. at
23 Ex. A *citing* USA 515-519) Mr. Lay says this is a “unfortunate coincidence.” (Lay
24 Dep. 101:2-19)
25

1 128. On September 21, 2017, Ms. O’Kell submits written objections to the
2 three-day suspension. (Crotty Decl. at Ex. A *citing* USA 576)

3 129. On October 24, 2017, Mr. Lay delivered Ms. O’Kell’s performance
4 evaluation including a 2 “Minimally Successful” rating for the Strategic Goal of
5 “Providing for Excellence in Customer Service.” Mr. Lay’s handwritten note
6 justified this drop in performance by critiquing Ms. O’Kell for utilizing her chain of
7 command to report age discrimination and hostile work: “Kelly, on multiple
8 occasions you have sent unprofessional e-mails to Regional Office Staff or to Field
9 Office staff.” (Crotty Decl. at Ex A *citing* USA 615)

10 130. The October 24, 2017, meeting to deliver the EPAP lasted three hours.
11 Ms. O’Kell described, “It was three hours of Clyde trying to get me to yell at him.
12 He kept falsely accusing me of horrible things ... Then he asked how I felt about the
13 EPAP and I told him that I knew he was going to fail me for filing the EEO.” (Crotty
14 Decl. at Ex. A *citing* USA 2469)

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16
17
18 **J. The fourth protected activity. Ms. O’Kell, on October 30, 2017, again
19 complains of age discrimination, retaliation, and other law violations.**

20 131. On October 30, 2017 Ms. O’Kell again emailed Lorri Lee describing
21 her renewed concerns about discrimination and retaliation in the EFO, with emphasis
22 on Clyde Lay’s behavior during her October 24, 2017, three-hour EPAP meeting.
23 (Crotty Decl. at Ex. A *citing* USA2461-2473) Ms. O’Kell’s email expressed specific
24
25

1 concern about renewed retaliation for her efforts to assure NEPA policy was
2 followed correctly under the new leadership of Mr. Brooks and continued age
3 discrimination and retaliation. *Id.*

4 132. On October 31, 2017 Ms. Lee forwarded Ms. O’Kell’s complaint to
5 Dawn Wiedmeier, Nate Shimatsu, and Kip Stover, i.e. the same crew who had been
6 disciplining Ms. O’Kell since day one. The title of the email was “EFO-NEPA-
7 Management-I believe this is a high priority.” Ms. Lee asked Ms. Weidmeier, Mr.
8 Shimatsu, and Mr. Stover, “What should we do with this allegation?” (Crotty Decl.
9 at Ex A *citing* USA 2461)
10
11

12 133. On November 8, 2017, Carolyn Chad, Deputy Area Manager, issued
13 Ms. O’Kell a 3-day suspension without pay based on Mr. Lay’s September 14, 2017
14 proposal to suspend. (Crotty Decl. at Ex. A *citing* USA 1982) Ms. Chad is the
15 deputy to Ms. Weidmeier. (Crotty Decl. at Ex. M *citing* Chad Dep. 58:6-7) Ms. Chad
16 cannot recall speaking to Ms. Weidmeier about Ms. O’Kell. (Chad Dep. 59:6-9)
17
18

19 134. Ms. Chad issued that suspension based on documents she received from
20 Clyde Lay and acknowledged that the evidence Mr. Lay submitted in support of the
21 three-day suspension contained Ms. O’Kell’s complaints of age discrimination.
22 (Chad Dep. 16:1-25; 17:1-25; 18:1-16) In fact, Ms. Chad at deposition initially took
23 the position that she had no clue Ms. O’Kell was complaining of age discrimination
24 and only acknowledged Ms. O’Kell’s complaints of age discrimination and
25

1 retribution once confronted with documents. (*Compare* Chad Dep. 14:21-25; 15:1-
2 2; 16:9-13; 68:2-17 (Chad claiming ignorance of O’Kell’s EEO activity) *with* Chad
3 Dep. Ex. 1 *citing* 000567 (“They are constantly retaliating against me for going to
4 EEO”) 00570 (“They should stop punishing me for filing the EEO”)); 20:23-25;
5 21:1-25;1-5; 47:2-25;48:1-4; 69:2-14)

7 135. Kip Stover chose Ms. Chad to be the deciding official on the three-day
8 suspension even though Ms. Chad had never served in such a capacity before. (Chad
9 Dep. 24:5-10, 21-23) Ms. Chad then raised, with Mr. Stover, concerns she had about
10 some of Ms. O’Kell’s allegations. Mr. Stover, in turn, allegedly claimed that Ms.
11 O’Kell’s allegations were concerning. (Chad Dep. 49:15-25; 50:1-21; 52:11-24;
12 54:8-13) But, as far as Ms. Chad knows, Mr. Stover did nothing to address the
13 concerns Ms. Chad raised. (Chad Dep. 52:11-24)

16 136. Ms. Chad acknowledged that Ms. O’Kell’s rebuttal to the three-day
17 suspension contained Ms. O’Kell’s concerns that workplace decisions were being
18 made because of her age. (Chad Dep. 19:1-3)

20 137. In fact, when Ms. Chad met with Ms. O’Kell to present the suspension
21 Ms. Chad told Ms. O’Kell that she (Chad) could not discuss Ms. O’Kell’s complaints
22 of discrimination and retaliation. (Chad Dep. 29:2-25; 30:1-24) Then, later in her
23 deposition Ms. Chad claimed she “don’t recall frankly” Ms. O’Kell bringing up any
24

