

Cynthia Bower
EEOC No. 551-2009-00074X
Re: Violation of Settlement Agreement by USDA ARS

Exhibit 1

Settlement Agreement

Not available due to confidentiality requirements

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This material is part of a collection that documents the harassment, discrimination, and retaliation perpetrated against Alaska's women research scientists by their supervisor, with full knowledge (and arguably, "tacit approval") of their federal employer, the USDA Agricultural Research Service (ARS)

Exhibit 2

Timeline for Requesting a W-2 Form

Timeline for Requesting a W-2 Form

27 February 2011

I emailed Ted Nykiel, supervisor of the USDA Agricultural Research Service (ARS) Pay and Leave staff (ted.nykiel@ars.usda.gov) to request tax documentation of my EEOC-mediated settlement award (which was paid to me by the agency in August 2010).

28 February 2011

Ted Nykiel forwarded my email to ARS Human Resources Assistant, Ashley Randall (Ashley.Randall@ars.usda.gov). However, I emailed them both a clarification of my request, (i.e. I wanted a corrected W-2 Form, not a 1099, due to the wage-based nature of my EEOC claim). Ms. Randall emailed contact information (301 504-1300) for the Budget and Fiscal Officer, Kim Parks. I called Ms. Parks, who promised to email me more information.

2 March 2011

Kim Parks (Kim.Parks@ars.usda.gov) emailed that she had left a message for the 1099 help desk at the National Finance Center regarding the issuance of a 1099 form. I requested a corrected W-2, since the EEOC-mediated settlement represented compensation for a wage-based complaint.

9 March 2011 (and again on March 14th and 15th)

I emailed Ms. Parks to check their progress, but did not receive the necessary tax documents, necessitating that I prepare a Form 4852 (Substitute for W-2) for my tax return.

18 March 2011

Before submitting Form 4852, I was required to contact the IRS (1-800-829-1040). I notified them that the USDA Agricultural Research Service (PO Box 60000, New Orleans, LA, 70160, ID# 72-0564834) had sent me an incorrect W-2 form (omitting the EEOC-mediated settlement award), even though I had contacted my employer (repeatedly) for a corrected copy. The IRS issued them a letter on my behalf (Reference #0143075196, IRS Letter Number LTR0062C).

31 March 2011

I called the IRS again (ID# 1000176887, Mrs. ?Acorn?), since I had not yet received a copy of the IRS letter. Everything had been sent to my previous (incorrect) Fairbanks address, instead of Kodiak. I requested that they issue another letter to the Agency using my current address in Kodiak. I was told that the second mailing probably wouldn't arrive in time, so I should include a 4852

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Form (substitute W-2) with my tax return when I file it. I was also advised to request a Tax Account Transcript from the IRS in June (to verify my record of income), so that I can file an amended return if new information was added to my tax record.

14 April 2011

I mailed my tax return (certified mail: USPS #70101870000277989781) to the Internal Revenue Service (P.O. Box 7704, San Francisco, CA, 94120-7704).

08 June 2011

I requested a Tax Account Transcript for 2010, to verify that no adjustments have been made to my tax record since I filed.

08 June 2011

The Tax Account Transcript for 2010 arrived June 16th 2011, verifying that the USDA had not sent the missing W-2 Form to the IRS.

20 June 2011

I sent a written request to the IRS (PO Box 9020, Holtsville, NY 11742-9020) asking for assistance in obtaining a W-2 Form from USDA. The IRS accepted the certified letter on June 27th, but never responded.

01 August 2011

I contacted the IRS (800-829-0922) again concerning the missing W-2 Form and was transferred to the Tax Law Department. An IRS employee (Mr. Frank, ID #1001306240) explained that all the IRS could do was to send a letter to the USDA (which it had already done on March 18th and March 31st). Mr. Frank said that the IRS has no authority to enforce U.S. tax laws and cannot do anything else to help me obtain the missing W-2.

02 August 2011

I am sending this Violation-of-Settlement-Agreement letter as the next logical step in my quest to obtain a W-2 from the USDA, in order to account for my Settlement income in accordance with U.S. laws.

