

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. _____

THERESA ANN FOLEY
Plaintiff

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE
Defendant

COMPLAINT AND DEMAND FOR JURY TRIAL

I. Introduction

1. This is an action brought by Theresa Ann Foley, a Special Agent of the Federal Bureau of Investigation, based upon employment discrimination on the basis of disability, employment discrimination on the basis of gender and illegal retaliation she was subjected to while stationed at the **U.S. Naval Base at Guantanamo Bay Cuba**, assigned to interrogate detainees at Camp Delta.

2. Due to the discrimination and retaliation she was subjected to, Special Agent Foley (“SA Foley”) has suffered a variety of serious injuries including permanent physical damage to her leg and spine, a hysterectomy and extreme emotional distress. Ms. Foley is totally disabled at this time. SA Foley remains an employee of the Federal Bureau of Investigation (“FBI”), assigned to its Boston Field Office.

3. Among other things, Special Agent Foley claims that during the time she was stationed at Guantanamo Bay Cuba, there existed a pervasive atmosphere of sexual harassment and gender discrimination by employees of the FBI and other U.S.

Government entities, which contributed and fostered the discrimination to which she was subjected. The FBI knew of this pervasive atmosphere of discrimination, encouraged it,

and tolerated it. Defendant is Eric H. Holder, Jr., the Attorney General of the United States and the senior official of the United States Department of Justice, of which the FBI is a division. Mr. Holder is the head of the Department of Justice. Mr. Holder is sued in his official capacity. This action is brought pursuant to 42 U.S.C. §2000e et seq., 42 U.S.C. §2000e-16, and §501 of the Rehabilitation Act of 1973, 29 U.S.C. §791 et seq. and 29 U.S.C. §794a.

4. Due to discrimination against her based upon her gender (female), SA Foley contracted the tropical disease Leptospirosis while stationed at Guantanamo. After contracting Leptospirosis, SA Foley requested from the FBI a reasonable accommodation regarding this disability which would have enabled her to engage in firearms qualification while stationed at Guantanamo. SA Foley's request for a reasonable accommodation was improperly denied by the FBI (although a similar reasonable accommodation had been granted to her on a previous occasion), which resulted in SA Foley permanently injuring her leg during firearms qualification, and causing her Leptospirosis to spread further throughout her body. SA Foley's contracting Leptospirosis and the failure of the FBI to grant SA Foley a reasonable accommodation, caused her to suffer a variety of injuries including permanent physical damage to her leg and her spine, having to undergo a hysterectomy, and having to undergo extreme emotional distress. SA Foley is currently totally disabled, is receiving worker's compensation benefits, and is living at her parent's home in Boston. SA Foley's main caregiver is her Mother. It is not currently known whether or to what extent SA Foley will ever be able to return to work with the FBI or elsewhere.

II. Jurisdiction and Venue

5. Jurisdiction over this matter lies in this Court pursuant to 29 U.S.C. §791 et seq., 29 U.S.C. §794a, 42 U.S.C. § 2000e et seq. and §2000e-16. This Court has jurisdiction over civil rights claims arising under the laws of the United States involving Defendant pursuant to 28 U.S.C. §1343, and 42 U.S.C. §§2000e-16 and 2000e-5.

6. Venue in this District Court is proper because Defendant conducts business in the District of Massachusetts, the records related Plaintiff's employment are located, maintained and administered within the District of Massachusetts, and Plaintiff is employed by the Defendant within the District of Massachusetts. Additionally, but for the injuries she suffered due to the discrimination engaged in against her, SA Foley would currently be an active employee working for the FBI in Boston, Massachusetts. Finally, due to her total disability at this time, Plaintiff is residing at her family's home within the District of Massachusetts for medical reasons, and it would be a great and grave burden and hardship to Plaintiff, and seriously detrimental to her physical health for Plaintiff to have to litigate this matter against Defendant in a District other than the District of Massachusetts.

7. On January 26, 2007, Special Agent Foley filed a timely Charge of Discrimination on the basis of disability, gender, sexual harassment and retaliation against the FBI.

8. On April 13, 2009, the U.S. Department of Justice issued a Final Agency Decision in relation to Special Agent Foley's complaints of employment discrimination. That Decision was received by Special Agent Foley on or after April 14, 2009. Accordingly, Special Agent Foley has exhausted her administrative remedies and has timely invoked the jurisdiction of this Court.

