

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

IN RE UNITED STATES POSTAL SERVICE  
PRIVACY ACT DISCLOSURE ORDER

Misc. No. 10-0472 (EGS)

**UNITED STATES POSTAL SERVICE’S MOTION FOR CLARIFICATION OR  
SUPPLEMENTATION OF PRIVACY ACT DISCLOSURE ORDER AND FOR  
EXPEDITED CONSIDERATION**

Pursuant to Local Civil Rule 40.8(b)(1) and Federal Rule of Civil Procedure 7(b), the U.S. Postal Service moves for this Court to enter an order (a) either clarifying that this Court’s August 10, 2010, Privacy Act Disclosure Order permits the Postal Service to disclose information protected by the Privacy Act, as described further below, to the lawyers who served as class counsel during Phase I (“Phase I Counsel”), even for individual claimants who have not designated Phase I Counsel as their representative for litigating individual claims for relief in Phase II; or (b) amending the August 10, 2010, Privacy Act Disclosure Order to authorize such disclosures.

**Procedural History**

1. On August 23, 2007, Sandra McConnell, a letter carrier employed by the Postal Service in Rochester, New York, filed an administrative complaint with the Equal Employment Opportunity Commission (“EEOC”) alleging nationwide violations of the Rehabilitation Act arising out of the National Reassessment Program.<sup>1</sup>

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<sup>1</sup> The administrative class complaint is titled, *McConnell v. U.S. Postal Service*, EEOC No. 520-2008-00053X / Agency No. 4B-140-0062-06.

2. On January 30, 2008, EEOC Administrative Judge Erin Stilp entered an Agreed Protective Order authorizing the Postal Service and the Class Agent to disclose Privacy-Act protected information to each other in connection with discovery.<sup>2</sup>

3. On May 30, 2008, Administrative Judge Stilp certified the class and designated Ms. McConnell's attorneys, Thomas & Solomon LLP and Kator Parks, Harris, & Weiser PLLC, as class counsel during the liability phase (herein "Phase I Counsel").

4. On August 10, 2010, this Court in this miscellaneous matter entered a Privacy Act Disclosure Order authorizing disclosure subject to the terms of the January 30, 2008, EEOC Agreed Protective Order.

5. On June 4, 2015, Administrative Judge Stilp granted in part the Class Agent's Motion for Summary Judgment.

6. On March 9, 2018, the Office of Federal Operations affirmed Administrative Judge Stilp's decision, ordered the Postal Service to notify class members of the procedure for filing individual claims for relief, and ordered the class members to file written claims for individual relief within 30 days of receiving notice of the Office of Federal Operations' decision. Phase I refers to the litigation up to and including the Office of Federal Operations' March 9, 2018, decision.

### **Phase II**

7. Phase II refers to the litigation of individual claims of relief that were filed after the March 9, 2018, decision. The Postal Service states that tens of thousands of individuals have filed individual claims for relief.

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<sup>2</sup> See Ex.1, January 30, 2008, EEOC Agreed Protective Order as further clarified in the EEOC's Administrative Judge's June 10, 2022 Order.

8. Early in Phase II, EEOC Administrative Judge Roberts-Draper denied Phase I Counsel’s request to be appointed as class counsel for all class members during the individual claim process and ordered Phase I Counsel to “provide a clean, precise written designation of representation form expressly stating that claimant designates Thomas & Solomon LLP and Kator, Parks, Harris & Weiser, & Weiser, PLLC to represent them in Phase II, Individual Relief portion of the litigation[.]”<sup>3</sup>

9. The Postal Service states that Phase I Counsel has submitted standalone designations of representation for tens of thousands of individual claimants, but thousands of claimants have either designated a different person as their representative or have not designated a representative and presumptively are proceeding pro se.

#### **Data Production Orders**

10. In a series of orders, Administrative Judge Roberts-Draper has ordered the Postal Service to produce data to the EEOC for individuals who had filed claims in Phase II in a single spreadsheet.<sup>4</sup>

11. The data include the claimant’s full name, social security number, home address, home and personal mobile telephone numbers, personal email address, date of hire, date of

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<sup>3</sup> See Ex. 2, Feb. 27, 2019 Case Management Order (stating that the “OFO’s November 7, 2018 decision made no finding that Class Agent’s Counsel represented all class members or would continue to represent all class members during the relief phase. Nor did it authorize the appointment of a single ‘class counsel’ over the express objections of individual claimants. Indeed, there are several class members who have affirmatively designated and retained other counsel to represent them in this matter, who have affirmatively rejected Class Agent’s counsel or wish to proceed pro se.”)

<sup>4</sup> See Ex. 3, April 20, 2022 Order; *see also* Ex. 4, May 10, 2022 Order (revising spreadsheet); Ex. 5, May 16, 2022 Order (revising schedule); Ex. 6 May 24, 2022 Order (clarification); Ex. 7, September 22, 2022 Order (status conference agenda); Ex. 8, September 27, 2022 Order; Ex. 9, November 3, 2022 Order.

separation and reason for separation, and specific information on the claimant's discrimination claims.<sup>5</sup>

12. Some of this data is protected under the Privacy Act of 1974.<sup>6</sup> In addition, the D.C. Circuit has recognized that the unauthorized disclosure of this Privacy Act protected information could present a substantial risk of identity theft. *See, e.g., In re U.S. OPM Data Sec. Breach Litig.*, 928 F.3d 42 (D.C. Cir. 2018) (holding that plaintiffs had standing to sue in a case involving an OPM data breach).

13. Relying upon its routine use exceptions to the Privacy Act, the Postal Service produced its available data to the EEOC on July 15, 2022, and produced data to Phase I Counsel for only the individuals who have designated Phase I Counsel as their representative.<sup>7</sup>

14. The Postal Service has determined that it is unable to rely upon its routine use exceptions to produce data to Phase I Counsel for individuals who have not designated Phase I Counsel as their representative for Phase II, at least without any articulated or shown litigation need for this data.<sup>8</sup>

15. The Postal Service is concerned that the August 10, 2010, Privacy Act Protective Order issued by this Court does not cover disclosure to Phase I Counsel for individuals who have not designated Phase I Counsel as their representative for Phase II. Specifically, the August 10,

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<sup>5</sup> See Ex. 4.

