

**UNITED STATES OF AMERICA
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NEW YORK DISTRICT OFFICE
33 Whitehall Street, 5th Floor
New York, NY 10004**

**SANDRA M. McCONNELL, ET AL.
a/k/a/ VELVA B.**

Class Agent,

v.

**LOUIS DEJOY, Postmaster General,
UNITED STATES POSTAL SERVICE,**

Agency.

**EEOC Hearing Nos.: 520-2010-00280X; 520-2019-00271X
Agency Case No.: 4B-140-0062-06**

ORDER TO PRODUCE FINAL SPREADSHEET & NOTICE OF SANCTIONS

PLEASE TAKE NOTICE THAT on Monday, October 31, 2022, a status conference was held in the above referenced matter to further discuss discrepancies and omissions in the spreadsheets submitted to the Commission on October 21, 2022, namely:

1. the deletion of approximately 1000 records without notice to the EEOC.
2. the failure to provide complete Social Security Numbers (SSNs).
3. the substantive modification of data in columns setting forth claims asserted.
4. duplicate records.
5. the failure to submit one complete spreadsheet as previously ordered.¹

During the conference, the Agency admitted that it removed approximately 1000 claims from the spreadsheet without notice to the Commission. According to the Agency even though it provided these claims on a prior spreadsheet, it unilaterally removed them because it did not believe the individuals were proper class members. The Agency further admitted that it had not provided all SSNs, arguing that Class Counsel also has SSNs and should therefore provide such information

¹ On September 27, 2022, the parties were ordered to submit one spreadsheet with the required information.

instead. The Agency asserted that it has not submitted one spreadsheet as ordered because its Privacy Officer believed that the Commission's requested information is in violation of the Privacy Act and therefore the Agency is not obligated to fully comply with Commission order and directives.

As for the substantive modifications of data, Class Counsel admitted that it had modified the data in the columns which set forth the claims asserted, explaining that it used the additional time provided to make additional edits.

The parties' explanations and arguments are unpersuasive and without merit. The Commission has and continues to ORDER the parties to submit ONE COMPLETE spreadsheet inclusive of ALL employees that meet the definition of "Class Member" as outlined in Judge Stilp's Order of May 30, 2008:

"All permanent rehabilitation employees and limited duty employees at the Agency who have been subjected to the NRP from May 5, 2006, to the present, allegedly in violation of the Rehabilitation Act of 1973."²

During the remedial phase of the litigation, the Commission determines proper class members NOT the Agency. Moreover, the Agency's arguments that it cannot serve Class Counsel with information regarding claimants in the spreadsheet due to privacy concerns has been wholly rejected by the Commission. *See* Commission's Order of June 10, 2022. The information sought in the spreadsheet is information which falls squarely within the Routine Use Exception of the Privacy Act; moreover, a Protective Order already exists in this matter as one was signed not only by a Commission AJ, but also by a Federal District Court judge in 2008 and 2010, respectively. These protective orders have not been rescinded nor have they expired; they cover the category of information sought in the spreadsheet and they cover the entire litigation until resolution of this matter. Additionally, any argument that these Protective Orders need to be amended is now waived given that the Agency has failed to take any steps to do so since being ordered to produce the data. The Agency's arguments regarding production of SSNs are similarly rejected. The Agency is the employer of record for these individuals and is therefore clearly in the possession of such data.

THEREFORE, the Agency is **ORDERED** to add back onto the spreadsheet the 1000 records it removed along with any and all other records that were either removed or never added.³

The Agency is **FURTHER ORDERED** to:

a. Resolve the following duplicates:

² The NRP concluded on July 1, 2011, and therefore the definition is amended to include employees assessed by the NRP from May 6, 2006 to July 1, 2011.

³ During the Conference there was conversation about approximately 900 claims inclusive of Employee Identification Numbers (EINs) of employees who filed claims of damages in 2018 or 2019. It was unclear from the discussion if this set of employee records are different from the 1000 records that were removed by the Agency. To the extent that this is a different set of employee records that were removed or were never added originally, their information is to be placed onto the spreadsheet.

- M-064329
- M-065344
- M-065531
- M-066619
- M-068221
- M-070323
- M-071512
- M-075995
- M-092391
- M-095477
- Jerry L. Ford - M-030222 & M072103 (Mr. Ford appears to have two claimant numbers)

b. Provide full and accurate Social Security Numbers for those records that are missing SSNs or have only partial SSNs.

c. Submit ONE COMPLETE SPREADSHEET to the Commission with all information sought.

The Commission will ONLY accept ONE spreadsheet on November 18, 2022. Smaller, dissected spreadsheets served on the Commission **will not be** accepted.

ALL INFORMATION IS TO BE PLACED ON ONE COMPLETE SPREADSHEET.

THE AGENCY IS FURTHER HEREBY PLACED ON NOTICE THAT should it continue to withhold the information sought or fail to disclose the requested information to Class Counsel in the creation of one complete spreadsheet the Commission will impose sanctions pursuant to 29 C.F.R. Sec. 1614.109(f)(3).

CLASS COUNSEL IS ALSO PLACED ON NOTICE THAT should it move around, add or subtract columns/categories to the spreadsheet it, too, will be subject to sanctions.

The single complete spreadsheet is due to the Commission *via* e-mail to the undersigned judge on **FRIDAY, NOVEMBER 18, 2022**.

NO FURTHER EXTENSIONS WILL BE GRANTED.

It is **So ORDERED**

Date: November 3, 2022

/s/Monique J. Roberts-Draper

Monique J. Roberts-Draper
Administrative Judge

CERTIFICATE OF SERVICE

For timeliness purposes, it will be presumed that this **ORDER** was received immediately upon electronic transmission. I certify this **ORDER** was sent to the following parties via email transmission on November 3, 2022:

Agency Counsel via Email

Sean Powers, Esq.
Eve G. Burton, Esq.
U.S. Postal Service Law Department

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