

# **EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JUDGE ALEXANDER FERNÁNDEZ, an  
Administrative Law Judge at the United States  
Department of Housing and Urban Development  
who resides at [REDACTED]  
[REDACTED]

*Plaintiff*

v.

SHAUN DONOVAN, SECRETARY OF THE  
UNITED STATES DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT;

DAVID T. ANDERSON, Director, Office of  
Hearings and Appeals at the United States  
Department of Housing and Urban Development  
(in his professional capacity); and

MARCELA E. BELT, Chief Executive Officer  
at the United States Department of Housing and  
Urban Development (in her professional  
capacity).

*Defendants.*

Case: 1:10-cv-00185  
Assigned To : Leon, Richard J.  
Assign. Date : 2/2/2010  
Description: Employ. Discrim.

**COMPLAINT**

**COMPLAINT**

Plaintiff Administrative Law Judge Alexander Fernández, complaining against Defendant United States Department of Housing and Urban Development, Defendant David Anderson, and Defendant Marcela Belt (collectively “Defendants”), alleges as follows:

## SUMMARY OF ACTION

1. Judge Fernández brings this complaint of employment discrimination against Defendants based primarily on Defendants' acts of disability discrimination, harassment, discrimination on the basis of national origin, hostile work environment, and retaliation/reprisal for Judge Fernández' prior Equal Employment Opportunity ("EEO") activity. Judge Fernández also alleges that HUD interfered, and continues to interfere, with his independence as an Administrative Law Judge.

2. The acts complained of violate, *inter alia*, the Federal Rehabilitation Act, 29 U.S.C. §§ 791 and 794a; the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; the Federal Civil Rights Act, 42 U.S.C. § 2000e *et seq.*; the Federal Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*; 5 C.F.R. § 930.201; 24 C.F.R. §§ 26 and 180; and the Civil Service Reform Act, 5 U.S.C. § 7702.

3. Judge Fernández seeks (1) compensatory, (2) declaratory, and (3) injunctive relief based on the continued illegal, discriminatory, and retaliatory conduct that he has been subjected to by Defendants.

## PARTIES

4. Judge Fernández is a male citizen of the United States who resides in Arlington, Virginia. Plaintiff is of Cuban decent and suffers from various medical ailments. At all times relevant to this action through the present, Plaintiff was employed as an Administrative Law Judge ("ALJ") at HUD.

5. The United States Department of Housing and Urban Development ("HUD") is an Executive agency of the United States Government with an official address of 451 7th Street S.W., Washington, DC 20410.

6. Steve Preston was the Secretary of HUD from the time Judge Fernández began working at HUD in September 2008 through January 2009. Defendant Shaun Donovan has been the Secretary of HUD from January 2009 through the present.

7. At all times relevant to this action through the present, Defendant David Anderson has been the Director, Office of Hearings and Appeals (“OHA”) at HUD and Plaintiff Judge Fernández’ first or second level supervisor. Defendant Anderson is not, and never has been, an Administrative Law Judge. On information and belief, at all times relevant to this action and through the present, Defendant Anderson has served in a Senior Executive Service, or equivalent, position.

8. At all times relevant to her participation in the events transpiring in this action, Defendant Marcela Belt was the Chief Executive Officer at HUD. Upon information and belief, Defendant Belt retired from HUD in December 2009. Defendant Belt is not, and never has been, an Administrative Law Judge. On information and belief, at all times relevant to this action and through the present, Defendant Belt has served in a Senior Executive Service, or equivalent, position.

#### **JURISDICTION AND VENUE**

9. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343; 29 U.S.C. §§ 791 and 794a; 42 U.S.C. § 2000e *et seq.*; and 5 U.S.C. § 7702.

10. Jurisdiction is proper because Judge Fernández has exhausted all available administrative remedies.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because all of the actions Judge Fernández complains of took place in the District of Columbia within the jurisdiction of the United States District Court for the District of Columbia.

#### ADMINISTRATIVE PREREQUISITES

12. Judge Fernández has complied with all of the administrative prerequisites necessary to bring this action.

13. On November 4, 2008, Judge Fernández made a timely request for EEO Counseling and filed an informal complaint of discrimination with Defendant HUD's EEO Office.

14. On December 16, 2008, Judge Fernández timely filed a formal charge of discrimination with Defendant HUD's EEO Office.

15. Judge Fernández promptly and diligently responded to all EEO requests for information and fully cooperated in Defendant HUD's, and the U.S. Department of the Interior's, investigation of his complaint.

16. As of February 2, 2010, 413 days have passed since Judge Fernández initially filed his formal EEO Complaint and HUD has failed to complete an investigation into Judge Fernández' allegations.

17. HUD has failed to carry out its statutory duty to complete the investigation in a timely fashion.

18. Judge Fernández is therefore entitled to file this complaint before this district court. *See* 42 U.S.C. § 2000e-16(c); 29 C.F.R. § 1614.106.

## FACTS

19. More than five years ago, Judge Fernández was diagnosed with Fibromyalgia and Arthritis. His rheumatologist certified that these physical conditions limit Judge Fernández' ability to walk long distances. Shortly after receiving these medical diagnoses, Judge Fernández, based upon his medical condition, was granted a permanent Disabled Parking Placard by the Commonwealth of Virginia pursuant to Va. Code § 46.20-1240.

20. Judge Fernández also suffers from Cardiomyopathy and a bladder condition that requires him to self-perform a medical procedure three to four times a day. In addition, he suffers from frequent strong pain in his back and knees, and he is obese.