<sup>6</sup> 5 U.S.C. § 552a (setting conditions under which federal agencies can disclose information they maintain on individuals including, but not limited to, their education, financial transactions, medical history, and criminal or employment history, or records that contain the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph).

<sup>7</sup> See 5 U.S.C. § 552a(a)(7), (b)(3); *see also* 70 Fed. Reg. 22,516-01 at 22518 (April 29, 2005) (identifying the Postal Service's standard routine uses).

<sup>8</sup> See Ex. 10, Postal Service's July 15, 2022 Letter to Administrative Judge.

2010, Order permits disclosures to “class counsel” for the “purposes of assisting class members and potential class members to effectuate their rights in the [*McConnell* administrative] class action litigation.” (ECF No. 2 ¶ 1.) Phase II involves adjudication of individual complaints by individual parties, not adjudication of an administrative class complaint affecting class members who have not appeared and have not filed an individual complaint. Moreover, Phase I Counsel is not serving as administrative class counsel or even individual counsel for the individuals who have not designated Phase I Counsel as their representative and has not articulated (or shown) any litigation need for this data as required by the August 10, 2020, Order. Additionally, the Postal Service is aware of at least some individual claimants expressing process concerns.<sup>9</sup>

16. Administrative Judge Roberts-Draper has stated that a new “protective order, especially one signed by a Federal District Court is unnecessary” and, on November 3, 2022, stated that the EEOC may impose sanctions, should the Postal Service continue to withhold the information sought or fail to disclose the requested information to Phase I Counsel in the creation of one complete spreadsheet, even for individuals who have not designated Phase I Counsel as their representative.<sup>10</sup>

17. The Postal Service seeks to both comply with the Administrative Judge’s order as well as the requirements of the Privacy Act. Section 552a(b)(11) of the Privacy Act authorizes disclosure “pursuant to the order of a court of competent jurisdiction.” *See* 5 U.S.C. § 552a(b)(11). To allow the Postal Service to avoid both potential sanctions from the Administrative Judge and

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<sup>9</sup> *See., e.g.*, Ex. 11, May 21, 2022 Email from Claimant to AJ Roberts-Draper.

<sup>10</sup> *See* Ex. 1, Administrative Judge’s June 10, 2022 Order (treating the Postal Service draft amended protective order as a motion and denying it); *see also* Ex. 9, Administrative Judge’s November 3, 2022 Order (“should [the Postal Service] 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. 1614.109(f)(3)”).

potential liability under the Privacy Act, the Postal Service respectfully requests that this Court enter an order either: (a) clarifying that its August 10, 2010 Privacy Act Disclosure Order authorizes the Postal Service to disclose to Phase I Counsel Privacy-Act protected information for individual claimants they do not represent in Phase II; or (b) supplementing the August 10, 2010 Privacy Act Disclosure Order to authorize such disclosure. Alternative proposed Orders are attached.

18. The Postal Service is serving this motion on representatives for litigants who have appeared at status conferences during Phase II and is publishing this motion on the class action website to afford notice of this motion to all other litigants so that they have an opportunity to raise with this Court any concerns that they might have with the relief requested by the Postal Service in this motion. This motion is not being served individually on all Phase II litigants.

19. Considering the Administrative Judge's November 3, 2022, order, which states that sanctions may issue if the data is not produced by the Postal Service, the Postal Service is requesting expedited consideration of this motion.

20. Pursuant to Local Rule 7(m), counsel for the Postal Service in the *McConnell* administrative class action has conferred with Phase I Counsel by email regarding the relief requested in this motion, and Phase I Counsel has advised the Postal Service that Phase I counsel opposes the filing of this motion. From that response, the Postal Service understands this motion to be opposed.

Respectfully submitted,

**Redacted**

**CERTIFICATE OF SERVICE**

On November 15, 2022, the Postal Service, through its counsel in *McConnell v. U.S. Postal Service*, has represented that they have caused to be served in the manner stated below a true and correct copy of the foregoing motion, accompanying exhibits and alternative proposed orders on the following representatives for litigants who have appeared at status conferences during Phase II in *McConnell*:

**EEOC:**

Hon. Monique Roberts-Draper,

Redacted

**ATTORNEYS OR REPRESENTATIVES:**

Redacted

[om](#)

Redacted

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**In re United States Postal Service  
Privacy Act Disclosure Order** )  
)  
)  
)  
Louis DeJoy<sup>1</sup> ) **10-mc-472 (EGS)**  
Postmaster General )  
United States Postal Service )  
475 L'Enfant Plaza, SW )  
Washington, D.C. DC 20260-1150 )  
)

**SUPPLEMENTAL PRIVACY ACT  
DISCLOSURE ORDER**

Upon consideration of the United States Postal Service's Motion for a Supplemental Privacy Act Disclosure Order in connection with individual claims for relief (Phase II) arising from an administrative class action (Phase I) currently pending before the Equal Employment Opportunity Commission, any opposition thereto and the entire record herein, IT IS HEREBY ORDERED as follows:

1. Pursuant to 5 U.S.C. § 552a(b)(11), the Postal Service is authorized to disclose and release to the attorneys who served in the administrative class action as class counsel (Phase I Counsel) current and former Postal Service employees' protected information without obtaining the prior written consent of the individuals to whom such information pertains, even if such individuals have not designated Phase I Counsel as their representative for their individual claims for relief, for the purposes of assisting class members, potential class members, Phase II claimants and potential Phase II claimants to effectuate their rights in their individual claims for relief arising from the *McConnell v.*

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 25(d), Postmaster General Louis DeJoy is automatically substituted for prior Postmaster General John E. Potter.

*Potter* class action litigation, EEOC Case No. 520-2008-00053X, Agency No. 4B-140,0062-06.