1 claims of discrimination with her at that meeting even though Ms. Chad signed an
2 affidavit claiming the opposite. (Chad Dep. 32:1-9 & Ex. 4 *citing* 000400-401)

3 138. Ms. Chad claimed ignorance that Ms. O’Kell had accused Mr. Lay (the
4 issuer of the three day suspension) of discrimination and retaliation and testified that
5 she “don’t know” what she would have done vis-à-vis issuing the suspension had
6 she known that the issuer of the discipline (Lay) had been accused of
7 discrimination/retaliation by Ms. O’Kell. (Chad Dep. 40:12-25; 41:1-5) The fact Ms.
8 O’Kell accused Mr. Lay of discrimination and retaliation and that Mr. Lay was
9 proposing to suspend Ms. O’Kell did cause Ms. Chad concern. (Chad Dep. 41:6-10)
10
11

12 139. Nonetheless, Ms. Chad refused to answer the “yes or no” question about
13 whether it was appropriate for a manager accused of discrimination/retaliation to be
14 involved in later disciplining the accuser. (Chad Dep. 45:8-17) Ultimately Ms. Chad
15 conceded that it would be inappropriate for a supervisor accused of sexual
16 harassment to be involved in subsequently disciplining the employee who accused
17 the supervisor of sexual harassment. (Chad Dep. 45:23-25; 46:1-22)
18
19

20 140. On November 28-30, 2017, Kip Stover and Nate Shimasu conducted
21 interviews in Ephrata related to Kelly O’Kell’s October 30, 2017 complaint of
22 alleged NEPA Violations. (Diamond Decl. at Ex. A *citing* Report pg. 22) Plaintiff
23 HR Expert Witness Deborah Diamond noted how inappropriate this was because
24 Mr. Stover was also clearly involved with assisting management in disciplining Ms.
25

1 O’Kell: “The BOR’s selection of Kip Stover as one of the investigators did not meet
2 complaint procedure assurance that the investigator would be impartial... Kip Stover
3 was a fact witness and should not have been selected to serve as an investigator. A
4 reasonably skilled and prudent investigator would insist upon interviewing Kip
5 Stover given his role in assisting management with the discipline process.” *Id.*

7 **K. The final acts of retaliation.** The Agency commissions a sham
8 investigation against Ms. O’Kell based on “out of the blue” complaints penned
9 by questionable witnesses Barb Gentry and Karissa Fromm “per
10 management’s request.” Then, in 2018, with newly promoted supervisors
11 Jonathon Brooks and Marc Maynard in place, Mr. Stover drafts the documents
12 to execute Ms. O’Kell’s official removal.

11 141. In January 2018, Jonathan Brooks, a former cartographer with an
12 Associate’s Degree in Civil Engineering Tech, is promoted to Realty Supervisor,
13 supervising seven employees including Ms. O’Kell. (Crotty Decl at Ex. N *citing*
14 Brooks Dep. 15:8-18; 19:6-9; 20:9-23; 85:11-25) Mr. Brooks’ direct supervisor is
15 Mr. Lay. *Id.* Mr. Brooks’ supervisory abilities were possibly impaired due to a head
16 injury caused by his son shooting him and his wife during a mental health lapse. His
17 deposition revealed many memory gaps and slow processing time. Other employees
18 noted their mutual frustration with Brooks’ leadership, including Karissa Fromm,
19 (Fromm Dep. 11:17-20; 12:9-14), a younger Agency employee who worked closely
20 with Mr. Brooks and was interviewed by Mr. Stover about an alleged inappropriate
21 relationship she had with Agency Maintenance Supervisor Andrew Herbst while on
22 government time. (Crotty Decl. at Ex. P *citing* Fromm Dep. 42:1-24)

1 142. At this same time, January 2018, Ms. Hernandez, the employee who
2 processed Ms. O’Kell’s original EEO complaints in Boise, Idaho and who cared
3 about the EEO process retired. (Hernandez Dep. 19:12-15)

4 143. Beginning in January 2018, Mr. Brooks engaged in multiple acts of
5 retaliation against Ms. O’Kell including changing her work station, micro-managing
6 sick leave, denying credit hour schedules, and generally introducing road blocks to
7 sabotage Ms. O’Kell’s performance. (O’Kell Decl. ¶¶70-80)

8 144. On February 8, 2018, Marc Maynard filled Mr. Wertz’s position as
9 Ephrata Field Office Manager. This hiring process included the “longest interview
10 that [Maynard] had ever participated in” in front of a panel comprised of Kip Stover,
11 Dawn Weidmeier, and two other names unfamiliar to this case. (Crotty Decl. at Ex.
12 O citing Maynard Dep. 65: 12-25; 66:1-12; 23:15-25) Ms. Weidmeier was Mr.
13 Maynard’s immediate boss, and Mr. Lay was Mr. Maynard’s deputy manager.
14 (Maynard Dep. 24:1-6)

15 145. Tellingly, Mr. Maynard “does not recall” the sorts of questions Mr.
16 Stover and Ms. Weidmeier asked when choosing to advance the former wildlife
17 biologist who, after just thirteen weeks on the job, would sign Ms. O’Kell’s Proposed
18 Removal papers. (Maynard Dep. 21:10-17) Mr. Maynard also “does not recall
19 specific [introductory] conversations” with Mr. Lay but does recall being made
20 aware that “the dynamics in the office were challenging on multiple fronts.” *Id.*

1 146. On February 8, 2018, Michael Brown issued his Report of Investigation
2 surrounding Ms. O’Kell’s Summer 2016 EEO Complaint. (Crotty Decl. Ex. K *citing*
3 ROI pg.1)