21. Judge Fernández has worked for the federal government since June 1991 and, since it became medically necessary, has been provided a parking space at each federal job he has held. It has not always been necessary for Judge Fernández to receive an accommodation in order to obtain these parking places, because parking has sometimes been readily available.

22. During his tenure with the Federal Government, Judge Fernández has previously served as a Trial Attorney, Deputy Associate Solicitor, and General Counsel.

23. Judge Fernández officially began to work as an ALJ at HUD on September 21, 2008. He first reported to work on September 22, 2008.

24. Judge Fernández is fully qualified and both mentally and physically able to perform the essential functions of an ALJ. However, due to his medical conditions, Judge Fernández requires an accommodation in order to transport himself to and from his office at HUD.

### Accommodation Request

25. A couple of days after he started working at HUD, Judge Fernández orally requested from Defendant Anderson a parking space in the building where he worked due to his medical disability.

26. From the very beginning, Judge Fernández told Defendant Anderson that he was not expecting a “free ride” and expected to pay what individuals at HUD’s “Main Campus” paid for disabled parking. Judge Fernández also explained that he had had access to handicapped parking at his Federal employment since his rheumatologist had indicated the need for a handicapped placard over five years ago.

27. On September 29, 2008, Judge Fernández made a second request for accommodation by sending an email to Ms. Marianne DeConti, the Administrative Officer, Office of the Secretary at HUD, that (1) notified her of his medical conditions and (2) requested that, as a result of these medical conditions, he be permitted to pay for an appropriate parking space.

28. On or around October 8, 2008, HUD offered Judge Fernández a parking space in the sub-basement of the main HUD building. As described to Judge Fernández, the proffered parking spot was approximately four flights of stairs beneath street level without elevator access. The only access up to street level consisted of pedestrian stairs or the automobile ramps. If Judge Fernández accepted this “accommodation” he would have to negotiate the stairs or dodge garage traffic.

29. As Judge Fernández’ medical disability routinely causes him to suffer prolonged pain and weakness after walking distances greater than one block, this offer was not a sufficient or reasonable accommodation.

30. Even if Judge Fernández was able to successfully exit the HUD building after he parked his car, the HUD building is four blocks away from where Judge Fernández works. And HUD offered no accommodation to assist Judge Fernández in getting to his workplace.

31. Due to HUD's failure to provide a suitable parking space in response to Judge Fernández informal request, and in an abundance of caution as no further request was legally required, on October 20, 2008, Judge Fernández filed a third request for accommodation.

32. In this request, Judge Fernández included a letter from his rheumatologist noting that Judge Fernández "has prolonged pain and weakness after walking over 1 block at a time" and that the rheumatologist therefore "support[s] a reasonable accommodation for [Judge Fernández] to be able to drive to work in order to avoid public transportation." On October 23, 2008, this material was forwarded to the office of HUD's Employee Assistance Program ("EAP").

33. HUD has never questioned the validity of Judge Fernández' medical disability.

34. HUD has never questioned the validity of Judge Fernández' need for an accommodation.

#### **Denial Of Accommodation Requests**

35. Despite repeatedly explaining his immediate need for an accommodation, HUD failed to provide an accommodation until February of the following year. During that time, HUD did nothing to assist Judge Fernández with regard to his request.

36. Because his medical disability precludes public transportation as a viable option, Judge Fernández was therefore forced to rely on others to transport him daily to and from his place of work for several months.



37. On October 30, 2008, Judge Fernández realized that his partner would not be available to drive him to and from work on November 6, 2008. Judge Fernández therefore sent an e-mail to his first-level supervisor Defendant Anderson which (1) noted that Judge Fernández' parking accommodation request had been outstanding for more than a month and was not yet resolved; (2) explained that Judge Fernández would not be able to obtain a ride home from work on November 6, 2008; and (3) requested that Judge Fernández therefore be permitted to work from home on that date. As his initial request for an accommodation (parking space) had not been granted, Judge Fernández requested this alternative accommodation as a temporary measure.

38. On November 3, 2008, Defendant Anderson issued a memorandum in response to Judge Fernández' e-mail. In that memorandum, Defendant Anderson denied Judge Fernández' request to work from home and stated that if Judge Fernández would not be in the office that day, he would have to submit a request for leave.

39. Judge Fernández spoke with HUD's Employee Assistance Program Director, Ms. Deborah Rizzo, about his concerns with Defendant Anderson's denial. Only after Ms. Rizzo corrected Defendant Anderson, did Defendant Anderson finally accede to Judge Fernández' request and, on November 5, 2008, rescind his initial memo, stating that "I have now been advised to grant your request to work at home on November 6."

40. Judge Fernández was ultimately able to obtain transportation to and from the office on November 6, 2008 and, as such, spent that day working at HUD.

41. Virtually the same situation arose one week later on November 13, 2009 as, due to HUD's lack of responsiveness to his parking accommodation request, Judge Fernández was again forced to request to an accommodation to work at home. Despite having dealt with an

identical situation the previous week, Defendant Anderson again failed to grant Judge Fernández' request in a timely manner.

42. Defendant Anderson ultimately only agreed to this request after repeated e-mail reminders from Judge Fernández and, for a second time, being told to grant this request by Ms. Rizzo.

43. When questioned by the EEO investigator about whether Judge Fernández' medical "impairment was considered in [Defendant Anderson's] actions," when Defendant Anderson determined whether to permit Judge Fernández to work from home on these two dates, Defendant Anderson admitted that he did *not* take Judge Fernández' disability into account. Instead, Defendant Anderson stated "that [Judge Fernández'] requests to work from home were not based upon reasonable accommodation, but was based solely on the lack of someone to drive him from his residence[.]"