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Exhibit 3

IRS Request for W-2



Department of the Treasury
Internal Revenue Service

P.O. BOX 9020
HOLTSVILLE NY 11742-9020

In reply refer to: 0143075196

Apr. 12, 2011 LTR 62C 3

201012 30

00000142

BODC: WI

CYNTHIA K BOWER
PO BOX 1383
KODIAK AK 99615

Taxpayer Identification Number:
Tax Year: 2010
Form: W-2

Employer/Payer Name: U S DEPARTMENT OF AGRICULTURE
Employer/Payer Address: PO BOX 29310
NEW ORLEANS, LA 70189

Dear Taxpayer:

WHY WE'RE SENDING YOU THIS LETTER

We're sending you this letter since you haven't received your form shown above, needed to file your tax return.

WHAT WE ARE DOING

We're sending your employer/payer a letter asking them to send you the form shown above.

WHAT YOU NEED TO DO

If you haven't received the form shown above from the employer/payer within two weeks prior to the due date of your return, file your return using the enclosed Form 4852, Substitute for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

You should complete Form 4852, estimating your income and withholding tax as accurately as possible. Attach Form 4852 and other Forms W-2, if applicable, to your tax return.

If you receive the form shown above from your employer/payer, have filed your tax return, and the information differs from the information reported on your return, you must amend your return by filing Form 1040X, Amended U.S. Individual Income Tax Return. You may obtain Form 1040X and Form 1040X instructions from the Internal Revenue Service website, www.irs.gov, or by calling the Forms and Publications toll-free number 1-800-829-3676.

001354

Apr. 12, 2011

LTR 62C 3

201012 30

00000143

CYNTHIA K BOWER
PO BOX 1383
KODIAK AK 99615

HOW TO CONTACT US

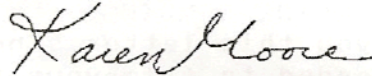
If you have any questions, please call us toll free at 1-800-829-0922.

If you prefer, you may write to us at the address shown at the top of the first page of this letter.

Whenever you write, please include this letter and, in the spaces below, give us your telephone number with the hours we can reach you. Also, you may want to keep a copy of this letter for your records.

Telephone Number _____ Hours Daytime

Sincerely yours,



Karen Moore, Dept. Mgr.
Toll Free Dept. 4, Ops. 2

Enclosure:
Form 4852

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Exhibit 4

U.S. law requires a W-2 not a 1099

U.S. Law Requires a W-2 not a 1099

I am seeking a corrected W-2 Form from my 2010 federal employer, the USDA Agricultural Research Service, so that my EEOC-mediated settlement award can be documented. Due to the wage-based nature of my EEOC complaint, a W-2 Form should be issued, rather than a 1099 Form. The following information cites U.S. laws and regulations supporting the issuance of a W-2 form.

1) USDA Awarded Taxable Settlement Money to Me

- In August 2010, during an EEOC-mediated negotiation, I signed a settlement agreement with the USDA Agricultural Research Service (ARS) that listed the monetary award as “payment of all of pecuniary, non-pecuniary and/or compensatory damages based on allegations raised in EEOC 551-2009-00074X”.

2) Tax Documentation was Not Furnished by USDA

- The USDA ARS did not provide tax forms to document my Settlement Award, in violation of:
 - U.S. Code Title 26 (section 6051), which requires an employer to furnish information returns (Form W-2, Wage and Tax Statement) to employees.
 - Entry #2 of the Settlement Agreement (negotiated between the USDA ARS and myself), which specified that “Taxes will not be taken from the amount being paid to Complainant, but the Agency will report this amount to the IRS.”
- The USDA ARS also ignored two requests (March 18th and March 31st) from the IRS (Letter Number LTR0062C, for inquiry #0143075196), thereby forcing me to file Form 4852 (Substitute W-2) with my 2010 Tax Return, instead of the correct tax documentation.