2. The Postal Service's disclosure of protected information to Phase I Counsel may include, *inter alia*, current and former employees' names, addresses, telephone numbers, Social Security numbers, medical records, injury compensation records, personal identification numbers, personnel files, communications, claims files, and other claimant-specific documents. Such protected information may be necessary to the advancement, prosecution, and defense of the individual claims for relief arising from the *McConnell v. Potter* administrative class action litigation.

3. Phase I Counsel's use of disclosed protected information shall be subject to the Agreed Protective Order signed by Phase I Counsel and the Postal Service and approved and entered by the presiding EEOC Administrative Judge on January 30, 2008, as further clarified in the EEOC's Administrative Judge's June 10, 2022 Order.

4. Entry of this Order shall not be construed as divesting the EEOC of jurisdiction over the individual claims for relief arising from the *McConnell v. Potter* class action litigation pursuant either to 29 C.F.R. §§ 1614.407 and 1614.409, or to any other applicable federal statutory or administrative regulatory provision.

5. Nothing in this Order shall be construed as the filing of a Complaint under the Federal Rules of Civil Procedure seeking redress for the causes of action raised by the individual claims for relief arising from the *McConnell v. Potter* class action litigation.

6. This Order does not constitute a ruling or agreement between Phase I Counsel and the Postal Service on the question of whether any particular information or document is properly discoverable or admissible in the individual claims for relief arising from the

*McConnell v. Potter* class action litigation, and it does not constitute a ruling on any potential objection as to whether any document or information is discoverable in the course of the individual claims for relief arising from the *McConnell v. Potter* class action litigation.

7. Upon twenty days' notice to the other party, either Phase I Counsel or the Postal Service may seek modification of this Order from the Court.

**SO ORDERED**

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United States District Judge  
District of Columbia

Dated: November \_\_\_\_, 2022



FURTHER ORDERED that, in light of the above, the Motion is otherwise denied as moot.

SO ORDERED.

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United States District Judge  
District of Columbia

Dated: November \_\_\_\_\_, 2022



enter this Agreed Protective Order.

1. The Postal Service is authorized to release to the Class Agent, through her counsel, otherwise protected information that may be necessary to disclose in discovery in this case.

2. The right of access to such information in this litigation shall be limited to the parties, counsel of record, paralegals, consultants, experts or other agents acting under the direct supervision of any counsel of record, solely for the purpose of assisting counsel of record with respect to this case, or any witness endorsed by any party or any person whom counsel in good faith considers to be a potential witness, but only insofar as is necessary relative to matters pertaining to the testimony or anticipated testimony of such witness or potential witness.

3. Except as provided herein, no person having access to such information shall make public disclosure of, or disclose to any other person, any such information or material, without further Order of the Administrative Judge, stipulation of the parties, or requirement by law. The Class Agent shall not use the information so disclosed for any purpose other than this pending case and any ancillary litigation matters that may arise out of this case. When disclosing the information provided by the Postal Service in accordance with this Order, counsel shall advise the person to whom disclosure is made of the terms of this Order.

4. The parties are entitled to submit all or part of the information disclosed pursuant to this Order to the Administrative Judge or use said information during any phase of this case, as appropriate. In so doing, the

parties shall take appropriate steps to redact all personal identifiers.

5. At the conclusion of this case and any ancillary litigation, all copies of documents disclosed pursuant to this Order then in the custody of the Class Agent or her counsel shall be returned to the Postal Service Law Department, or shall be destroyed. If the documents are returned, they shall be accompanied by a transmittal letter generally describing the documents returned. If the documents are destroyed, counsel for Complainants shall advise counsel for the Postal Service in writing as to method and date that said documents were destroyed.

6. The Complainants, and their counsel, shall indemnify and hold harmless the Postal Service for any claimed violation of the Privacy Act occasioned by a breach of any of the terms of this Order by any of the individuals employed by the class or class counsel identified in paragraph 2 above.

7. This Order is without prejudice to the rights of any party to make any objection to the admissibility of such documents under the Federal Rules of Evidence.

**WE ASK THAT THIS ORDER BE ENTERED:**

**Redacted**

# Redacted

ENTERED AND ORDERED this 30 day of January, 2008.

# Redacted

Administrative Judge



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
New York District Office

Redacted

**TELECOPIER TRANSMITTAL**  
OFFICIAL GOVERNMENT BUSINESS

**TO:** Recipients: **Redacted**

Location: \_\_\_\_\_

Fax number: \_\_\_\_\_ Phone #: \_\_\_\_\_

# of pages incl. cover sheet: \_\_\_\_\_

Date: January 30, 2008

**FROM:** Sender: **Redacted** Administrative Judge

Phone number: **Redacted** E-mail: **Redacted**

Fax number: **Redacted**

MESSAGE:

\_\_\_\_\_

\_\_\_\_\_

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**CONFIDENTIALITY NOTICE**

This communication is intended for the sole use of the person to whom it is addressed and may contain information that is privileged, confidential, and exempt from disclosure.

Any dissemination, distributions, or copying of this communication by anyone other than the intended recipient or the person responsible for its delivery is strictly prohibited.

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UNITED STATES OF AMERICA  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
NEW YORK DISTRICT  
33 Whitehall Street, New York, NY 10004-2112

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Redacted McCONNELL, ET AL.,  
a/k/a Velve B., Class Agent

Complainant,

-v-

LOUIS DEJOY, POSTMASTER GENERAL,  
UNITED STATES POSTAL SERVICE,

Agency.

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EEOC Hearing No.: 520-2010-00280X  
Agency Case No.: 4B-140-0062-06  
OFO Appeal Nos.: 07-2016-0006; 07-2016-0007  
OFO Request Nos.: 05-2018-0094; 05-2018-0095

### ORDER

PLEASE TAKE NOTICE THAT the Agency's request for a Protective Order, to the extent that its May 25, 2022 letter is a request, is **DENIED**.