#### **EEO Complaint**

44. Due to these and other discriminatory actions taken against him, on November 4, 2008 Judge Fernández filed a timely request for EEO Counseling and an informal complaint of discrimination with HUD's EEO Office.

45. As this EEO counseling and informal complaint failed to produce satisfactory results, on December 16, 2008, Judge Fernández filed a formal complaint of discrimination with HUD's EEO Office.

46. Despite these filings and repeated correspondence between Judge Fernández and his supervising officials, the discrimination suffered by Judge Fernández did not stop. Rather, the situation intensified.

47. Defendant Anderson and other officials at HUD engaged in a series of actions against Judge Fernández that involved further discriminatory conduct, harassment, retaliation/reprisal against Judge Fernández for filing the EEO Complaint, the creation of a hostile work environment, and the interference with Judge Fernández' judicial independence.

48. Defendant HUD is on notice of all of these incidents, as they are described in detail in correspondence from Judge Fernández and his Counsel to HUD and Defendant Donovan's Chief of Staff, Laurel Blatchford. Ms. Blatchford is Judge Fernández' second-level supervisor.

49. In particular, Ms. Blatchford has received numerous emails detailing many of Defendant Anderson's actions since the beginning of Ms. Blatchford's tenure at HUD.

50. Ms. Blatchford has ignored all of Judge Fernandez' e-mails and correspondence.

51. In addition, Judge Fernández has had numerous conversations with Linda-Bradford-Washington, Director, Office of Departmental Equal Employment Opportunity, and Jerry L. Holloway, Director, Equal Employment Opportunity Division, about the abuses he has suffered at HUD.

52. Ms. Bradford-Washington has reported, on several occasions, that she has fully briefed the Office of the Secretary on all of Judge Fernández' allegations.

53. Plaintiff hereby incorporates by reference all of the allegations raised in the formal EEO Complaint and associated correspondence, and will not repeat them verbatim here. A non-exhaustive representative sample includes the following improper and illegal actions.

**Improper Interference With The ALJs' Dockets And Judicial Independence**  
**(Note: these items are also pled as EEO violations)**

**Defendant Anderson Assigned Cases to ALJs Based on Political Motivations, Thereby Thwarting the Independent ALJ Process Established by the Administrative Procedure Act**

54. Judge Fernández was specifically hired by HUD because of his “special citations assessment, civil penalty enforcement, and extensive litigation experience....”

55. However, in or around October or November 2008, Judge Fernández became aware that Defendant Anderson was improperly assigning Civil Money Penalty cases to Administrative Law Judge Mahoney (the only other ALJ in the office) on a virtually exclusive basis.

56. When Judge Fernández questioned Defendant Anderson as to why Judge Fernández was not receiving Civil Money Penalty Cases to adjudicate, Defendant Anderson answered that Judge Fernández was not “sufficiently sophisticated” to adjudicate those cases, because they involved “very high” penalty amounts “in the hundreds of thousands of dollars,” and the Secretary was “particularly concerned” about those cases as they involved recovery for the “Treasury.”

57. On or around December 8, 2008, Judge Fernández brought these concerns, as well as other concerns, to HUD’s Ethics office where he spoke to two attorneys. During that meeting, Judge Fernández relayed his concerns to those attorneys regarding Defendant Anderson’s actions and how those actions not only violated the Administrative Procedure Act and the Ethical Canons federal employees must adhere to, but were also in retaliation for the EEO process Judge Fernández had initiated.

58. Weeks passed and Judge Fernández received no answer from the Ethics office. After two months of waiting, Judge Fernández finally received an email from Paula Lincoln,

Associate General Counsel, Office of Ethics and Personnel Law, telling him that “although the questions [he] raised are certainly legitimate concerns” there was, in essence, nothing her office could do about it.

59. In short, Ms. Lincoln closed Judge Fernández’ inquiry and took no further action, failing to even raise Judge Fernández’ concerns with his second-level supervisor, the Inspector General, or any other authority at HUD or within the Federal Government.

60. Defendant Anderson’s interference did not end with Civil Money Penalty cases. Early in Judge Fernández’ tenure, he was assigned a case dealing with Native American Housing issues (under the Native American Housing Assistance and Self Determination Act of 1996) wherein the Secretary withdrew his complaint after the parties had a conference before Judge Fernández.

61. Sometime after the Secretary withdrew that complaint, Judge Fernández noticed that he was no longer being assigned cases to adjudicate under NAHASDA.

62. During conversations with Defendant Anderson, in the presence of Judge Mahoney, Defendant Anderson told Judge Fernández that NAHASDA cases “required sensitivity to political considerations faced by the Secretary.”

Defendant Anderson Illegally Caused Notices to Be Issued on Judge Fernández’ Docket Thereby Usurping Judge Fernández’ Independence

63. In or around November 2008, Judge Fernández had several conversations with Defendant Anderson regarding Defendant Anderson’s repeated insistence on directing issuance of *Notices of Docketing* on ALJ cases, thereby interfering with the ALJ Docket.

64. Judge Fernández explained to Defendant Anderson that, as Defendant Anderson was not an ALJ, or for that matter a judge of any kind, he was not authorized to exercise

authority over an ALJ's docket and was thereby prohibited both from issuing *Notices* and/or other types of documents on an ALJ's docket and from telling the ALJs what types of orders they must issue.

65. Undeterred, Defendant Anderson caused the Docket Clerk, Ms. Becky Black, to issue *Notices of Docketing* on Judge Fernández' cases while Judge Fernández was on vacation for a few days.

66. Defendant Anderson caused the *Notices of Docketing* to be issued over Judge Fernández' objections, and with full knowledge that Defendant Anderson's own actions were in violation of the APA.