III. The Parties

9. Plaintiff Special Agent Foley ("SA Foley") is a resident of Boston, Suffolk County, Massachusetts. She is a citizen of the United States. She is a female who suffers from a disability, the disease Leptospirosis and its various symptoms and complications. At all times relevant to this Complaint, Special Agent Foley has been employed by Defendant as a Special Agent with the Federal Bureau of Investigation. The matters at issue in this case took place outside of the United States, at the U.S. Naval Base and Detention Facility at Guantanamo Bay Cuba ("Guantanamo"). For the past 9 years, Special Agent Foley has been employed by the Defendant, as a Special Agent with the Federal Bureau of Investigation. Since 2005, SA Foley has been working in and assigned to the Boston Field Office of the Federal Bureau of Investigation, United States Department of Justice.

10. Defendant Eric H. Holder, Jr., is the Attorney General of the United States and is the most senior manager of the United States Department of Justice, Plaintiff's employer. The United States Department of Justice is the agency of the United States Government

within which the Federal Bureau of Investigation is an administrative department or division. The Federal Bureau of Investigation, United States Department of Justice has a business location in Boston, Suffolk County, Massachusetts and is an employer within the meaning of 42 U.S.C. §2000e(b), was engaged in an industry effecting commerce within the meaning of 42 U.S.C. §2000e, and in all other respects met all of the requirements for coverage under 42 U.S.C. §§2000e and 2000e-16, as well as under 29 U.S.C. §791 et seq.

11. At all times relevant to this Complaint, Plaintiff performed her job in at least a satisfactory manner.

IV. Factual Allegations

12. Theresa Ann Foley is an FBI Special Agent. She is a 43 year old female. During 2003 and 2004, SA Foley was stationed with the FBI at the U.S. Naval Base in Guantanamo Bay, Cuba, assigned to interrogate detainees at Camp Delta.

13. Prior to being employed by the FBI, SA Foley had a successful career for 12 years with the Drug Enforcement Administration. For many years her brother and sister-in law have served with distinction on the Boston Police Department.

14. SA Foley was first employed by the FBI in January 2000. In 2003, SA Foley requested, and was granted, a one-year temporary duty assignment to the detention facility for terrorists maintained by the U.S. Government at the U.S. Naval Base at Guantanamo Bay Cuba. SA Foley's assignment was to be the interrogation of detainees in Camp Delta at Guantanamo.

15. SA Foley first arrived at Guantanamo on October 7, 2003. When she arrived at Guantanamo, SA Foley was the first full-time female FBI Agent assigned to Guantanamo.

16. When she first arrived at Guantanamo, SA Foley was knowingly assigned by the male FBI administration at Guantanamo to the least desirable and least hygienic housing available to the FBI on the base. This assignment was made knowing that the particular housing was infested with rats and other vermin, and knowing that it was infested to a greater extent than was housing assigned to other FBI employees. This particular housing was assigned to SA Foley because she was female. Male FBI employees were assigned to superior housing. Among other things, a male FBI agent who arrived at Guantanamo the same time as SA Foley was assigned to much better and more hygienic housing which was not infested with disease carrying vermin, as was the housing to which SA Foley was assigned. At the time, the most dangerous housing (in terms of vermin infestation) was consistently assigned to female FBI employees.

17. The housing assigned to SA Foley upon her arrival at Guantanamo was infested with vermin, specifically, large rats. As a result of the rat infestation in her dwelling, SA Foley contracted the debilitating tropical disease Leptospirosis.

18. During the course of the FBI's internal EEO investigation of SA Foley's complaint of discrimination, a number of SA Foley's supervisors and managers submitted sworn affidavits stating that a certain FBI supervisory special agent had assigned SA Foley to her particular initial housing assignment at Guantanamo. That supervisory

special agent submitted an affidavit stating that not only had he not been involved in the assignment of SA Foley to her initial housing at Guantanamo, but that he was not even present at Guantanamo until several weeks after SA Foley arrived there, that some other (unnamed) agent had assigned SA Foley to her housing upon her arrival at Guantanamo, and that he did not know why she was given her particular housing assignment.

Additionally, the FBI EEO investigation refers to a “spreadsheet” which one of SA Foley’s supervisors prepared regarding the issue of housing assignments, but this document was not provided in the FBI EEO investigatory report.