The Agency's arguments that a new protective order is needed are misplaced and unpersuasive. The disclosure of information the Postal Service has been ordered to provide during this phase are Postal Service records contained in the Postal Service's system of records, including but not limited to Sections 100.000; 100.700; 100.800; 100.850 and are subject to the Routine Use exception of the Privacy Act. Disclosure of these records to an authorized EEOC Administrative Judge when requested "in connection with the investigation of a formal complaint of discrimination filed against the Postal Service under 29 CFR Part 1614" meets the Routine Use exception and is therefore appropriate. The Agency has not identified any category of information requested by the Commission which does not fall within this exception. Once such records are disclosed, they become records subject to the EEOC's system of records designated as EEOC/GOVT-1 (Equal Employment Opportunity (EEO) in the Federal Government Complaint and Appeal Records). As provided in the EEOC/GOVT-1 system of records, access to and use of EEO complaint records are limited to those persons whose official duties require such access.

The Postal Service's concern that the records it provides during the damages phase may or will be disclosed in violation of the Privacy Act is without merit. Therefore, a protective order, especially one signed by a Federal District Court is unnecessary.

Notwithstanding the Agency's spurious arguments, a protective order issued by an EEOC AJ in 2008 already exists in this matter. It has not expired, and its provisions encompass the entirety of this litigation, i.e. liability and damages.

The Postal Service's request is **DENIED** and the dates for production remain June 15, 2022.

It is So **ORDERED**

**DATE:** June 10, 2022

*/s/Monique J. Roberts-Draper*

Monique J. Roberts-Draper

**Redacted**

**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 on June 10, 2022:

**Agency Counsel**

Redacted

**Class Counsel**

Redacted

Exhibit 2

UNITED STATES OF AMERICA  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
NEW YORK DISTRICT OFFICE  
33 WHITEHALL STREET, 5<sup>th</sup> Floor  
NEW YORK, NEW YORK 10004

-----X  
**Redacted** McCONNELL, ET AL.,  
a/k/a Velva B., Class Agent

**Complainant,**

v.

MEGAN J. BRENNAN, Postmaster General,  
UNITED STATES POSTAL SERVICE,

**Agency.**

-----X  
EEOC Hearing No.: 520-2010-00280X  
Previous Appeal Nos.: 0720160006, 0720160007, 0720080054  
EEOC Request Nos.: 0520180094 & 0520180095  
EEOC Appeal No.: 0120182505  
Agency Case No.: 4B-140-0062-06

**CASE MANAGEMENT ORDER**

**PLEASE TAKE NOTICE THAT** this **ORDER** is issued in compliance with the Office of Federal Operations (OFO) decision dated November 7, 2018.

**TOLLING**

It is hereby **ORDERED** that the 90-day period within which the Agency is required to issue a decision on an individual claim is tolled until further notice. **THEREFORE**, no Final Agency Decisions (FADs) will be issued until the fact-finding phase has ended and decisions regarding relief are issued by the undersigned judge.

**LIST OF CLAIMANTS WHOSE CLAIMS THE AGENCY DISPUTES**

As of OFO’s November 7, 2018 decision it is unclear as to how many individual claims for relief the Agency has disputed or will dispute. The Class Agent contends that all the claims are disputed, the agency contends that it has not disputed all claims, however it has not specified how many claims are disputed. **THEREFORE**, the Agency is to provide a list of the names of all class members whose claim for relief the Agency has disputed or intends to dispute **no later than March 12, 2019**<sup>1</sup>;

<sup>1</sup> The Agency’s submission of February 26, 2019 *USPS Response in Opposition to Motion for entry of Case*

**APPOINTMENT OF A SINGLE CLASS COUNSEL FOR PHASE II- INDIVIDUAL RELIEF**

Phase I Class Agent Counsel, Thomas & Solomon LLP and Kator, Parks, Harris & Weiser, P.L.L.C. February 11, 2019 *Motion for Entry of Case Management Order and Proposed Order* request to be appointed as class counsel of all class members is **DENIED**.

OFO's November 7, 2018 decision made no finding that Class Agent's Counsel represented all class members or would continue to represent all class members during the relief phase. Nor did it authorize the appointment of a single "class counsel" over the express objections of individual claimants. Indeed, there are several class members who have affirmatively designated and retained other counsel to represent them in this matter, who have affirmatively rejected Class Agent's counsel or wish to proceed *pro se*.

**APPOINTMENT OF SPECIAL MASTERS**

Phase I Class Agent Counsel, Thomas & Solomon LLP and Kator, Parks, Harris & Weiser, P.L.L.C February 11, 2019 *Motion for Entry of Case Management Order and Proposed Order* request that the EEOC appoint special masters to assist in the processing individual claims during Phase II- Individual Relief is also **DENIED**.

29 C.F.R. §1614.204 (1)(1) outlines the procedures for relief for individual class members and it explicitly states that the EEOC Administrative Judge "shall retain jurisdiction over the complaint in order to resolve any disputed claims by class members." OFO's September 26, 2017 decision in this matter exclusively ordered EEOC judges to retain jurisdiction during the relief phase. Moreover, counsel points to no binding legal authority, either within EEOC guidelines, rules or regulations or outside of them that allows EEOC judges to appoint special masters. Finally, the appointment and supervision of special masters would unnecessarily complicate the fact-finding process, lengthen an already lengthy litigation and prove to be unwieldy. Therefore, counsel's request is **DENIED**.

**CASE MANAGEMENT**

**DISCOVERY**

There will be no discovery propounded in this matter.

If upon receiving the submissions on disputed claims additional information is needed to make a determination, I will issue an order to the parties to meet and confer to determine which party has the information, whether and how it can be produced so as to honor medical confidentiality and a reasonable schedule for production of the needed documents.

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*Management Order and Proposed Case Management Order* states that the Postal Service submitted to the "Administrative Judge notices of which claims it intends to dispute on January 14, 2019 and provided a copy of such notice to the class." I have searched my emails and have not found Counsel's submission. Perhaps due to the government shutdown the filing never reached my inbox. Therefore, I am ordering Agency counsel to resend its January 14, 2019 submission on or before March 15, 2019.

## SUBMISSIONS

### The Agency:

It is hereby **ORDERED** that the Agency will provide a statement to the undersigned Judge in support of its decision to dispute a class member's claim, attaching all relevant supporting documents/evidence. The Agency's burden is to show **by clear and convincing evidence** that the class member is ***not*** entitled to relief. The agency submission is **due 20 calendar days within receipt this ORDER**. A copy must be provided to the claimant and their counsel, if represented.