67. While still on vacation, on November 20, 2008, Judge Fernández sent an e-mail to Defendant Anderson reiterating his prior oral statements and emphasizing that Defendant Anderson's practice exceeds Defendant Anderson's authority and interferes with Judge Fernández' judicial administration of cases over which he presides.

68. Specifically, Defendant Anderson's issuance of *Notices of Docketing* on Judge Fernández' docket, rather than permitting Judge Fernández to carry out his statutorily mandated duty to issue a *Notice of Hearing and Order*, left unchecked, could have adversely affected the tolling of the statute of limitations in several of Judge Fernández' cases.

69. Defendant Anderson has admitted issuing these notices and told the EEO investigator that the ALJ Judges' "consent was not needed."

Defendant Anderson Illegally Corresponded with Parties Appearing before the ALJs, Thereby Usurping the ALJs' Independence

70. On or around May 12, 2009, Defendant Anderson received a letter from a respondent in a case being adjudicated by Judge Mahoney. Rather than immediately referring

the letter in question to Judge Mahoney, as the case was under Judge Mahoney's jurisdiction, Defendant Anderson engaged in *ex parte* communication with the respondent.

71. Respondent's case was listed as a pending case in Judge Mahoney's docket and appeared on the listing of the "ALJs OPEN DOCKET OF CASES." Undeterred, Defendant Anderson exceeded his authority by sending a letter to the respondent that incorrectly stated that the subject matter of her complaint "is not a matter over which the judges in this office have jurisdiction." Importantly, Defendant Anderson did not consult with Judge Mahoney prior to (or after) sending the letter. In addition, he did not advise counsel for HUD of his contact with Respondent.

72. It was only weeks after Defendant Anderson had engaged in the *ex parte* conduct that Judge Mahoney realized what had occurred, when he found the letter on the shared directory while searching for another document.

73. Months later, on or around November or December 2009, Defendant Anderson engaged in further *ex parte* communication on the same case. This time, he instructed the Docket Clerk to call counsel for HUD and instruct counsel that "Judge" Anderson wanted a Settlement Update filed in writing, rather than by telephone (as required by a previous order issued by Judge Fernández, who was serving as Settlement Judge). This time, Defendant Anderson failed to notify Respondent of his contact with HUD counsel in addition to usurping Judge Fernández' authority.

Defendant Anderson Illegally Thwarted Communication between the ALJs and the United States Department of Justice, Thereby Preventing the ALJs from Exercising their Judicial Independence

74. On September 17, 2009, Judge Fernández had one of his law clerks send an e-mail to DOJ informing them that in the future DOJ would only receive information relating to *Notices of Election* (provided in Fair Housing cases) after their issuance and that DOJ should address any inquiries regarding Fair Housing matters to a law clerk, rather than to the docket clerk.

75. Judge Fernández, in concert with Judge Mahoney, took this precaution because of irregularities that both he and Judge Mahoney had uncovered in the manner information was being provided to DOJ.

76. Upon seeing this e-mail, Defendant Anderson sent a five-paragraph e-mail response to DOJ that expressly overruled Judge Fernández' order.

77. When Judge Mahoney responded by sending an e-mail to DOJ stating that Defendant Anderson's position was not the preference of HUD's ALJs (who want the DOJ to comply with Judge Fernández' order), Defendant Anderson sent another e-mail to the DOJ stating that Defendant Anderson's order "supersede[s] the position which the two HUD ALJs prefer."

78. Defendant Anderson then sent a subsequent e-mail to Judge Mahoney stating that Judge Mahoney "may be" guilty of subordination.

79. In response to Judge Mahoney's further objections, Defendant Anderson promised to request an opinion from HUD's Office of General Counsel regarding the proper method of issuing these notices, but he never followed through on his promise, despite being reminded to do so by Judge Mahoney.



80. Ms. Blatchford was informed of this event and took no action, leaving Defendant Anderson's actions undisturbed.

Defendant Anderson Illegally Interfered with Control over the ALJ Docket

81. On or around September 25, 2009, ALJ Mahoney requested that Ms. Black provide docket numbers for the more than 100 Mortgage Review Board ("MRB") cases that had recently been directed to the ALJs. These docket numbers are critical for allowing judges to keep track of the numerous cases.

82. Rather than allow the ALJs to control these matters on their docket, Defendant Anderson instead circulated an e-mail throughout HUD's office that, without any justification, overruled Judge Mahoney's request.

83. Defendant Anderson "noted" the ALJ's objections to his decision, but stated that the ALJs should "respect the instructions contained in that directive."

Defendant Anderson Interfered with the Scheduling of ALJ Hearings

84. On January 5, 2009, Judge Fernández sent an e-mail to Defendant Anderson cautioning that two upcoming hearings scheduled in Puerto Rico might take longer than the three days allotted.

85. Judge Fernández suggested that, if that turned out to be the case, he stay in Puerto Rico an extra day, rather than incurring the greater expense of an additional round-trip flight to and from Puerto Rico.

86. Defendant Anderson responded by sending an e-mail that disparaged Judge Fernández' performance as an ALJ.

87. This e-mail response from Defendant Anderson's also states his intent to "in the future, closely scrutinize the time allotted for a Departmental hearing scheduled by [Judge Fernández] before approving requests for travel expenditures, stenographic services, and, where necessary, interpreters[.]"

88. Defendant Anderson's disproportionate e-mail response belittling and questioning the professional abilities of Judge Fernández copied two other employees (Ms. Black and Ms. Matos) and a Responsible Management Official (Defendant Belt) who were outside of Judge Fernández' supervisory chain.