3) The USDA Award Settled a Wage-based Complaint

- The out-of-court settlement agreement, which I negotiated with the USDA ARS on August 19th 2010, failed to list the particular claims that were being settled (unfair hiring, promotion, and retention practices), nor did they allocate percentages of the award for back pay and front pay.
- The written settlement agreement listed the payment as remedying "pecuniary, non-pecuniary, and/or compensatory damages based on allegations raised in EEOC 551-2009-00074x", without specifically identifying the rights that were compromised by the Agency. In *Alexander v. Internal Revenue Service*, (72 F.3d 938, 942, 1st Cir.

1995), the court recognized the importance of determining which issues resulted in a monetary award.

- My EEOC complaint (#551-2009-00074X) stemmed from six wage-based grievances and two EEO complaints lodged against the agency.
 - **I was offered my job at lower GS and salary levels than the advertised position.** Unfair hiring practices due to gender discrimination constitute legal grounds for a plaintiff to receive back pay, (Title VII of the Civil Rights Act; The Equal Pay Act of 1963; Title 29 U.S. Code, Section 206 d).
 - **I was denied a promotion without being evaluated by objective, measurable criteria.** Settlement compensation for denial of promotion due to disparate treatment (employment discrimination) are considered to be wages, eligible for back pay, (Title VII of the Civil Rights Act; IRS Revenue Ruling 96-65).
 - **I was required to “voluntarily” resign as a condition of the Settlement Agreement despite no wrongdoing on my part.** When I met with the USDA representatives and EEOC mediator on August 19th 2010, I had no intention of losing my job that day; however, my “voluntary resignation” was written into the settlement agreement by the USDA, which suggests that a component of the settlement award represents front pay. The USDA provided no other options for me to escape the harassment, discrimination, and retaliation being perpetrated against me by my ARS supervisor, a man who had been named as a Respondent by every woman research scientist working for ARS in Alaska since he became a supervisor in 2003. I was not allowed to prepare for the separation or to mitigate the impact of sudden unemployment (at a time when the U.S. unemployment rate was 9.6%). It is now August 2011, and I am still unemployed.
 - **The entire settlement award should be considered W-2 wages from back pay and front pay.** The Lilly Ledbetter Fair Pay Act of 2009 allows back pay due to discrimination to be collected beyond three years.
 - **Back Pay:** GS 13 for six years, (a minimum of \$64,000, plus over \$11,000 in lost pay from the local Cost Of Living Adjustment).
 - **Front Pay:** I was a permanent USDA employee, with Superior annual performance ratings and an “h-index” (which measures scientific impact) over twice that of my GS-15 supervisor. I would likely have received an annual salary until my retirement,

had it not been for the unlawful activities of my supervisor.

4.) Wage-based Settlements are Reported on a W-2 Form, (not a 1099)

- Settlements resulting from wage-based claims (e.g. back pay and front pay) are reportable by the employer to the employee (and to the Social Security Administration) on a Form W-2.
 - The nature of my Back Pay claim is USDA's violation of:
 - Back Pay Act (5 U.S.C. § 5596(b)(1))
 - Equal Pay Act of 1963. (29 U.S.C. § 206(d))
 - Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, as amended by the Civil Rights Act of 1991
 - The nature of my Front Pay claim is USDA's violation of:
 - Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, as amended by the Civil Rights Act of 1991
 - Equal Pay Act of 1963 (29 U.S.C. § 206(d)).

5.) W-2 Wages are Subject to Tax Withholding

- U.S. Code Title 26 (section 6051) requires an employer to furnish information returns (Form W-2, Wage and Tax Statement) to the Social Security Administration, [according to Treas. Reg. §31.6051-2(a)].
- Federal Insurance Contributions Act (FICA) tax is owed on all remuneration paid by an employer to its employees, (See IRC §§ 3101; 3111).
- Back pay is considered wages for FICA, since individuals could not be made whole unless they received social security credit and any retirement benefits that would have resulted, [according to Internal Revenue Code § 3402(a)(1); Hemelt v. United States (supra 122 F.3d at 204); and Dotson v. United States (87 F.3d 682, 5th Cir. 1996)].
- The Social Security Administration is a benefits agency and must rely on the Federal Tax Authorities of the Internal Revenue Service to enforce penalties against employers who inaccurately report wages.