4 147. Mr. Lay does not recall Mr. Brown completing his investigation on
5 February 8, 2018. (Lay Dep., 115:21-25;116:1-2)
6

7 148. On February 26, 2018 Realty Assistants Barb Gentry and Karissa
8 Fromm nearly simultaneously and out of the blue submit written complaints directly
9 to Kip Stover regarding Ms. O’Kell. (Lay Dep. 115:16-20; Crotty Decl. at Ex. A
10 *citing* USA 1631-1637; 1647) At the time, it was office knowledge/rumor that Ms
11 Fromm was involved in an affair with Maintenance Supervisor Andy Herbst, and
12 she confessed as much to Ms. Hoff. (Hoff. Dep. 112:19-25; 113:1-8)
13

14 149. Mr. Stover interviewed Ms. Fromm on September 14, 2017 regarding
15 Ms. O’Kell and during that interview Ms. Fromm made no complaints of Ms.
16 O’Kell’s conduct. (Crotty Decl. at Ex. A *citing* USA 3627-3639) But Mr. Stover
17 seemed not to question Ms. Fromm’s sudden change of tune regarding Ms. O’Kell
18 nor did he send Ms. Fromm’s September 14, 2017 interview transcript to the person
19 who would later investigate Ms. Fromm’s complaint of harassment against Ms.
20 O’Kell. (Stover Dep. 103:3-7)
21

22 150. On March 8, 2018, in contrast to marked delays with responding to Ms.
23 O’Kell’s complaints, the Agency quickly contracted with unlicensed investigator
24
25

1 Hayward Reed to investigate Gentry and Fromm's complaints against O'Kell.
2 (Diamond Decl. *citing* Dimond Report pg. 22) Hayward Reed was not licensed as a
3 practicing attorney or private investigator in the state of Washington as required by
4 RCW 18.165. *Id.* Nevertheless, interviews including a surprise interview of Ms.
5 O'Kell herself, took place in Ephrata on March 14-15, 2018. (O'Kell Decl. ¶79)
6

7 151. One of the interviewees, Stephon Rodgers, was a co-worker of Ms.
8 O'Kell who provided positive testimony in Ms. O'Kell's favor. (Rodgers Decl. ¶4,
9 7-11)
10

11 152. On March 18, 2018, shocked by the new investigation and illogical,
12 about-face complaints from Ms. Gentry (who she rarely interacted with) and Ms.
13 Fromm (who she considered a friend and sometimes socialized with outside of
14 work), Ms. O'Kell appealed to Mr. Maynard, the new local leader to intervene on
15 her behalf. (Maynard Dep. 31:21-25; 32:1-15; O'Kell Decl. ¶84) To that end, Ms.
16 O'Kell approached Mr. Maynard to discuss concerns she had about workplace
17 harassment and retaliation involving Mr. Lay and Mr. Brooks, possibly in collusion
18 with Ms. Fromm and Ms. Gentry. *Id.*
19
20

21 153. Mr Maynard requested follow-up information about O'Kell's informal
22 oral concerns in writing, which Ms. O'Kell was unable to provide because what she
23 knew came from her limited participation in the Hayward Reed interviews. Instead,
24 on March 30, 2018, Ms. O'Kell, still optimistic about the new link in her chain of
25

1 command, responded to Mr. Maynard’s information request by email, telling him,
2 “You have all the information you need in the records at your managers’ office. ...
3 They [Brooks and Lay] refuse to provide me with the allegations that were
4 investigated about me. I do not have the info.” (Maynard Dep. 34:19-25; 35-1-25;
5 36:1-17).

6
7 154. Mr. Maynard did not respond to Ms. O’Kell’s concerns about ongoing
8 age discrimination and retaliation from Mr. Brooks and Mr. Lay, but instead
9 seemingly joined the team (Stover-Weidmeier-Lay-Brooks) orchestrating her
10 demise. To that end, Ms. O’Kell’s failure to “provide requested information” [read:
11 information about the new Hayward Reed investigation against her] soon became
12 the **Charge 1 “Failure to Follow Supervisory Instructions”** in the Proposed
13 Removal which Mr. Maynard signed. (Maynard Dep. 33:3-22).

14
15
16 155. Mr. Maynard’s boss, Ms. Weidmeier, testified that there is no policy
17 which required written documentation to support verbal complaints about
18 harassment. (Weidmeier Dep. 49:6-26, 50:1-6)

19
20 156. Mr. Maynard spoke with Mr. Lay as part of the process of firing Ms.
21 O’Kell but has little recollection of the substance of the conversation. (Lay Dep.
22 117:24-25; 118:1-10)

23
24 157. Mr. Maynard’s subjective perception that the tone used in Ms. O’Kell’s
25 above described email soliciting support from a new supervisor was

1 “condescending, disrespectful, rude, and most certainly unprofessional” became the
2 first of eleven specifications under **Charge 2: Inappropriate Conduct.** (Crotty
3 Decl. at Ex. A *citing* USA 1273-1287) Eight of the additional nine “Inappropriate
4 Conduct” specifications used to support Ms. O’Kell’s proposed removal were
5 similarly based upon subjective assessments of Ms. O’Kell’s wording in emails. An
6 example of the repeated attacks against Ms. O’Kell’s professionalism vis-à-vis
7 emails appears in the excerpt from her Proposed Removal letter below:
8

9
10 Specification 3:

11 On March 21, 2018, at 9:31 a.m., you sent me an inappropriate email in response to my March
12 20, 2018, instructions for you to provide me with information related to the very serious
13 allegations you raised against other EFO Managers involving bribery, conspiracy, and
14 harassment (see Enclosure 2). Specifically, you stated:

15 “I will have the attorneys deal with it. I am clearly not going to be defended by
16 Reclamation.”