89. On May 18, 2009, Judge Fernández requested approval of travel compensatory time for upcoming hearings that he was to preside over in Minnesota. In his e-mails, Judge Fernández expressly explained that "the hearings were scheduled as they were so that duplicate travel would be avoided (two cases were consolidated for hearing purposes), thereby saving monetary resources."

90. On or around May 20 and June 2, 2009, Defendant Anderson responded to this request by sending e-mails that (1) wrongfully accused Judge Fernández of trying to charge HUD for wasteful travel expenditures; and (2) improperly tried to influence and control the number of hearing days in the cases over which Judge Fernández was presiding.

91. Rather than simply directing his reply to Judge Fernández, Defendant Anderson again disparaged Judge Fernández by unnecessarily publicizing his May 20, 2009 e-mail to several of Judge Fernández' judicial and staff colleagues at HUD.

92. Defendant Anderson's obsession with the number of hearing days an ALJ allocates to conduct a hearing, knowing full well that if a hearing ended sooner than the

scheduled end date the ALJ would return to the office, culminated in an e-mail instructing the ALJs on how hearings should be scheduled while working for OHA.

Judge Fernández' Pleas to Management Went Unheard

93. Judge Fernández' attempts to appeal to senior HUD officials to stop Defendant Anderson's interference with ALJ independence were treated dismissively or altogether ignored.

94. On or around December 8, 2008, Judge Fernández met with HUD's Ethics office to discuss Defendant Anderson's improper assignment of cases. Two months later, on February 9, 2009, and after Judge Fernández continued to request that they take action, the Ethics office finally issued an e-mail in response. This e-mail, however, stated that while Judge Fernández raised "legitimate concerns," the Ethics office could not take any action regarding them. When Judge Fernández asked why "the issue I raised regarding being told by Defendant Anderson that 'I was not sufficiently sophisticated to handle the Secretary's concerns' regarding a particular type of case does not warrant a full ethics investigation," no answer was provided.

95. In addition, Ms. Laurel Blatchford, Chief of Staff at HUD, was specifically informed about several of these violations of the ALJs' independence – including the Mortgagee Board Review and Notice of Election issues. No action was taken by Ms. Blatchford, or anyone else at HUD, to stop Defendant Anderson's interference with the ALJs' judicial independence or to abate the hostile work environment that this created.

**Retaliatory, Discriminatory, And Harassing Conduct And Creation Of A Hostile Work Environment**

Prohibiting Contact with Docket Clerk

96. On April 21, 2009 Defendant Anderson further created a hostile work environment, discriminated, and retaliated against Judge Fernández by issuing a directive ordering Judge Fernández to cease all personal, oral, email, or phone contact of any kind with Ms. Black, the OHA's sole docket clerk.

97. As part of his directive, Defendant Anderson also stated that Ms. Black "agreed" to "terminate and cease all personal, oral, email, and phone contact of a personal or business nature with Judge Fernández indefinitely."

98. Defendant Anderson stated that this directive was necessary because Ms. Black had experienced an unspecified negative encounter with Judge Fernández. Defendant Anderson's directive was issued without warning and Judge Fernández was not provided with any explanation or reason for its issuance.

99. Defendant Anderson's April 21, 2009 directive prohibiting Judge Fernández from having any contact with Ms. Black had serious ramifications for Judge Fernández' efficiency and morale, as it is extremely difficult and awkward for Judge Fernández to conduct his job without being permitted to have any direct contact with the office's docket clerk.

100. Since then, Judge Fernández has been forced to get his docketing work done through intermediaries as he is not permitted to address Ms. Black directly.

101. When Judge Fernández was forced to speak with Ms. Black directly in order to issue certain judicial orders in a timely manner, Defendant Anderson retaliated by sending a two-page e-mail chastising Judge Fernández and stating that Judge Fernández' actions were in "direct

violation of [his] directives.” Defendant Anderson further accused Judge Fernández of insubordination and threatened to take further “corrective action” against Judge Fernández.

102. Judge Fernández promptly wrote to Ms. Blatchford, Chief of Staff at HUD, apprising her of the situation and requesting a meeting to discuss Defendant Anderson’s ban on Judge Fernández’ contacting Ms. Black due to the ban’s extreme impracticality, concealed basis, and clear retaliatory intent.

103. Once again, no action was taken by Ms. Blatchford or anyone else at HUD to remedy Defendant Anderson’s actions or the hostile and inefficient work environment they created.

104. On or around August 21, 2009, Defendant Anderson again retaliated against Judge Fernández by reprimanding Judge Fernández for insubordination, this time for “communicating” with Ms. Black by merely “replying all” to an e-mail originally sent by Defendant Anderson that included Ms. Black, among several others, on its list of recipients.

105. Once again, Judge Fernández brought this issue to the direct attention of Ms. Blatchford and, once again, no action was taken by Ms. Blatchford or HUD to remedy the situation or address the increasingly severe hostile work environment.

106. Remarkably, since Defendant Anderson issued his April 21, 2009 directive, Ms. Black has spoken to and/or initiated contact with Judge Fernández on multiple occasions, contrary to her “agreement” to refrain from such contact. Despite Defendant Anderson’s knowledge of these communications, Ms. Black, unlike Judge Fernández, has not been reprimanded or penalized. Defendant Anderson treats them disparately.

107. On August 18, 2009, Judge Fernández learned from Defendant Anderson that on an unspecified date, Ms. Black had allegedly filed an EEO Complaint against HUD, naming

Judge Fernández as a principal, although Defendant Anderson is actually her supervisor. HUD has never informed Judge Fernández of the specific context or charges of Ms. Black's complaint.

