

*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

## 1

*This document is confidential and cannot be included here*

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# EXHIBIT

2

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United States Department of Agriculture  
OGC-Civil Rights Litigation Division  
1400 Independence Ave, SW  
South Building, Room 3312  
Washington D.C. 20250

August 2, 2011

Dear USDA Representative,

It has come to my attention that the U.S. Department of Agriculture (USDA) has violated the Settlement Agreement that we negotiated with the assistance of an Equal Employment Opportunity Commission (EEOC) mediator on August 19<sup>th</sup>, 2010. A copy of the Settlement Agreement has been attached as Exhibit 1.

According to Paragraph 2 of the Settlement Agreement:

*Content removed due to confidentiality requirements  
associated with USDA Settlement Agreements*

The Agency failed to abide by the terms of the Settlement Agreement when it refused to "report this amount to the IRS", despite my efforts to enlist their cooperation (Exhibit 2), supplemented with direct requests from the Internal Revenue Service (IRS) (Exhibit 3).

In addition to violating the terms of the Settlement Agreement, the USDA Agricultural Research Service (ARS) is also in violation of U.S. law (26 U.S.C. 6051), which requires an employer to furnish information returns (including annual W-2 Forms). Alternate tax documentation (such as a 1099 Form) is not appropriate for my Settlement income, since my EEOC case stemmed from wage-based complaints, which automatically require a W-2 Form (Exhibit 4).

Paragraph 13 of the Settlement Agreement stipulates:

*Content removed due to confidentiality requirements  
associated with USDA Settlement Agreements*

In Summary

1. The Agency failed to comply with terms of the Settlement Agreement by refusing to report my settlement income to the IRS (in accordance with Paragraph 2 of the Settlement Agreement AND as required by U.S. law).
2. I am providing written notice of the alleged noncompliance to both the USDA OGC-Civil Rights Litigation Division, and the USDA Director of the Office of Adjudication, as specified in Paragraph 13 of the Settlement Agreement.
3. This notice is timely (i.e. within 30 days of the date on which Complainant knew or should have known of the alleged noncompliance), since I first learned of the IRS's inability to enforce U.S. tax laws when I contacted their Tax Law Department on August 1<sup>st</sup>, 2011.

Therefore, pursuant to the Settlement Agreement, I am hereby requesting that the Agency immediately provide me with a W-2 Form to document the settlement income I received from the USDA in 2010, (an amount for which I was legally obligated to pay an additional \$ \_\_\_\_\_ to the IRS in April 2011).

I have abided by all terms of the Settlement Agreement and therefore I have an expectation that the Agency will likewise honor the terms of our Agreement. Thank you for your cooperation in this matter.

Sincerely,

Cindy Bower  
PO Box 1383  
Kodiak, AK 99615

Enclosures

- Exhibit 1: Settlement Agreement
- Exhibit 2: Timeline for Requesting a W-2 Form
- Exhibit 3: IRS Request for W-2
- Exhibit 4: U.S. Law Requires a W-2 not a 1099

**CERTIFICATE OF SERVICE**

For timeliness purposes, it shall be presumed that the parties received the foregoing Notice within five (5) calendar days after the date it was sent via first class mail or immediately upon e-mail delivery or confirmation of receipt by facsimile.

I certify that on 02 August 2011 the foregoing notice of Violation of Settlement Agreement by USDA was sent via First Class Mail to the following:

United States Department of Agriculture  
OGC-Civil Rights Litigation Division  
1400 Independence Ave, SW  
South Building, Room 3312  
Washington D.C. 20250

Director  
Office of Adjudication  
U.S. Department of Agriculture  
Whitten Building  
Washington D.C. 20250

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Cindy Bower  
PO Box 1383  
Kodiak, AK 99615

# EXHIBIT

3

*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)*

**U.S. DEPARTMENT OF AGRICULTURE  
OFFICE OF ADJUDICATION AND COMPLIANCE**

CYNTHIA BOWER,	)
	)
Complainant,	)
	)
v.	)
	)
TOM VILSACK,	)
SECRETARY, U.S. DEPARTMENT	)
OF AGRICULTURE,	)
	)
Agency.	)

**AGENCY'S RESPONSE TO CYNTHIA BOWER'S ALLEGATIONS  
OF NON-COMPLIANCE WITH SETTLEMENT AGREEMENT**

The United States Department of Agriculture's ("USDA") Agricultural Research Service ("ARS"), by and through its undersigned representatives, hereby timely responds to the Office of Adjudication's ("OA") inquiry, received by ARS on September 6, 2011, into Complainant Cynthia Bower's ("Complainant") allegations of non-compliance with a settlement agreement entered into by the Parties on August 19, 2010 (the "Settlement Agreement").