17 The manner in which you responded to me is inappropriate. The tone of your email was
18 condescending, disrespectful, rude, and most certainly unprofessional. For you to raise very
19 serious allegations without providing any supporting evidence and then respond to me in this
20 manner is unacceptable, and cannot and will not be tolerated. As you have previously been
21 notified, you are not prohibited from raising your concerns. In fact, you have been encouraged
22 to do so. However, there are appropriate processes, forums, and reasonable means in which to
23 raise your concerns.

24 158. Each specification includes the same verbiage defending with explicit
25 certainty the subjective finding: “the tone of your email was condescending,
disrespectful, rude, and most certainly unprofessional.” (Crotty Decl. at Ex. A *citing*
USA 1273-1277) Similarly, each specification reiterates that Ms. O’Kell is “not
prohibited from raising [her] concerns.” In short, the letter of removal states and re-
states that Ms. O’Kell can and should attempt to address her concerns with her

1 supervisors, but only in a manner to their subjective liking: i.e. complain about
2 discrimination, just do it nicely. *Id.*

3 159. Additionally, the critiques of Ms. O’Kell’s performance in the
4 Proposed Removal letter *are attributed to* Mr. Maynard; however, who actually
5 wrote Ms. O’Kell’s Proposed Removal letter [presumably Mr. Stover who had
6 drafted all previous discipline for Ms. O’Kell] is a source of some factual confusion
7 as Mr. Maynard described the letter’s origin as follows:
8

- 9
- 10 • “Kip Stover assisted me in writing that. Ultimately, it’s my letter” (Maynard
11 Dep. 24:11-14)
 - 12 • “Kip Stover prepared this [letter] based on a conversation that I had with
13 him. I reviewed it.” (Maynard Dep. 24:21-23)
 - 14 • “Certainly, Kip wrote this in first draft, but at the point I sign it I may as well
15 have written it. It's my decision. (Maynard Dep. 61:2-8)
 - 16 • “Kip wrote this at my request.”³ (Maynard Dep. 64:23-25; 65:1-2)

17 160. Mr. Maynard claimed under oath that he did not ask Mr. Brooks nor
18 Mr. Lay for any input as to whether Ms. O’Kell should be removed from federal
19 service. (Maynard Dep. 29:19-24) Maynard claimed he did, however, receive a “lot
20 of unsolicited suggestions or advice from a number of people.” *Id.* That advice did
21 not, however, keep him from claiming, under oath, that he made the decision to

22 ³Regardless of who actually signed the letter, Kip Stover was present at the May 14.
23 2018, meeting when Mr. Maynard presented the Proposed Removal Letter Stover
24 had drafted to Ms. O’Kell. (Maynard Dep. 20: 1-19)
25

1 remove Ms. O’Kell, “independently and on [his] own,” albeit using a letter drafted
2 by Mr. Stover. (Maynard Dep. 65: 12-25; 66:1-12)

3 161. And Mr. Maynard’s under oath claim that it was “his decision” to fire
4 Ms. O’Kell is belied by the Agency’s Interrogatory response that it was Ms.
5 Weidmeier who made the decision to fire Ms. O’Kell and did so without even
6 speaking to Mr. Maynard. (Crotty Decl. at Ex. D *citing* Agency Response to Plaintiff
7 Interrogatory No. 2) Ms. Weidmeier did, however, speak with Mr. Stover before
8 firing Ms. O’Kell. *Id.*

9
10
11 162. On or about May 22, 2018 Ms. O’Kell drafted an 87-page response to
12 the Agency’s proposal to fire her and sent that response to Ms. Weidmeier. (O’Kell
13 Decl. ¶88)

14
15 163. On May 22, 2018, Mr. Stover and Ms. Wiedmeier exchanged emails
16 about Ms. O’Kell’s response in which Ms. Weidmeir thanked Mr. Stover for his help
17 in dealing with Ms. O’Kell and noted that “there’s a light at the end of the tunnel”
18 regarding the O’Kell matter. (Stover Dep. 110:1-11 & Ex. 53)

19
20 **L. Blatant inconsistencies in Agency depositions shed sizable suspicion**
21 **upon the integrity of the Agency’s defense (read: pretext) while simultaneously**
22 **tainting key witnesses’ accounts of Ms O’Kell’s allegedly inappropriate**
23 **behavior. Moreover, blatant deviations from standard EEO investigation**
24 **protocol invite special concern into Mr. Stover’s abilities to fairly protect the**
25 **employees of his region.**

1 164. Ms. Hoff described “feeling bullied” by Mr. Lay to write complaints
2 against Ms. O’Kell: “I didn’t want to write this statement against Kelly, but I was
3 given this direct order [by Mr. Lay]. So one thing we’ve been told is that in our
4 office, direct orders are to be followed. If you do not meet the direct orders, you are
5 putting yourself in line to be—let me get this correct—to be removed from the
6 federal government.” (Hoff Dep. 100:19-25; 101:1-15) 1.