108. To the contrary, Ms. Linda Bradford-Washington, Director of ODEEO, repeatedly told Judge Fernández that he was not the subject of any EEO Complaints.

109. Upon information and belief, the first time Ms. Black raised any issue regarding her relationship with Judge Fernández was in April 2009. Immediately thereafter, Defendant Anderson issued his directive completely severing the professional ties between Judge Fernández and Ms. Black. Indeed, Defendant Anderson moved Ms. Black into an office previously occupied by an attorney and ultimately allowed Ms. Black to move to another office building while remaining HUD's sole docket clerk, despite protests from HUD's ALJs regarding the absurd impracticality and administrative burdens created by such an arrangement.

110. In contrast, despite Judge Fernández' filing of an EEO Complaint against Defendant Anderson, and despite Judge Fernández' repeated requests, Defendant Anderson has refused to remove himself from Judge Fernández' supervisory chain.

111. As a result, Judge Fernández has repeatedly requested that Defendant Anderson's supervisors step in to remove Defendant Anderson from Judge Fernández' supervisory chain, at least temporarily, in order to stop the ever-increasing retaliatory acts directed against Judge Fernández. These requests have also been ignored.

112. Defendant Anderson's decision to allow Ms. Black to transfer to another office location, yet keep her title and responsibilities, created significant inefficiencies, as no one at who remained at HUD's Office of Hearings and Appeals had been trained to perform Ms. Black's docket clerk responsibilities and Ms. Black's physical absence made it impractical for her to continue performing all of the tasks necessary to keep the ALJs' dockets running

efficiently. As such, on or around October 16, 2009, Judge Mahoney sent an e-mail to Ms. Black, copying Defendant Anderson, requesting that she provide a written summary of how to perform them. Judge Mahoney's request was never acted upon. To the contrary, Defendant Anderson ridiculed the request, thereby further undermining the authority of the ALJs over the OHA support staff and intensifying the hostile work environment.

**Retaliatory And Harassing Conduct And Discrimination On The Basis Of National Origin By Prohibiting Private Conversations In Spanish**

113. Defendant Marcela Belt was, until recently, the CEO of HUD and has represented the Secretary's Office in its dealings with HUD's EEO Office, the Office of General Counsel, and Judge Fernández.

114. Defendant Belt, Defendant Anderson, Administrative Judge Herman A. Manuel and Ms. Black have visibly and/or verbally disapproved of Judge Fernández communicating in Spanish with Ms. Matos, who is also of Hispanic origin.

115. In one particularly egregious example, Ms. Matos asked to speak with Defendant Belt regarding the problems Ms. Matos was having with Defendant Anderson. When, after several weeks of delay, Ms. Matos was finally able to meet with Defendant Belt, Defendant Belt told her that "If the problem is that you are going behind closed doors to talk in Spanish to Judge Fernández, then don't" and recommended that Ms. Matos instead "work on your relationship" with Defendant Anderson. In addition to the ethnic bias evidenced by this statement, it is telling that neither Judge Fernández nor Ms. Matos had told Defendant Belt about their private conversations.

116. As Defendant Belt does not work in OHA, she could only have learned that Ms. Matos and Judge Fernández met “behind closed doors,” or that they spoke Spanish together, if Defendant Anderson or another individual from OHA had told her.

**Breach of Confidentiality, Disparate Treatment, And Additional Examples Of Hostile Work Environment**

117. On information and belief, HUD’s EEO office maintained Defendant Belt (a Responsible Management Official) as the point-person in the Secretary’s Office, often advising her of conversations with Judge Fernández, and keeping her apprised of developments in the EEO case. This created a hostile work environment and thwarted the investigative process.

118. On information and belief, Defendant Belt provided an unofficial copy of Judge Fernández’ confidential EEO Complaint (or the information contained therein) to Defendant Anderson (a Responsible Management Official). This created a hostile work environment and thwarted the EEO investigative process.

119. On information and belief, during Ms. Matos’ interview for a position at OHA, Defendant Anderson improperly informed her that a Judge at HUD had filed an EEO Complaint regarding a parking space and metro transit subsidy.

120. Upon information and belief, during this interview, Defendant Anderson also indicated his belief that this claim was frivolous because Judges make too much money to be arguing about these types of matters.

121. Defendant Anderson’s decision to tell potential employees specific details about Judge Fernández’ then-pending EEO Complaint and to deride its merit perpetuated the hostile work environment already directed against Judge Fernández.



122. On or around March 26, 2009, Defendant Anderson retaliated against Judge Fernández by writing a memorandum to Judge Mahoney, on temporary detail as Acting Chief Administrative Law Judge, who was then Judge Fernández' first level supervisor, which stated that Ms. Matos improperly signed two Certificates of Service that allegedly should have been signed by Ms. Black. The memorandum then claimed that Judge Fernández, as the presiding Judge, was responsible for these mistakes and concluded by stating that Judge Mahoney's "effort toward rectifying these improprieties is appreciated."

123. This memorandum was copied to multiple individuals outside of Judge Fernández' supervisory chain of command, but not to Judge Fernández himself.

124. On April 20 and 21, 2009 HUD held a "facilitation" to address complaints within the office. Administrative Judge ("AJ") Manuel used this occasion to publicly berate Judge Fernández.

125. The very next day, on April 22, 2009, an OPM investigator arrived at HUD to conduct a background check for Judge Fernández' pending security clearance. Defendant Anderson retaliated against Judge Fernández by suggesting that the investigator meet with AJ Manuel to discuss Judge Fernández and escorted the investigator to AJ Manuel's office, where a lengthy discussion between the investigator and AJ Manuel ensued.