19. The assignment of female agents to unsafe unhygienic housing at Guantanamo (when compared to the more hygienic housing assigned to male agents) was completely consistent with the generally sexist, discriminatory and “boys club” atmosphere prevalent at Guantanamo during the time SA Foley was assigned there. This pervasive sexually discriminatory and harassing atmosphere was at such an extreme, that it is accurate to describe the prevalent atmosphere as an “animal house” atmosphere. When FBI agents were not busy interrogating terrorists held at Guantanamo, they were expected and encouraged by their managers and supervisors to be sun bathing, snorkeling, fishing, drinking, carousing and engaging in romantic relationships with each other. Over the course of her stay at Guantanamo, once it became clear that SA Foley did not believe this conduct was appropriate for an FBI Special Agent, and refused to engage in this conduct, SA Foley was ostracized and maligned.

20. SA Foley observed the pervasive atmosphere of sexual discrimination at Guantanamo firsthand. Additionally, there exist photographs depicting the pervasive

atmosphere of sexual discrimination and sexual harassment present at Guantanamo at or close to the time period that SA Foley was present on the base. Specifically, the photographs depict personnel at Guantanamo engaged in drunken carousing in a sexually charged atmosphere, day and night. Various photographs show repeated instances of female employees in bathing suits or revealing attire sitting on the laps of male employees, and female employees being hugged, kissed and likely groped by male employees. The presence of alcohol is evident in many of the photographs and many of the personnel depicted appear to be intoxicated. Other photographs reveal, among other things, what appear to be intoxicated FBI employees wearing some type of mocking imitation of Arab or Afghan attire, and personnel at a Halloween party dressed in orange detainee jumpsuits (apparently as a joke). Still other employees appear to be completely intoxicated and engaged in various activities which indicate both a pervasive discriminatory atmosphere toward women, as well as behavior inappropriate for employees stationed at a detention facility for terrorists. Some of the behavior resembles stereotypical “spring break” behavior. This highly inappropriate behavior by FBI personnel and other U.S. Government personnel working at Guantanamo, was known by the FBI, was encouraged by the FBI, and was tolerated by the FBI

21. During October 2003, her first month at Guantanamo, SA Foley was subjected to sexually harassing remarks by another FBI Agent. That agent asked SA Foley why she was not dating, asked her whether she was a lesbian, asked her whether she hated men, and commented to SA Foley that her “nipples were leaking.” SA Foley complained about these remarks by reporting the agent’s sexually inappropriate remarks to one of her supervisors. That supervisor asked SA Foley if she planned on filing a sexual harassment

complaint. The harassing agent was removed from Guantanamo shortly afterwards, presumably due to his conduct toward SA Foley as well as other female employees working at Guantanamo.

22. As a result of being assigned to infested housing due to her gender, SA Foley came into contact with the feces and urine of rats, and was likely bitten by rats or their fleas. Due to that, she contracted the tropical disease Leptospirosis.

23. Leptospirosis is a bacterial/spirochete disease that affects humans and can affect animals. It is caused by bacteria of the genus *Leptospira*. Basically, Leptospirosis is contracted through exposure to the feces and urine of rodents, in particular rats, or their fleas. Leptospirosis has a quick gestation period. At the time that SA Foley was present on Guantanamo (October 2003 through July 2004), Leptospirosis was common in Cuba, particularly that part of Cuba in which Guantanamo Bay Naval Base is located. It is not known whether any detainees imprisoned at the U.S. Naval Base at Guantanamo contracted or suffered from Leptospirosis during the time period that SA Foley was present at Guantanamo Bay Naval Base, and if such exposure occurred, whether U.S. Government officials knew the likelihood of such exposure.

24. Due to the exposure to Leptospirosis SA Foley experienced, due to the severe infestation of her housing unit, she was infected with Leptospirosis almost immediately and had a multitude of symptoms within days of her exposure.

25. SA Foley's initial symptoms due to Leptospirosis consisted of bites all over her body, breathing issues, swollen joints and muscles, fatigue, and numerous other issues.

Due to the rat infestation not being completely or properly remediated, SA Foley was exposed to Leptospirosis over a number of weeks and months. This exposure caused a weakening in her immune system, and the leptospirosis bacteria affected her ability to fight infection. This caused breathing issues in her lungs and sinus cavities.