8 165. Mr Wertz’s deposition claimed no knowledge of Gina Hoff’s interest
9 in applying for the Project Manager position which contradicted Ms. Hoff’s own
10 testimony. (Wertz Dep. 47:7-24; 48:1-3)

12 166. Mr. Wertz’s deposition also contradicted Charity Davidson’s EEO
13 interview where Ms. Davidson claimed she was directed by Mr. Wertz and Mr. Lay
14 not to work with Ms. O’Kell. (Crotty Decl. at Ex. A *citing* USA 3482) However, Mr.
15 Wertz swore under oath he never told Ms. Davidson not to work with Ms. O’Kell.
16 (Wertz Dep. 60:22-25; 61:1-11) He also swore, that to his knowledge, Mr. Lay had
17 never directed Ms. Davidson to avoid Ms. O’Kell. *Id.*

19 167. Expert witness Deborah Diamond noted that the earlier EEO
20 investigations managed by Kip Stover likely included coaching on the supervisor’s
21 strategic abuse of the answer: *do not recall*. “A skilled investigator would have asked
22 the witnesses to explicitly state whether they denied saying/doing what was alleged”
23 (Diamond Decl at Ex. A *citing* Diamond Report pg. 21)
24
25

1 168. Karissa Fromm’s letter of complaint filed “at the request” of Kip Stover
2 on February 16, 2018, also clearly suggests orchestrated retaliation, especially when
3 noting the ongoing friendship between Ms. O’Kell and Ms. Fromm during the time
4 period of the letter. *See infra*. Indeed, in sworn testimony on October 21, 2019, Ms
5 Fromm contradicted much of the content of the requested testimony she wrote
6 against Ms. O’Kell in early 2018: “For me, she was a good coworker. We
7 communicated well together. ...she was knowledgeable. She was pleasant for me to
8 work with.” (Fromm Dep. 9:20-23) And later, on the same date, Ms Fromm
9 confirmed, “We had a good working relationship. I actually learned a lot from Kelly.
10 She was kind of my mentor in a sense.” (Fromm Dep. 8:6-10)

13 169. Similarly, Ms. Maciel’s 2019 testimony under oath, sheds considerable
14 doubt on the June 2016 solicited complaints against O’Kell following the initial
15 ageism comment at Red Robin, suggesting, that again, certain employees may well
16 have been enticed to collaborate in retaliation against O’Kell to protect management.
17 For example, why/how would a 30-something former Air Force staff sergeant accuse
18 Ms. O’Kell of (a 56 year old + lady with a debilitating back injury) of being
19 physically aggressive even “capable of violence” one day, and then leave her
20 children with Ms. O’Kell overnight a short time thereafter. (Crotty Decl. at Ex. A
21 *citing* USA 561; O’Kell Decl. ¶25; Maciel Dep. 16:13-22)

1 170. Ms. Maciel’s deposition reveals other credibility concerns. For
2 example, one minute she says she did not tell Mr. Ortiz about her altercation with
3 Ms. O’Kell. (Maciel Dep. 56:11-18). And then, minutes later, after reading the
4 statement she wrote against Ms. O’Kell “per Mr. Ortiz’s direction,” she changed her
5 story: “I apologize. I did—the day that she went off on me on April 19, I did go talk
6 to Tony...” (Maciel Dep. 57:2-21)
7

8 **M. Comparators are important in determining workplace retaliation**
9 **claims, and by all indication, the Ephrata Field Office was a place where**
10 **tempers flared and high standards of professionalism were ignored by many**
11 **employees; nevertheless, Ms. O’Kell was effectively the only Ephrata employee**
12 **to face formal reprimands and face eventual termination.**

13 171. Ms. DuBois recalled Sarah Maciel as another Agency hire who “fit Mr.
14 Wertz’s mold” for being “young and perky.” (DuBois Second Dec. ¶ 10) She
15 described Ms. Maciel as a problematic employee who “belittled” Ms. DuBois and
16 Ms. O’Kell to Mr. Wertz and Mr. Ortiz from the beginning of her employment. *Id.*
17 Ms. Maciel would interfere with budget analysis tasks assigned to Ms. DuBois,
18 becoming hostile, circumventing Ms. DuBois’ assigned authority, and approaching
19 the presumably ageist supervisors (Mr. Wertz, and Mr. Ortiz) to intervene on her
20 behalf regardless of policy and procedure. *Id.* To these antics, Mr. Wertz responded,
21 “Ms. Maciel was young, ... yes, she may be wrong,” but Ms. DuBois should “learn
22 to work with her.” *Id.* (DuBois Second Dec. ¶ 10) Ms. Hoff confirmed that Ms.
23 Maciel was treated differently despite her unprofessional, hostile demeanor: “there
24
25

1 was definitely tension with Sarah [Maciel] quite often.” (Hoff Dep. 79:12-20) **No**
2 **formal discipline was pursued**, and instead Ms. Maciel continues to work for the
3 Department of Interior in Boise, Idaho in a GS12 position

4 172. Ms. DuBois further reported an incident when Ms. Maciel’s aggression,
5 unaddressed by management, was directed at Ms. O’Kell during a mandated budget
6 for realty class sponsored by accountants from the regional office. Ms. Maciel was
7 so verbally abusive towards Ms. O’Kell that the visiting accountants questioned her
8 behavior. When Ms. DuBois reported Ms. Maciel’s hostility and bullying behavior,
9 Mr. Wertz did nothing. (Second DuBois Decl. ¶14). **No formal discipline was**
10 **pursued.**

11 173. Ms. Fromm testified under oath that the verbal abuse and other hostility
12 she experienced with Ms. Maciel was more “frequent and worse” than any issues
13 she claimed (albeit inconsistently) to have experienced with Ms. O’ Kell. (Fromm
14 Dep. 82:13-25; 64: 6-25). Ms. Maciel went so far as to “ransack Ms Fromm’s office”
15 (Fromm Dep. 82:13-25; 64: 6-25). **No formal discipline was pursued.**