### The Individual Claimant:

It is hereby **ORDERED** that the class member will submit to the undersigned Judge a statement and any relevant documents in support of their claim for relief.

#### **The submission must include a specific detailed showing that the claimant**

- **is a class member;**
- **who was affected by the Agency's discriminatory policy or practice and;**
- **that the discrimination took place during the time-period for which class-wide discrimination was found;**
- the categories of harm alleged by complainant
- the categories of relief for which claimant is seeking damages and the legal foundation in support of said damages

Claimants' submissions are **due 20 calendar days within receipt of the Agency's statement of dispute**. A copy must be provided to the Agency.

Except for relevant exhibits, the parties' respective statements **must not** exceed twenty (20) pages.

**All submissions MUST BE FILED ELECTRONICALLY, either by email or FEDSEP with an email to the undersigned judge stating that a filing has been submitted.**

**HARDCOPY SUBMISSIONS SENT THROUGH THE MAIL WILL NOT BE CONSIDERED**

### REQUESTS FOR MORE TIME

Requests for an enlargement of time must be for good cause. Requests must be in writing, served on the other party and include an explanation of why additional time is necessary.

### WITHDRAWALS

All withdrawals must be in writing. The undersigned judge must be notified with ten (10) days of the parties' agreement to withdraw; upon receipt of the request for withdrawal the undersigned judge will issue an Order dismissing the claim and instructing the Agency to issue a

Final Agency Decision with appeal rights to OFO.

**HEARINGS**

As per OFO's November 7, 2018 decision, hearings are not mandatory in this process and is at the discretion of the judge. Therefore, if further development of the record is deemed necessary and factual disputes arise and need to be addressed at hearing, an Order Scheduling a Hearing will be issued, and a conference call will be held to discuss dates, witnesses, etc.

**SETTLEMENT**

Individual claims may be settled without approval from the undersigned judge. Group settlements must be approved pursuant to 29 C.F.R. §1614.204(g).

**CONCLUSION OF FACT-FINDING**

As per the November 7, 2018 OFO decision "at the conclusion of the fact finding, the AJ will issue a decision concerning the class member's claim to the Agency and the class member. The decision will advise the Agency that the 90-day period for issuing a final order on the claim will resume upon receipt of the AJ's decision. If the Agency does not issue a final order with 90-days, the AJ's decision becomes the final order of the Agency."

Date:

**SO ORDERD**

**Date: February 27, 2019**

**For the Commission:**

**/s/Monique J. Roberts-Draper**

Monique J. Roberts-Draper

Administrative Judge

**Redacted**

**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 on February 27, 2019:

**Agency Counsel**

Redacted

**Counsel**

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted



**UNITED STATES OF AMERICA  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
NEW YORK DISTRICT  
33 Whitehall Street, New York, NY 10004-2112**

**Redacted** **McCONNELL, ET AL.,  
a/k/a Velve B., Class Agent**

**Complainant,**

**-v-**

**LOUIS DEJOY, POSTMASTER GENERAL,  
UNITED STATES POSTAL SERVICE,**

**Agency.**

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**EEOC Hearing No.: 520-2010-00280X  
Agency Case No.: 4B-140-0062-06  
OFO Appeal Nos.: 07-2016-0006; 07-2016-0007  
OFO Request Nos.: 05-2018-0094; 05-2018-0095**

**ORDER TO PRODUCE & NOTICE OF STATUS CONFERENCE**

On March 4, 2022, the Administrative Judge held a conference with the parties to determine the availability of data related to this class action. During the conference, Class Counsel referred to the Baker Sub-Class Report (aka Class Exhibit A) and Class Exhibit B (Excel spreadsheets) containing areas of information sought by the Commission. The Commission seeks to establish an EEOC database for the efficient and expeditious adjudication of pending claims in the above-referenced matter. To that end, it seeks relevant information about claimant data maintained by the parties.

I have reviewed both Class Exhibits A and B and note that they appear to contain only some of the information the Commission seeks. Moreover, these exhibits contain information for the entire class of approximately 134,000 employees and are not responsive to the specific needs of the Commission. Since the Commission is only charged with adjudicating approximately 29,000 disputed claims, information is sought for only these disputed claims.

To ensure the Commission receives the information it requires, an Excel spreadsheet is attached. The parties are ORDERED to provide the requested information for each claimant and column. As you will see, some columns are colored blue and others yellow as a way for the Commission to track which party provided the requested information. The Agency should complete those columns in blue and Class Counsel in yellow.

**The completed Excel spreadsheet is due to the Administrative Judge on or before Wednesday June 8, 2022.**

**PLEASE TAKE FURTHER NOTE** that a status conference will be held in this matter on **Thursday, May 12, 2022 at 11:00 am.** A Microsoft TEAMS invitation will be sent to the parties under separate cover.

**It is So ORDERED**

**DATE: April 20, 2022**

**s/Monique J. Roberts-Draper**

**Redacted**

**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 on April 20, 2022:

**Agency Counsel**

Redacted

**Counsel**

Redacted

Redacted

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# Redacted

Ex. 4

**Subject:** [EXTERNAL] REVISED EEOC EXCEL SPREADSHEET

**CAUTION:** This email originated from outside USPS. **STOP and CONSIDER** before responding, clicking on links, or opening attachments.

Parties,

Attached please find a revised Excel spreadsheet. Columns were added that allow complainants the opportunity to identify claims that were previously alleged. Revised dates for completion and filing will be discussed at the conference on Thursday.

Also, to the extent my order is silent, the Agency is instructed to provide a court reporter for Thursday's conference to ensure an accurate record.