Complainant's non-compliance allegation, contained in her August 2, 2011, letter (the "August 2, 2011 Letter") is that the Agency "refused to report [Complainant's] settlement income to the IRS (in accordance with Paragraph 2 of the Settlement Agreement AND as required by U.S. law)." See August 2, 2011 Letter at pg. 2.

At this point in time, it appears that ARS accidentally did not report Complainant's settlement payment of \_\_\_\_\_ (herein the "Settlement Payment") to the IRS after paying Complainant the Settlement Payment. However, Complainant is incorrect when she states that ARS "**refused**" to report her Settlement Payment to the IRS. Conversely, Complainant admits that ARS did make efforts to report Complainant's Settlement Payment to the IRS. Specifically, at Exhibit 2 of her August 2, 2011 Letter, Complainant states that on March 2, 2011, Complainant received an email from Ms. Kim Parks, of the ARS Fiscal Operations Branch, where Ms. Parks admits to contacting the National Finance Center regarding the issuance of a IRS 1099 tax form to Complainant in conjunction with the Settlement Payment. Specifically, in the timeline at Exhibit 2 of her August 2, 2011 Letter, Complainant states:

**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 [IRS]

1099 form...

Unfortunately, however, it would appear Complainant's Settlement Payment was accidentally never reported to the IRS. Most significantly, Complainant has not incurred any loss or damages as a result of the Settlement Payment not being reported to the IRS. Further, ARS is currently taking action to remedy this accidental oversight and is reporting the Settlement Payment to the IRS.

In her August 2, 2011 Letter, Complainant also appears to request that the Agency issue to her an IRS W-2 form rather than an IRS 1099 form in conjunction with the Settlement Payment.

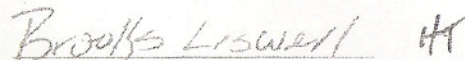
The relevant provision of the Settlement Agreement, reproduced in its entirety directly below, does not prescribe what tax form Complainant is supposed to receive:

*Content removed due to USDA confidentiality requirements*

Nor does the Settlement Agreement set forth whether the Settlement Payment is for lost wages or for other non-wage related compensatory damages. As such, the Agency is not required, by the terms of the Settlement Agreement, to provide Complainant a W-2 for lost wages. Complainant's request for a W-2 is outside the terms of the Settlement Agreement.

However, in conjunction with reporting Complainant's Settlement Payment to the IRS, the Agency is also ensuring all appropriate tax forms are being issued to Complainant. If a W-2 is deemed the appropriate tax form, Complainant will be issued a W-2.

Respectfully submitted,

  
BROOKS LISWELL  
Agency Representative  
U.S. Department of Agriculture  
Office of the General Counsel



Civil Rights Litigation Division  
1400 Independence Ave., SW  
South Building, Room 3324C  
Washington, DC 20250-1400  
202-720-5326 (voice)  
202-720-4089 (fax)  
brooks.liswell@ogc.usda.gov

**CERTIFICATE OF SERVICE**


I hereby certify that a copy of the foregoing Agency's Response to Allegations of Non-Compliance of Settlement Agreement has been sent by the following methods this the 16<sup>th</sup> day of September 2011 to the following:

U.S. Department of Agriculture  
Office of Adjudication  
1400 Independence Ave., S.W.  
Washington, DC 20250-9410  
202-690-2345 (fax)

**VIA ELECTRONIC MAIL**

Cindy Bower  
PO Box 1383  
Kodiak, Alaska  
99615

**VIA FIRST CLASS MAIL**

  
Helena Thompson  
Equal Employment Opportunity Specialist

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# EXHIBIT

## 4

*This exhibit consisted of one heavily redacted (semi-illegible) computer printout showing a Document Chain Report from USDA's Financial Management Modernization Initiative webpage. The Date of the entry was 8/31/2010, (presumably the date that the settlement award money was issued). The transaction was listed through "Accounts Payable", which is defined as "payment of vendors for goods or services" (according to [http://info.fmmi.usda.gov/Glossary/Glossary\\_home.html](http://info.fmmi.usda.gov/Glossary/Glossary_home.html)).*

*Apparently, rather than identify the money as an EEOC-mediated Settlement Award (paid to a USDA employee as compensation for harm incurred due to the Agency's unlawful activities), the USDA categorized my award as payment to a Vendor. By using this system, the Agency could "forget" to issue tax documentation without any oversight (or accountability for their actions).*

Document Chain Report - FMMI Portal - Production - Windows Internet Explorer

https://portal.fmmi.usda.gov/portal/

USDA United States Department of Agriculture  
Financial Management Modernization Initiative

Welcome Accounts Payable Accounts Receivable Cost Management Funds Management General Ledger Management Interface Table Maintenance