16 174. Ms. Maciel herself acknowledged that Mr. Ortiz initiated an informal
17 disciplinary meeting to discuss her own [read: Maciel’s] hostile and unprofessional
18 communication at meetings, particularly with Ms. Fromm (Crotty Decl. at Ex A
19 *citing* USA 561). **No formal discipline was pursued.**

1 175. In a separate comparator, members of the Ephrata Field Office reported
2 that on or about May 3, 2016, Susan White, Archaeologist “stood up, yelling,
3 completely out of control.” Mr. Ortiz witnessed this act, but did nothing. Later, Ms
4 White herself acknowledged by email that she had been out of line. **No formal**
5 **discipline was pursued.** (Hoff Dep 124:1-15)
6

7 176. Ms. Hoff also described the generalized discriminatory treatment
8 experienced by Ms. O’Kell as compared to the preferential treatment experienced
9 by other women at the agency: “I can tell you [O’Kell] was definitely treated
10 differently than Karissa and Nasha and Sarah [all women under 40].” (Hoff Dep.
11 46:13-15)
12

13 177. During the time period of Ms. O’Kell’s termination, Ms. Fromm was
14 investigated by Mr. Stover for lying to her supervisor and leaving work to engage in
15 inappropriate relations with the maintenance supervisor Mr. Herbst, who was
16 allegedly also having an affair with a different employee. Ms. Fromm and Mr. Herbst
17 still work for the agency; (Fromm Dep 42:1-24; Hoff Dep. 113:1-14) **No formal**
18 **discipline was pursued.**
19
20

21 178. Mr. Lay and Mr. Stover received complaints about Ms. Maciel’s hostile
22 behavior. (Lay Dep. 55:18-25; 56:1-21; 57:9-14; 59:18-23)
23
24
25

1 179. Mr. Lay never personally witnessed Ms. O’Kell act inappropriately at
2 meetings, considered Ms. O’Kell a competent realty specialist, and a very hard
3 worker. (Lay Dep. 58:17-19; 60:18-22)

4 **N. The Agency deviated from well-established HR norms and its own**
5 **policies in disciplining Ms. O’Kell.**

6 180. In addition to examples cited above, Deborah Diamond, a former EEO
7 Investigator for the IRS, who chaired the EEO Advisory committee, and served on
8 several national EEO task forces concluded that the DOI’s investigation into Kelly
9 O’Kell’s formal EEO complaint was negligently delayed. To be specific, the DOI
10 allowed 349 days—nearly a full year—to elapse before issuing the O’Kell case to
11 an outside EEO Investigator. An additional 183 days passed before a report was
12 issued. (Diamond Decl. *citing* Diamond Report pg. 20)

13 181. Expert Witness Deborah Diamond contrasted the delinquency in
14 processing Ms. O’Kell’s complaint to the haste with which the same Agency
15 investigated Barb Gentry and Karissa Fromm’s complaint against Ms. O’Kell. In
16 that situation, the Bureau of Reclamation hired an outside investigator in just 11
17 days, the report was issued in 31 days, and a decision (proposed termination of Ms.
18 O’Kell) was issued within 36 days. (Diamond Decl. *citing* Diamond Report pg. 20)
19 Further, Mr. Reed (who the Agency hired to rapidly investigate the complaints
20 brought against Ms. O’Kell) was an unlicensed investigator. *Id.* pg. 22.

1 182. Ms. Diamond further noted that the agency's investigations into Ms.
2 O'Kell's case were not consistent with the Department of Interior Investigator Guide
3 to Conducting Administrative Investigations which establishes generally accepted
4 standards of practice for an impartial investigation. (Diamond Decl. *citing* Diamond
5 Report pg. 18)
6

7 183. The Bureau of Reclamation's selection of Kip Stover as one of the
8 investigators blatantly violated complaint procedure assurance that the investigator
9 would be "impartial" and an "uninvolved" Human Resources representative. In fact,
10 Mr. Stover was assisting management in preparing Ms. O'Kell's proposed 3-day
11 suspension on the same day (09/14/2017) he (Mr. Stover) interviewed Ms. O'Kell
12 regarding her 08/14/2017 harassment and retaliation complaint against the same
13 management. (Diamond Decl. *citing* Diamond Report pg. 22)
14
15

16 184. Rather than investigating Ms. O'Kell's case, Mr. Stover should have
17 been interviewed as a key witness. Again, to quote Ms. Diamond: "A reasonably
18 skilled and prudent investigator would insist upon interviewing Kip Stover given his
19 role in assisting management with the discipline process." (Diamond Decl. *citing*
20 Diamond Report pg. 22)
21

22 185. The process used by the inappropriately chosen investigators was also
23 highly inappropriate. To be specific, during investigatory interviews for Kelly
24 O'Kell's 08/14/2017 and 10/30/2017 harassing-conduct complaints, Kip Stover and
25

1 Nate Shimatsu asked witnesses about Ms. O’Kell’s own conduct, rather than asking
2 witnesses about management retaliation against Kelly O’Kell. To quote Ms.
3 Diamond directly: “The Investigators failed to conduct interviews in a way that
4 would have permitted them to reach an impartial determination on the merits of
5 Kelly O’Kell’s discrimination and retaliation complaints.” (Diamond Decl. *citing*
6 Diamond Report pg. 21)
7

8 186. Equally problematic was the way the biased investigating officials
9 (read: Mr. Stover and Mr. Shimatsu) repeatedly permitted management to testify that
10 they “did not recall.” In fact, reading the EEO interviews conducted by Mr. Stover
11 the transcripts repeat the phrase “I do not recall” ad nauseum. Again, to quote Ms.
12 Diamond: “A skilled investigator would have asked the witnesses to explicitly state
13 whether they denied saying/doing what was alleged.” (Diamond Decl. *citing*
14 Diamond Report pg. 21)
15
16