So ORDERED

Monique J. Roberts-Draper  
Administrative Judge

# Redacted

**“When you cannot measure what is important, you tend to make important what you can measure.” Prof. Harold Koh, Yale Law School**

Agency Claimant Number	Social Security Number	Claimant Last Name	Claimant First Name	Claimant Middle Initial	Street Address on File with Agency	City on File with Agency	State (Abbreviated)	Zip Code on File with Agency	Home Phone on File with Agency	Cell Phone on File with Agency	Email on File with Agency
------------------------	------------------------	--------------------	---------------------	-------------------------	------------------------------------	--------------------------	---------------------	------------------------------	--------------------------------	--------------------------------	---------------------------

Legal Representative Name	Updated Street Address Provided by Counsel	Updated City Provided by Counsel	Updated State (Abbreviated) Provided by Counsel	Updated Zip Code Provided by Counsel	Updated Home Phone Provided by Counsel	Updated Cell Phone Provided by Counsel	Updated Email Provided by Counsel	Claimant Has Withdrawn Claim for Relief (Y/N)	Claimant Is Deceased (Y/N)	DOH	Separation Date (if applicable)	Separation Reason on SF-50
---------------------------	--	----------------------------------	---	--------------------------------------	--	--	-----------------------------------	---	----------------------------	-----	---------------------------------	----------------------------



Disparate Treatment Claim (Y/N)	Disparate Treatment Claim Disputed by Agency (Y/N)	Disparate Treatment Claim Asserted But Not Identified (Y/N)	Disparate Treatment Claim Withdrawn (Y/N)	Disparate Treatment Claim (Y/N)	Discriminatory Reassignment Claim (Y/N)	Discriminatory Reassignment Claim Disputed by Agency (Y/N)	Reassignment Claim Asserted But Not Identified by Agency (Y/N)	Discriminatory Reassignment Claim Withdrawn (Y/N)	Confidential Medical Info Disclosure Claim (Y/N)	Confidential Medical Info Disputed by Agency (Y/N)	Confidential Medical Info Disclosure Claim Asserted But Not Identified by Agency (Y/N)	Confidential Medical Info Disclosure Claim Withdrawn (Y/N)
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# Redacted

**CAUTION:** This email originated from outside USPS. **STOP and CONSIDER** before responding, clicking on links, or opening attachments.

Both parties have received the Revised Excel Spreadsheet.

Ex. 5

Revised dates for completion/submission are as follows:

Agency's date for completion is June 15

Complainant's date for completion is July 15

One comprehensive spreadsheet should be filed by July 18, 2020

So ORDERED

Monique J. Roberts-Draper  
Administrative Judge

# Redacted

**“When you cannot measure what is important, you tend to make important what you can measure.” Prof. Harold Koh, Yale Law School**

**From:**  
**To:**

**Redacted**

Exhibit 6

**Cc:**

**Subject:**

[EXTERNAL] CLARIICATION TO ORDER OF MAY 12, 2022

**Date:**

Tuesday, May 24, 2022 3:09:50 PM

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**CAUTION:** This email originated from outside USPS. **STOP and CONSIDER** before responding, clicking on links, or opening attachments.

As discussed at the conference, the Agency is instructed to provide the most current contact information it has for the approximately 29,000 class members. At the conference, the Agency indicated that there were class members who were still employed by the Postal Service and therefore, the Agency would have their most current information. However, for those class members who no longer work for the Postal Service, the **Agency is further instructed** to contact and work with the Office of Personnel Management (OPM) to secure their most current contact information (i.e. last known address, contact number and email).

Please be advised that dates for production **have not changed**, i.e. the Agency's completed Excel spreadsheet is due June 15, 2022, Complainant's completed spreadsheet is due July 15, 2022 and one completed spreadsheet is due to the Commission on July 18, 2022.

So ORDERED

Monique J. Roberts-Draper  
Administrative Judge

**Redacted**

**“When you cannot measure what is important, you tend to make important what you can measure.” Prof. Harold Koh, Yale Law School**

Exhibit 7

UNITED STATES OF AMERICA  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
NEW YORK DISTRICT OFFICE  
33 Whitehall Street, 5<sup>th</sup> Floor  
New York, NY 10004-2112

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Redacted **McCONNELL, ET AL.,**  
a/k/a Velva B., Class Agent

Complainant,

-v-

LOUIS DEJOY, POSTMASTER GENERAL,  
UNITED STATES POSTAL SERVICE,

Agency.

ORDER

Monique J. Roberts-Draper  
Administrative Judge

September 22, 2022

---

EEOC Hearing No.: 520-2010-00280X  
Agency Case No.: 4B-140-0062-06  
OFO Appeal Nos.: 07-2016-0006; 07-2016-0007  
OFO Request Nos.: 05-2018-0094; 05-2018-0095

### SEPTEMBER 26th STATUS CONFERENCE AGENDA

**PLEASE TAKE NOTICE THAT** a status conference is scheduled for Monday September 26, 2022. To that end, drafted below are a few items the parties should be prepared to discuss. I have also attached the Commission's Discrepancies Spreadsheet.

### SPREADSHEET DISCREPANCIES

The Commission has merged the spreadsheets submitted by the Agency and Plaintiffs' counsel and have found the following:

- There are 29,546 records in the Agency spreadsheet.
- There are 28,564 records in the Claimants' spreadsheet.
- There are 25,287 records in Claimants' spreadsheet which we can find in the Agency Spreadsheet.
- There are 4,274 records which are in the Agency's spreadsheet which are **not** in Claimants' spreadsheet.
- There are 3,276 records in the Claimants' spreadsheets which are **not** in the Agency's spreadsheet.
- Merging the Agency and Claimants' spreadsheets creates a master spreadsheet of **32,837** records of which:

- 859 records are missing claim numbers.
- There are 15 duplicate claim records with different data.
- Claimants' counsel has identified numerous claims that are **not identified** by the Agency, including:
  - 704 harassment
  - 28,525 reasonable accommodations withdrawal
  - 28,549 disparate treatment
  - 8,365 confidential medical disclosure
  - 28,255 reasonable accommodation denials
  - 13,976 discriminatory reassignments
  - 28,305 medical inquiry
- There are numerous entries by the Agency of "Not Specified" in the following columns:
  - 159 - Disability Shown
  - 68 - Qualified Shown
  - 87 - Harassment Asserted
  - 1,922 - Harassment Shown
  - 94 - Reasonable Accommodation Asserted
  - 2,148 - Reasonable Accommodation Shown NWA
  - 2,286 - Reasonable Accommodation Shown NMA
  - 92 - Confidential Medical Asserted
  - 4,327 - Medical Inquiry Shown
  - 4,297 - Medical Disclosure Shown