Invoice Process Invoice Approval AP Evaluation AP Reports IAS Interface Reports Advance Process BI Accounts Payable Reports BI Payroll Reports

### Document Chain Report

Business Activity

- Accounts Payable Reports
  - Display Line Items Report
  - Check Register Report
  - Number Ranges for Checks Report
  - Due Date Analysis for Open Items Report
  - Due Date Forecast for Open Items Report
  - Vendor List Report
  - Display Changes to Vendor Report
  - Down Payments List Report
  - List of Vendor Line Items Report
  - Electronic Funds Transfer Payment Query Report
  - Document Chain Report**
  - Accounts Payable Aging Report
  - Vendor PO Change Report
  - Payments Settlements List
  - Display List of Invoice Documents
  - Display Payment Status Report

### Display Document: Data Entry View

Menu Back Exit Cancel System Change Display/Change Mode Display Another Document Select Individual Object Display Document Header Disp

Data Entry View

Document Number [REDACTED] Company Code USDA Fiscal Year 2010

Document Date 08/31/2010 Posting Date 08/31/2010 Period 11

Reference [REDACTED] Cross-CC no [REDACTED]

Currency USD Ledger Group [REDACTED]

Item	Account	Description	Amount	Functional Area	Cost Center	Funded Program	Com	Tr Pnt Text
1	[REDACTED]	OpEx-LtgrnFeesAwrd		AGDEFAULT	[REDACTED]			CYNTHIA BOWER/LUMP SUM
2	[REDACTED]	CYNTHIA KAY BOWER		AGDEFAULT	[REDACTED]			CYNTHIA BOWER/LUMP SUM

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# EXHIBIT

## 5

*Exhibit 5 (dated 12/09/2011) was offered by the Agency as proof that they had finally sent tax documentation to the IRS; however, IRS personnel could find no record of this document.*

CORRECTED AS OF 12/09/2011

U.S. DEPARTMENT OF AGRICULTURE  
NATIONAL FINANCE CENTER  
P O BOX 60,000  
NEW ORLEANS, LA 70160

FEDERAL IDENTIFYING NO. 72-0564834  
2010 FORM 1099-MISC  
MISCELLANEOUS INCOME

RECIPIENT'S IDENTIFYING NO.   
ACCOUNT NUMBER: 00130839

CYNTHIA K BOWER  
PO BOX 1383  
KODIAK AK 99615

<u>TYPE INCOME</u>	<u>BLOCK NUMBER</u>	<u>AMOUNT</u>
OTHER INCOME	03	<input type="text"/>

THE ABOVE AMOUNT(S) REPRESENT NON-EMPLOYEE COMPENSATION,  
RENT, MEDICAL AND HEALTH CARE, OTHER INCOME, ROYALTIES,  
OR BENEFICIARY PAYMENT(S) TO YOU FOR THE FOLLOWING AGENCY  
OR AGENCIES:

AGRICULTURAL RESEARCH SERVICE

(SEE OTHER SIDE FOR INSTRUCTIONS TO RECIPIENT)

INSTRUCTIONS TO RECIPIENT

THIS IS IMPORTANT INFORMATION AND IS BEING FURNISHED TO THE INTERNAL REVENUE SERVICE. IF YOU ARE REQUIRED TO FILE A RETURN, A NEGLIGENCE PENALTY OR OTHER SANCTION MAY BE IMPOSED ON YOU IF THIS INCOME IS TAXABLE AND THE IRS DETERMINES THAT IT HAS NOT BEEN REPORTED.

NOTICE TO CORPORATIONS: PER IRS REGULATIONS, FEDERAL ENTITIES ARE REQUIRED TO REPORT PAYMENTS MADE TO CORPORATIONS FOR SERVICES PROVIDED DURING THE CURRENT TAX YEAR.

FOR CORRECTIVE ACTIONS, PLEASE FIRST CONTACT THE APPROPRIATE AGENCY/AGENCIES NOTED ON THE OPPOSITE SIDE. TYPES OF CORRECTIONS WOULD BE: (1) IMPROPER ISSUANCE OF FORM 1099; (2) INCORRECT RECIPIENT NUMBER (SOCIAL SECURITY NUMBER OR EMPLOYER IDENTIFICATION NUMBER); (3) INCORRECT PAYMENT AMOUNT; AND/OR (4) CORRECTIONS TO NAME OR ADDRESS FOR FUTURE PAYMENTS.

IF YOU HAVE ANY OTHER 1099 QUESTION(S), PLEASE CONTACT THE NATIONAL FINANCE CENTER AT 1-800-421-0323 AND REQUEST THE 1099 AREA OR CONTACT DIRECTLY AT 1-504-426-5376. INQUIRIES CAN ALSO BE SENT TO 1099HELPDESK@USDA.GOV.

OMB No. 1545-0115