17 187. Mr. Stover testified that he “didn’t know” why he never tried to press a
18 witness for more information other than letting an “I don’t recall” answer lie. (Stover
19 Dep. 61:17-22)
20

21 188. Expert Witness Ms. Diamond also questioned the EEO report’s
22 significant omission of additional EEO Complaints against the same management
23 officials: “A reasonably skilled and prudent investigator would have documented the
24
25

1 existence and particulars of these potential comparators.” (Diamond Decl. *citing*
2 Diamond Report pg. 21)

3 COUNTERSTATEMENTS OF FACTS.

4 1. Contrary to Defendant’s Fact Nos. 9-19, context is in order. As a
5 starting point, evidence exists that Mr. Wertz rigged the hiring process so as to
6 ensure Charity Davison was selected. *See supra*. Plaintiff Statement of Facts (PSOF
7 ¶¶50-68) Further, Mr. Ortiz’s May 2016 recommendation for Ms. O’Kell for the
8 position was remarkably positive. (Crotty Decl. at Ex. A *citing* USA-0000848)
9 Asked if Mr. Ortiz had performance or conduct issues with Ms. O’Kell, he responded
10 with a resounding “no.” *Id.* Instead, he directly complimented Ms. O’Kell’s ability
11 to represent the agency to partners: “Excellent ability, very professional
12 demeanor...”*Id.* The only mildly negative comments Mr. Ortiz made were in
13 response to a direct a query to describe a weakness. And while Defendant Fact No.
14 9 invites attention to the excerpted phrase, “a forceful personality that sometimes
15 clashes w/ others” it fails to include the rest of Ortiz’s transcribed comments: “Tony
16 believes this is b/c she becomes emotionally involved in her projects b/c she cares
17 so much.” *Id.* Mr. Ortiz’s reference checks also made clear that the EFO had
18 challenging personalities beyond Ms. O’Kell: “We do have challenging personalities
19 @EFO. Tony believes [O’Kell] has done the best she can given the circumstances...
20 she can be gone to for the smallest file to the most complex file and she will be

1 professional & provide a quality product.” *Id.* Asked if he would hire Ms. O’Kell
2 again he said, “Yes, because she is my go-to.” And contrary to Defendant’s critique
3 of Plaintiff’s interview for not mentioning “WBS” frameworks, no question on the
4 interview sheets asked about “WBS” framework. *Id.* Moreover, notes for Charity
5 Davidson’s interview include no direct mention of WBS framework. (Crotty Decl.
6 at Ex A *citing* USA 824-836) In fact, when asked to describe her experiences with
7 tracking systems, Ms. Davidson said she created her own system through trial and
8 error, indicating she probably was not familiar with the established federal
9 framework. *Id.* 827. Further, nothing in the notes from Ms. Davidson’s interview
10 expressly discusses the selected candidate’s “background working with federal,
11 state, and private water irrigation stakeholders.” *See id.*

14
15 2. Contrary to Defendant’s Fact No. 27, Corbin’s text should *not* be
16 included: it is a text favorable to Defendant cherry picked by Defendant all while
17 Defendant contended that other material witnesses in this case did not exchange text
18 messages regarding Ms. O’Kell. *See* ECF No. 030.

19
20 3. Contrary to Defendant’s Fact No. 28, evidence exists that such “anti-
21 O’Kell” statements may have been compelled by Agency HR. *See* PSOF ¶87.

22
23 4. Contrary to Defendant’s Fact No. 29, use of phrases equivalent to
24 “young and perky” by others, including management, is documented:

1 Q. Have you ever heard anyone in the office use the words "young and
perky"?

2 A. Yes.

3 Q. Who have you heard use those words?

4 A. Well, young; perky, I don't know... There's a lot of the guys that refer
to the young females in our office as young. Perky, young and perky.
5 Sounds like something Eric would say, maybe Clyde [Lay].

6 Q. Do you have any specific recollections of somebody using the phrase
"young and perky"?

7 A. No, but it just sounds like something that would be used in our--that's
8 why I was smiling, it just sounds like something that would be used in
our office. (Hoff Dep. 81:2-14)

9 Additionally, key Agency witnesses in this case (Wertz) either do not deny
10 making such statements or admit to making such statements. PSOF ¶¶71, 72, 74, 76-
11 77, 82.

12
13 5. Contrary to Defendant's Fact No. 30, Plaintiff's allegation about Clyde
14 Lay's and Clint Wertz's ageism is support by multiple testimonies beyond the
15 Plaintiff's. Louella DuBois, a retired employee of the DOI BOR, Ephrata Office,
16 and 31-year government employee, also recalled Mr. Wertz saying, "This office
17 needs new people, new blood." (DuBois Second Dec. ¶ 5) Mr. Wertz complained to
18 Ms. DuBois that old people "Don't want to go with the flow." *Id.* "Old people are
19 set in their ways." *Id.* On numerous occasions, Mr. Wertz looked Ms. DuBois in the
20 eye and asked, "When are you going to retire?" *Id.* Similar ageist comments by
21 management were also documented in Ms. Hoff's deposition:
22
23
24
25

1 Q. Did you ever hear co-workers in the office saying that the office
needed young blood? ·

2 A. Yeah. I think I actually heard Clyde say that once. I don't think, I
3 know I heard him say that once. (Hoff Dep. 82:1-4)

4 Karissa Fromm's testimony similarly confirmed Mr. Wertz's sentiments:

5 Q. Do you recall any comments about any other employees' age?

6 A. The only comment that I do recall is that our previous area office
boss was trying to bring in the newer generation.