The Parties should be prepared to address the following spreadsheet discrepancies at Monday's conference:

1. Explain the missing 859 claim numbers and whether the claim numbers can be provided (see EEOC Discrepancies Spreadsheet Tab 1).
2. The reason for the numerous "Not Specified" entries; what does "Not Specified" mean; how is it different from "No"; how soon can those entries be supplemented, if necessary.
3. How the parties propose the 15 duplicates with different data be handled (see EEOC Discrepancies Spreadsheet, Tab 2).
4. What the reason is for the 3,276 records in the Claimants' spreadsheets which are not in the Agency's spreadsheet and does the Agency object to their addition (See EEOC Discrepancies Spreadsheet, Tab 3).
5. The reason for the Agency's deletion of any columns from the EEOC's proposed spreadsheet and any objection to such deletion.
6. The reason for Claimants' counsel's addition of columns in the spreadsheet provided by EEOC.
7. How the parties propose the difference in identified claims asserted be resolved.

**HARD DRIVE SUBMISSION ISSUES**

In or about 2019, the parties were ordered to submit the notice of disputed claims with documentation and claim forms with accompanying supporting documents, encompassing the entire class of approximately 29,000 claimants. The Commission received hard drives from the parties purporting to include these documents. Prior to the office shut-down due to Covid-19, the Commission began to download onto its servers the information on these hard drives; having completed this task, it appears that the information submitted was not for the entire 29,000 McConnell class, but only approximately 7,000 claim forms and an even smaller number of the Agency's notices of dispute.

The parties are to be prepared to discuss why this information was not submitted to the Commission.

**It is So ORDERED**

**DATE:** September 22, 2022

**/s/ Monique J. Roberts-Draper**

Monique J. Roberts-Draper  
Administrative Judge

**Redacted**

**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 on September 22, 2022:

**Agency Counsel**

Redacted

**Counsel**

Redacted

Redacted

UNITED STATES OF AMERICA  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
NEW YORK DISTRICT OFFICE  
33 Whitehall Street, 5<sup>th</sup> Floor  
New York, NY 10004-2112

Exhibit 8

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Redacted McCONNELL, ET AL.,  
a/k/a Velva B., Class Agent

Complainant,

-v-

LOUIS DEJOY, POSTMASTER GENERAL,  
UNITED STATES POSTAL SERVICE,

Agency.

ORDER

Monique J. Roberts-Draper  
Administrative Judge

September 27, 2022

---

EEOC Hearing No.: 520-2010-00280X  
Agency Case No.: 4B-140-0062-06  
OFO Appeal Nos.: 07-2016-0006; 07-2016-0007  
OFO Request Nos.: 05-2018-0094; 05-2018-0095

**ORDER REGARDING SPREADSHEET SUBMISSION & RESCHEDULING STATUS  
CONFERENCE**

**PLEASE TAKE NOTICE THAT** a status conference was held in this matter on Monday, September 26, 2022 to discuss noted discrepancies in the spreadsheets submitted to the Commission. At the Conference, the parties agreed to work together to:

1. resolve the issues around duplicate records;
2. ensure all 859 claimants without case numbers are assigned case numbers;
3. the EEOC columns removed by the Agency will be restored; and
4. the 3,276 records removed by the Agency will be restored with any accompanying information the Agency has for said records.

The parties' re-submission of a single, complete spreadsheet is due to the Commission on **Friday, October 21, 2022**

Also at the status, the Agency agreed to resubmit its notices of disputed claims with documentation and Claimants' counsel agreed to resubmit claimant claim forms with any supporting documents, encompassing the entire class of approximately 29,000 claimants **by Friday, October 21, 2022.**

The parties will mail the external hard drives to:

# Redacted

**PLEASE TAKE FURTHER NOTICE** that the October status conference is **re-scheduled** for **Monday October 31, 2022 at 11:00 am**

**It is So ORDERED**

**DATE:** September 27, 2022

**s/Monique J. Roberts-Draper**

Monique J. Roberts-Draper  
Administrative Judge

Redacted

**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 on September 27, 2022:

**Agency Counsel**

Redacted

**Counsel**

Redacted

Exhibit 9

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

**Redacted** \_\_\_\_\_  
**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**

**Monique J. Roberts-Draper  
Administrative Judge**

**November 3, 2022**

**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.<sup>1</sup>

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

\_\_\_\_\_  
<sup>1</sup> 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."<sup>2</sup>

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.<sup>3</sup>

The Agency is **FURTHER ORDERED** to:

a. Resolve the following duplicates:

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<sup>2</sup> 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.

<sup>3</sup> 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

**Redacted** - M-030222 & M072103 **Redacted** 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**

Redacted

**Counsel via Email**

Redacted

Exhibit 10

Redacted

ATTORNEY  
NATIONAL EMPLOYMENT LITIGATION UNIT



July 15, 2022

Redacted

Monique J. Roberts-Draper  
Administrative Judge

Redacted

Re: *McConnell* Litigation

Dear Administrative Judge Roberts-Draper,

Today, you will receive a separate email with a hyperlink to a secure file-hosting website that contains an Excel spreadsheet with the data responsive to your April 20, 2022 and May 10, 2022 email orders. In producing this data, the Postal Service is relying in part upon the EEOC's written assurances contained in your June 10, 2022 Order Denying Protective Order, including that the EEOC will place this data in EEOC/GOVT-1 system of records, that access will be limited to persons whose official duties require it, and that the data will not be disclosed in violation of the Privacy Act.

As you will see, the Postal Service has produced most of the requested data, with some very limited exceptions. Specifically, the Postal Service has not located a queryable database for personal phone numbers or personal email addresses and has not received this data from OPM.