Additionally, SA Foley was treated for swollen muscles, particularly her legs, was treated with steroids and received extensive physical therapy so that the swelling would dissipate.

26. SA Foley was diagnosed as suffering from Leprospirosis when she returned to Boston for medical treatment in January 2004, after having sought treatment at the U. S. Naval Hospital at Guantanamo and at the Cleveland Clinic in Ft. Lauderdale, Florida. During January 2004, SA Foley's diagnosing physician wrote in a letter describing her condition, that SA Foley's illness (the Leptospirosis) interfered with her ability to work.

27. After her diagnosis in January 2004, SA Foley returned to the U.S. Naval Base at Guantanamo Bay Cuba, and continued to serve there as a Special Agent, although her medical and physical condition continued to deteriorate. In particular, in the months after January 2004, SA Foley had continually increased difficulty walking, kneeling and using her right leg, among other symptoms and difficulties. During January 2004, SA Foley informed her managers and supervisors of her disability, her illness, Leptospirosis.

28. After her return to Guantanamo in January 2004, SA Foley did her best to remain at Guantanamo and do her job. However, because SA Foley had complained of sexual

harassment, because she had complained of other inappropriate actions by various of her coworkers and because she was not viewed as part of the “FBI family” due to her refusal to engage in the “Club Med” atmosphere engaged in by other agents, SA Foley was both hindered in doing her job and was not given the reasonable accommodations to her disability to which she was entitled.

29. By the Spring of 2004, SA Foley’s physical condition had worsened.

Specifically, her pain and swelling in her legs grew worse, she had greater difficulty walking, and she had greater difficulty in bending her legs or her knees, in particular her right leg and right knee.

30. At the order of FBI management at Guantanamo, FBI agents on Guantanamo were required to undergo firearms qualification starting in March or April 2004. Due to her disability and certain of the symptoms caused by her disability (limitations in bending her knees and her legs), SA Foley requested, and was allowed, the reasonable accommodation of being permitted to shoot her weapon from a standing position during her firearms qualification in March or April of 2004. SA Foley had informed the FBI manager in charge of firearms qualification that she could not bend her right leg due to her disability, the leptospirosis, and this individual agreed to modify the firearms qualification so that she could qualify. This manager who conducted the qualification stated in an affidavit submitted during the FBI EEO investigation of this matter, that SA Foley was allowed to qualify by shooting from a standing position without getting into the kneeling or prone positions “because of her medical issues.” Accordingly, in March

or April 2004, SA Foley engaged in the required firearms qualification at Guantanamo without being required to engage in the prone or kneeling positions, as would have otherwise been required.

31. From March 2004 through May 2004, SA Foley continued to receive treatment for her medical condition, her disability and the symptoms she suffered from due to her disability. Despite these continued treatments, SA Foley's medical condition worsened from March 2004 through May 2004. The pain and swelling in her legs grew even worse, she had even greater difficulty walking, and she had even greater difficulty in bending her legs or her knees, in particular her right leg and right knee.

32. On or about May 13, 2004, one of SA Foley's supervisors at Guantanamo, Supervisory Special Agent Ehrie, told SA Foley that he had a "problem" with her firearms qualification. Supervisory Special Agent Ehrie told SA Foley that she was required to engage in firearms qualification in "proper fashion" by shooting from a kneeling and prone position, and that if she did not do that, there could be a question about her fitness for duty. By these words, Supervisory Special Agent Ehrie was informing SA Foley that her job was at risk if she requested a reasonable accommodation regarding firearms qualification, that SA Foley would not be allowed a reasonable accommodation regarding firearms qualification, and that SA Foley was required to engage in firearms qualification in a kneeling and prone position despite her disability and her need for a reasonable accommodation. SA Foley was required by her supervisor to engage in firearms training, but was not allowed to engage in such training with the

reasonable accommodation of attempting to qualify from a modified (standing) shooting position.

33. As Supervisory Special Agent Ehrie had threatened SA Foley with the loss of her job if she insisted upon a reasonable accommodation to her disability regarding her firearms qualification, and as he had denied SA Foley the reasonable accommodation she had requested, SA Foley attempted to engage in firearms qualification by shooting from a kneeling and prone position. However, when SA Foley knelt on her right knee during the firearms qualification, she heard a “ripping noise,” and was in such excruciating pain that she was unable to fire her weapon, she was unable to move her leg, and the person conducting the firearms qualification had to unload her weapon for her. SA Foley had torn muscles in her right leg, due to being denied the reasonable accommodation she had requested.