7 Q. And who was that? Who has made that statement?

8 A. Clint -- I don't remember his last name. It starts with a W [read: Clint
9 Wertz who rearranged the PM hiring panel to choose Charity Davidson
over O'Kell]

10 Q. And what was his statement exactly?

11 A. His statements were that he was trying to bring in the newer
generation. (Fromm Dep. 14:21-25; 15:1-6)

12 6. Contrary to Defendants' Fact No. 32, see response in the above-
13 paragraph. Additionally, other EFO employees testified about anti-age animus.
14 PSOF ¶38, 43-44.

15
16 7. Contrary to Defendant's Fact No. 33, Louella DuBois' testimony about
17 Clint Wertz is timely and very relevant to reveal a predilection for age discrimination
18 as expert witness and EEO Specialist Deborah Diamond expressly critiqued the
19 Agency's inadequate EEO Investigation for not incorporating testimony from
20 DuBois much earlier in the inadequate EEO investigations completed by Mr. Stover
21 and Hayward Reed. (Diamond Decl. Ex. A *citing* Diamond Report pg. 21)

22
23 8. Contrary to Defendant's Fact No. 36, see PSOF ¶94
24
25

1 9. Contrary to Defendant's Fact No. 39, Ms. O'Kell was required to claim
2 AWOL. (Crotty Decl. Ex. A *citing* USA 3828 ¶4)

3 Wed, Jul 20, 2016 at 11:55 AM
4 Ortiz, Anthony <aortiz@usbr.gov>
To: Kelly O'kell <kokell@usbr.gov>
5 Kelly,
As per our meeting of 20 July 2016 @ 9:50 am the following items were tasked to you:
6 1. A statement of what occurred after the meeting on 15 July 2016 after 12:25 to the end of your tour of duty which was
3 pm as you came in at 6:30 am by 2:30 pm today.
7 2. A statement as to why as to why you didn't go to Grand Coulee Monday.
8 3. Changes to your schedule need to be approved by me. This can be accomplished through text (my cell phone #) or
phone message (my work phone #) prior to the start of the shift that the change will occur in.
9 4. Your status for Friday 15 July 2016 from 12:25 pm 3 pm is absent with out leave (AWOL)
5. If you leave without my permission again you will also be counted as AWOL.
10 It was inappropriate to leave the meeting Friday and strict adherence to your tour of duty is expected unless authorized
by me prior.

11 10. Contrary to Defendant's Fact No. 51, Ms. O'Kell has identified an
12 environment rife with age discrimination and retaliation. PSOF ¶16-49.

13 11. Contrary to Defendant's Fact No. 52, see Ms. O'Kell's response to
14 Defense Fact No. 29. *See supra*.

15 12. Contrary to Defendant's Facts Nos. 65-68, neither Mr. Wertz or Ms.
16 Turner recalled Ms. O'Kell's under oath testimony that Mr. Ortiz told Ms. O'Kell
17 that he (Ortiz) was to fail her (O'Kell) on the April 2017 EPAP because of Ms.
18 O'Kell's EEO complaint. PSOF ¶126.

19 13. Contrary to Defendant's Fact Nos. 69-70, the facts upon which Mr. Lay
20 based this downgrade on the EPAP only became a basis for that adverse action after
21 the protected activity that took place on August 14, 2017. PSOF ¶108-112.

1 14. Defendant's Fact No. 71 is incomplete as it does not show the
2 underlying email that Ms. O'Kell allegedly sent.

3 15. Contrary to Defense Facts Nos. 72-76, the three day suspension was
4 presented on September 14, 2017, and Ms. O'Kell disputes much of the bases of the
5 three day suspension. PSOF ¶127-128.
6

7 16. Contrary to Defense Facts No. 78, Ms. Chad's involvement in the
8 discipline and subsequent evasive deposition testimony renders her bases for
9 upholding the three day suspension suspect. PSOF ¶134-139.
10

11 17. Contrary to Defense Fact No. 79, Ms. O'Kell sent emails to Ms. Gray-
12 Lee on August 14, 2017 and October 30, 2017. PSOF ¶112, 131.
13

14 18. Contrary to Defense Facts Nos. 80-84, Mr. Stover's "investigation" of
15 Ms. O'Kell's allegations was a sham. PSOF ¶125-126, 183-186.

16 19. Contrary to Defense Fact No. 87, Ms. O'Kell was either unable to
17 obtain the information and there was no policy requiring Ms. O'Kell to support any
18 allegation of wrongdoing with written documentation. PSOF ¶153, 155.
19

20 20. Contrary to Defense Fact No. 92, this investigation was in deviation
21 from HR investigatory practices and conducted by an unlicensed investigator. PSOF
22 ¶180-181.
23

24 21. Contrary to Defense Fact No. 93, Mr. Stover wrote much of the
25 proposed removal. PSOF ¶159.

1 22. Contrary to Defense Fact No. 94 (which relies on the declaration of
2 Charity Davidson), Ms. Davidson testified that she was instructed, by Mr. Wertz,
3 not to work with Ms. O’Kell (PSOF ¶166), accordingly it is difficult to ascertain
4 how Ms. Davidson can say that she was harassed by someone she was told not to
5 work with.
6

7 23. Contrary to Defense Fact No. 95, the Agency’s HR has threatened other
8 employees with discipline for not writing statements critical of Ms. O’Kell. (PSOF
9 ¶87)
10

11 Dated this March 5, 2020.

12
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CERTIFICATE OF SERVICE

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

Dated this March 5, 2020.

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