126. Defendant Anderson recommended AJ Manuel for this interview with knowledge of AJ Manuel's extreme dislike for Judge Fernández and despite the fact that AJ Manuel and Judge Fernández work in different offices within OHA, do not share a common workload, and do not engage in significant communication while at the office.

127. On information and belief, prior to June 10, 2009, Defendant Anderson and/or Defendant Belt shared or discussed the content of Judge Fernández' confidential EEO Complaint

with Administrative AJ Manuel, thus enhancing the hostile work environment already faced by Judge Fernández.

128. On June 10, 2009, AJ Manuel sent an e-mail to Administrative Law Judge Mahoney in which AJ Manuel asserted that Judge Fernández had filed a “questionable EEO claim” that was a “dubious attempt” by Judge Fernández “to shake down the Department [HUD] for \$300,000 and whatever else he can get.” Despite AJ Manuel’s decision to copy both Defendant Belt and Defendant Anderson on this e-mail slandering Judge Fernández, on information and belief, no disciplinary action was taken against AJ Manuel and the matter was never addressed or mentioned by OHA management.

129. On information and belief, Defendants Anderson and Belt have encouraged AJ Manuel’s behavior and have engaged in lengthy conversations regarding Judge Fernández’ claims and AJ Manuel’s personal views of Judge Fernández’ actions.

130. AJ Manuel has admitted casting his colleagues in a “negative light” to personnel within OHA. On information and belief, Judge Fernández is one such colleague. Indeed, AJ Manuel has publicly characterized Judge Fernández’ claims as “empty EEO threats.”

131. HUD’s indifference to AJ Manuel’s repeated public impugning of Judge Fernández’ character continued to foster the hostile work environment faced by Judge Fernández.

132. On or around June 23, 2009, Judge Fernández told Defendant Anderson that he would be attending an Administrative Law Judge Seminar and requested administrative leave for the two days of the conference.

133. When Judge Fernández asked what paperwork needed to be filled out in order to ensure that he remained covered for Workers Compensation while attending the conference,

Defendant Anderson refused to answer the question, despite having a responsibility to answer questions regarding workplace issues, and instead told Judge Fernández to “do your own legal research with respect to the applicability of FECA [the Federal Employees’ Compensation Act][.]”

134. On September 1, 2009, Defendant Anderson again retaliated against, and publicly reprimanded and humiliated, Judge Fernández by sending an email to all of the office’s ALJs and Administrative Judges that highlighted a new, perceived transgression by an unnamed “presiding judge” and gratuitously attached the non-redacted Certificate of Service identifying Judge Fernández, under the pretense of reminding everyone to review support staff’s work.

135. On information and belief, Defendant Anderson hosted an office luncheon, styled as a holiday party, for employees at OHA. This holiday party was held at the private club, where both Defendant Anderson and AJ Manuel are members, on Tuesday, December 15, 2009, during OHA’s core business hours – from approximately 12:00 pm to 3:00 pm.

136. Despite occurring in the middle of a work day, only selected employees (and at least one outside guest) were invited, and the participants were explicitly told not to inform the uninvited OHA employees about the party. Judge Fernández was neither invited nor informed about the party.

137. On information and belief, the employees who attended this holiday party did not use their personal leave time to do so. Defendant Anderson and HUD’s decision to hold a private office party, during prime working hours, and to intentionally exclude targeted workplace employees, was retaliatory and further exacerbated the hostile work environment.

### **Retaliatory Attempts To Relocate Judge Fernández Without His Consent**

138. On two separate occasions in May 2009, HUD attempted to physically relocate Judge Fernández to another building despite Judge Fernández' objections to moving and Judge Fernández' counsel sending HUD a cease and desist letter after the first attempt.

139. Judge Fernández was not given any notice about one of the attempted relocations; nor, despite repeated requests, was he provided with official orders regarding the moves or the definitive rationale behind the attempted relocation.

140. These retaliatory acts further created a hostile work environment.

### **Continuing Hostile And Discriminatory Acts Directed Against Judge Fernández**

141. The illegal discriminatory and retaliatory actions taken against Judge Fernández have not stopped and continue through the present day.

142. One such example includes Ms. Blatchford's denial of Judge Fernández' repeated requests to have legal counsel present at a meeting wherein she discussed Judge Fernández' EEO case with Judge Fernández, in the presence of at least one individual who had no legal right to be there.

143. The hostile work environment and retaliatory conduct taken against Judge Fernández culminated in his being placed on involuntary administrative leave from October 30, 2009 through December 14, 2009.

144. These additional actions are the subject of a separate formal EEO Complaint filed by Judge Fernández on December 10, 2009. Despite being filed more than seven weeks ago (as of February 2, 2010), and despite bringing the matter to the attention of HUD, Judge Fernández has not yet received any notice or confirmation from HUD of this filing and, on information and

belief, neither HUD nor the Department of the Interior has commenced an investigation into this complaint. Unless this investigation results in a satisfactory outcome, Plaintiff anticipates moving to consolidate these two EEO Complaints once all administrative remedies have been exhausted and the requisite deadlines have passed.

#### CLAIMS FOR RELIEF

First Count: Denial of Reasonable Accommodations: Discrimination based on Disability in Violation of the Federal Rehabilitation Act, 29 U.S.C. § 791 and the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*

145. The allegations contained in paragraphs 19 through 45 are incorporated herein by reference.

146. HUD's failure to timely provide Judge Fernández with his request for a reasonable accommodation forced Judge Fernández to rely on his partner to drive him to and from work every day. When his partner was unable to do so, Judge Fernández was forced to seek additional reasonable accommodations or be stranded at the office without transportation. The long-term denial of these reasonable accommodations violated the Federal Rehabilitation Act, 29 U.S.C. §§ 791 and the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*

147. The illegal denial of Judge Fernández' accommodation requests for several months resulted in Judge Fernández suffering repeated humiliation, depression, increased anxiety, and stress.