Moreover, as reflected in the column headings, the Postal Service's data occasionally have different formatting from the EEOC's spreadsheet. For example, the EEOC requested whether NEEOISO disputed a claimant's status as QUID, but NEEOISO's data addresses qualified and disabled as separate data fields. Similarly, the EEOC requested whether NEEOISO disputed a claim, but NEEOISO's data addresses whether a claimant made a specific and detailed showing in support of a claim. In such circumstances, the Postal Service has produced data as it exists. Moreover, data pertaining to NEEOISO's 2018 evaluation of the claims have not been updated to reflect untimely documentation submitted after the claims deadline lapsed.

Additionally, the data concerning disparate treatment reflect NEEOISO's and the Postal Service's position that the Claimants did not plead disparate treatment as a standalone claim. Instead, disparate treatment was viewed as the theory underlying the harassment and denial

of reasonable accommodation claims (as opposed to the disparate impact theory rejected by the Commission). Indeed, it is difficult to imagine what a standalone, disparate treatment claim would even look like in this case. If the EEOC determines otherwise, then the disparate treatment claim would be disputed.

Finally, the Postal Service reserves the right to correct, update or supplement the data produced. While the Postal Service reviewed data samples to identify and correct systemic errors, it did not review every row or cell or the underlying databases from which it extracted the data.

Separately, Phase I Counsel will receive a hyperlink to a secure file-hosting website that contains all data for Phase II claimants who have designated Phase I Counsel as their legal representative for Phase II proceedings in accordance with the Commission's earlier orders. Phase I Counsel will not receive data for the other Phase II claimants that Phase I Counsel does not represent.

The Privacy Act does not allow for the Postal Service to produce protected information to Phase I Counsel without consent of the individual, an authorized use under the Privacy Act or a routine use as specified by the Postal Service. As Phase I Counsel has not been designated as Phase II counsel for certain claimants, consent does not exist. Moreover, neither the Privacy Act's authorized uses nor the Postal Service's routine uses permit disclosure to private counsel for individuals that private counsel does not represent under these unusual circumstances. *See* 04/20/2022 Email from AJ; 04/26/2022 Email from J.R. P. to AJ; 05/10/2022 Email from AJ; 05/12/2022 Status Conference Transcript; 05/29/2022 Email from V. W. III to AJ; 05/31/2022 Email from V. W. III to AJ; 06/14/2022 Email from D. H. to AJ; 06/14/2022 Email from B. B-E. to AJ.

While the Postal Service is not providing Phase I Counsel with data for the Phase II claimants that Phase I Counsel does not represent, the Postal Service confirms that it is providing the complete dataset to the EEOC. The EEOC may evaluate whether federal law (including the Privacy Act) permits it to transmit the complete dataset to Phase I Counsel and take further action that is consistent with federal law (including the Privacy Act). The Postal Service takes no position on whether EEOC routine uses allow for such disclosure.

Best regards,

**Redacted**

cc: **Redacted**

**From:** Redacted  
**To:**  
**Subject:** [EXTERNAL] Hearing Document Uploaded for Hearing Number, 520-2019-00271X  
**Date:** Friday, July 15, 2022 3:20:40 PM  
**Attachments:** [eeoc\\_color\\_seal1444981934990360855eeoc\\_color\\_seal](#)

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## U.S. Equal Employment Opportunity Commission

On Fri Jul 15 17:20:34 EDT 2022, Carol Leffler uploaded Hearing Document file "2022 07-15 USPS Letter to McConnell AJ re Spreadsheet Production.pdf" of type "Miscellaneous - Spreadsheet" associated with Hearing Number "520-2019-00271X" for "U.S. Postal Service"

*Notice of Confidentiality: The information contained in this transmission may contain privileged and confidential information, including information protected by federal and state privacy laws. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution, or duplication of this communication is strictly prohibited and may be unlawful. If you are not the intended recipient, please contact us at [digital-support@eeoc.gov](mailto:digital-support@eeoc.gov) and destroy all copies of the original message and attachments.*

**From:**  
**To:**

# Redacted

**Subject:** [EXTERNAL] McConnell (Velva B) vs. USPS EEOC Hearing No. 520-2020-00280X  
**Date:** Tuesday, May 31, 2022 11:22:31 AM

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**CAUTION:** This email originated from outside USPS. **STOP and CONSIDER** before responding, clicking on links, or opening attachments.

Dear Judge Roberts

Exhibit 11

I do not know if you will get this email or not because my prior emails indicated that you blocked me  
To all pro se complainants on this email - are YOU blocked?

I checked the class action website and found this

May 2022 – Status Update

In advance of the May 12, 2022 status conference, the EEOC Administrative Judge circulated a new spreadsheet with additional information requested. In particular, the revised spreadsheet now provides an opportunity for Phase 1 Class Counsel, our offices, to review and comment on the Agency's designation of claims for each claimant.

At the May 12, 2022 status conference, the EEOC Administrative Judge was once again joined by EEOC Administrative Judge McCauley and the data attorney from the EEOC. The Judge set deadlines by which the parties must submit their portions of the spreadsheet. The Agency must complete their portion by June 15, 2022 and Phase 1 Class Counsel shall complete their portion by July 15, 2022. The comprehensive spreadsheet must be filed by July 18, 2022.

We understand that there is some confusion as to the date when the spreadsheet submissions are due. We understand any references by the EEOC Administrative Judge to the year 2020 was made in error and instead refers to 2022.

Phase 1 Class Counsel asked about whether special masters will be utilized going forward, and requested additional information about the process that will be utilized in order to evaluate the claims. The EEOC Administrative Judge responded that she was not able to comment on those issues at this time, but emphasized that she (and others within the EEOC) are working on this matter each week and are committed to moving things forward as quickly as possible.

I did not know of that meeting. I was not provided the spread sheet that only had my information so that I could comment.

This denies me basic due process. I am now kept out of the information loop. I am now denied equal access to the administrative process. No one is representing me but me. This violates the very essence of the Commission's requirements, policies and procedures and is unethical.

I am not represented by Class Counsel. The spread sheet may only be their clients which to me means that I am not part of the settlement process and denied the opportunity to present my case.

Redacted