Second Count: Discrimination on the Basis of National Origin in Violation of the Federal Civil Rights Act, 42 U.S.C. § 2000e *et seq.*

148. The allegations contained in paragraphs 35 through 144 are incorporated herein by reference.

149. Judge Fernández was repeatedly discriminated against on the basis of his national origin in violation of Title VII of the Federal Civil Rights Act 42 U.S.C. § 2000e *et seq.* This discrimination caused Judge Fernández to suffer stress, depression, anxiety, embarrassment, damage to his professional and personal reputation, a decrease in his stature within the office, and the deterioration of his relationship with certain members of his staff.

Third Count: Retaliation/Reprisal in Violation of the Federal Rehabilitation Act, 29 U.S.C. § 791; the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; and the Federal Civil Rights Act, 42 U.S.C. § 2000e-3

150. The allegations contained in paragraphs 35 through 144 are incorporated herein by reference.

151. Due to the filing of his EEO Complaint, Judge Fernández was subjected to repeated acts of retaliation/reprisal in violation of the Federal Rehabilitation Act, 29 U.S.C. § 791; the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; and the Federal Civil Rights Act, 42 U.S.C. § 2000e-3. These actions caused Judge Fernández to suffer increased stress, depression, and anxiety, and to suffer embarrassment, damage to his professional and personal reputation, a decrease in his stature within the office, and the deterioration of his relationship with certain members of his staff.

Fourth Count: Harassment in Violation of the Federal Rehabilitation Act, 29 U.S.C. § 791; the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; and the Federal Civil Rights Act, 42 U.S.C. § 2000e-3

152. The allegations contained in paragraphs 35 through 144 are incorporated herein by reference.

153. Since September 2008, when he began working at HUD as an Administrative Law Judge, Judge Fernández' disability subjected him to repeated harassment from his supervisors and colleagues in violation of the Federal Rehabilitation Act, 29 U.S.C. § 791; the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; and the Federal Civil Rights Act, 42 U.S.C. § 2000e-3. This has directly affected Judge Fernández' ability to perform his job.

154. In addition, this harassment caused Judge Fernández to suffer increased stress, depression, and anxiety and to suffer embarrassment, damage to his professional and personal reputation, a decrease in his stature within the office, and the deterioration of his relationship with certain members of his staff.

Fifth Count: Violation of the Federal Administrative Procedure Act, 5 U.S.C. § 3105

155. The allegations contained in paragraphs 54 through 62 are incorporated herein by reference.

156. Defendant Anderson has repeatedly violated the Federal Administrative Procedure Act by assigning cases to HUD's Administrative Law Judges, including Judge Fernández, based on Defendant Anderson's political motivations rather than following the legal requirement that "Administrative Law Judges shall be assigned to cases in rotation so far as practicable." 5 U.S.C. § 3105; *see also* 5 C.F.R. § 930.201(f)

157. This caused Judge Fernández to suffer embarrassment, depression, anxiety, damage to his professional and personal reputation, and a decrease in his stature within the office.

Sixth Count: Interference with Judicial Independence in Violation of the Federal Administrative Procedure Act 5 U.S.C. § 551 et seq.

158. The allegations contained in paragraphs 44 through 144 are incorporated herein by reference.

159. Defendant Anderson and other supervisory officials repeatedly sought to interfere and curtail the judicial independence that Judge Fernández is entitled to as an Administrative Law Judge. These actions violate the Federal Administrative Procedure Act 5 U.S.C. § 551 *et seq.*, 5 C.F.R. § 930.201 (e) and (f), and 24 C.F.R. §§ 26 and 180.

**PRAYER FOR RELIEF**

WHEREFORE, for the reasons set forth above, Judge Fernández respectfully requests that this Honorable Court grant the following relief:

- (1) A declaration that HUD has repeatedly acted in a discriminatory, retaliatory, harassing, and hostile manner against Judge Fernández;
- (2) A declaration that HUD has repeatedly interfered with Judge Fernández' independence as an Administrative Law Judge;
- (3) An injunctive order requiring HUD to take specific corrective action for the discrimination and retaliation of Judge Fernández in the past and that it take appropriate steps to protect Judge Fernández from further acts of discrimination and retaliation in the future, including an order that Defendant Anderson, Defendant Belt, and Ms. Blatchford no longer be in Judge Fernández' supervisory chain;

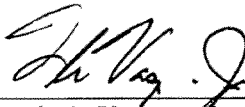


- (4) An order requiring HUD to expunge and withdraw, as if they never existed, any and all negative documentation and/or information (formal or informal) in Judge Fernández' Official Personnel File (or in any other location at HUD or within the Federal Government) that were either created by or based on allegations from anyone at HUD, including but not limited to the "Official Reprimand" issued against Judge Fernández by Defendant Anderson on November 24, 2009;
- (5) Awarding Judge Fernández compensatory damages of USD 300,000;
- (6) Awarding Judge Fernández reasonable attorney's fee and the costs and expenses of bringing this action against HUD;
- (7) Such other relief that is just and proper, including any pre- and post-judgment interest due;
- (8) All other relief to which Judge Fernández shows himself entitled to at law or in equity.

Dated: February 2, 2010

Respectfully submitted,

WHITE & CASE LLP

By   
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