34. In relation to the May 2004 firearms qualification, SA Foley was pressured, coerced and compelled, under threat of being considered unfit for duty and losing her job with the FBI, to engage in firearms training with no reasonable accommodation to her disability. SA Foley specifically requested and was specifically denied a reasonable accommodation to her disability. SA Foley was clearly informed that if she did not pass the firearms qualification without a modification, without a reasonable accommodation, she would be considered unfit for duty. To the contrary, during the EEO investigation of this matter, various FBI managers and supervisors indicated that firearms qualification was not required at Guantanamo. Most notably, agents did not carry their weapons while assigned to Guantanamo.

35. Although previously SA Foley's firearms qualification had been modified as an accommodation to her disability (the leg problems and related problems she was having due to the Leptospirosis), the second time she attended firearms qualification the FBI refused to make any accommodation to her disability. As a result of being required to shoot from a kneeling position, SA Foley tore her leg muscles. The damage to SA Foley's leg muscles (in particular the right one) due to her attempt to rise on her leg to a kneeling position from a prone position (which she had to do due to being required to shoot from a kneeling and prone position), allowed the Leptospirosis to enter her leg muscle and her bone and has caused severe and permanent damage to her leg. Once SA Foley engaged in a prone position (as was required of her) during her firearms training, and attempted to kneel on her right leg (as was required of her), the swollen leg muscles split, causing the bacteria to enter the muscle and affect the bone marrow. The bone marrow was destroyed by this bacteria and did not re-generate. Thus, permanent damage was sustained to SA Foley's right leg. A cranial stem fluid leak occurred due to the bacteria invading and destroying a portion of her cranium. The injuries SA Foley suffered as a result of the firearms qualification incident, enabled the Leptospirosis to spread further into her central nervous system.

36. The injuries SA Foley suffered due to her being denied a reasonable accommodation regarding her May 2004 firearms training, allowed her illness to spread within her body, and caused it to become much more severe and debilitating than it otherwise would have been, and to have a much greater impact upon her than it otherwise would have had.

37. In July 2004, SA Foley traveled to Boston to conduct certain work related interviews, and to have surgery related to her disability. Shortly after SA Foley's surgery, she was advised by her physicians not to return to Guantanamo for medical reasons related to her disability. SA Foley informed her supervisors at Guantanamo that for medical reasons she would not be able to return to Guantanamo, and she was placed on leave. Since July 2004, SA Foley has resided in her parents' home in Boston, while being treated for her medical conditions. SA Foley has never returned to Guantanamo.

38. In November 2003, SA Foley first applied for benefits under the federal workers compensation program, "OWCP." However, SA Foley did not receive workers compensation wage payment benefits until February, 2005, and until February 2005 SA Foley's receipt of OWCP medical benefits (and thus the payment of her extensive medical bills) was inconsistent and sporadic. SA Foley took all actions which were required and appropriate for her to take in order to receive these benefits. The inordinate and improper delay in SA Foley receiving these benefits was not due to any fault of SA Foley, but rather, was due to the actions of the FBI in intentionally delaying the processing of her claim or intentionally interfering with the processing of her claim.

39. SA Foley underwent surgery on her right leg in July 2005 in an attempt to repair the damage she suffered from the firearms incident. Due to her limping on that leg, SA Foley's lower spine cracked. Once the spine cracked, the L3, L4 and L5 discs collapsed. This necessitated a spinal fusion be conducted in April 2006. A rod and plate were placed in SA Foley's spine, along with screws. The L5 disc could not be fused as this

would have limited mobility in SA Foley's spine. Thus, on a frequent basis since 2006, SA Foley has had to undergo painful injections with a steroid and cortisone injection.

40. Once SA Foley's spine collapsed, her central nervous system was affected, which caused her female organs to be less able to fight infection, which was compounded by the *Leptospira* affecting her autoimmune system. Unfortunately, after an attempt to save SA Foley's female organs in March 2007, a hysterectomy had to be performed on SA Foley in June 2007.

41. SA Foley underwent surgery in April 2008, due to a return of the original infection. Specifically, a cranial, upper sinus infection had returned and a cranial stem fluid leak was threatening once again.

42. SA Foley has so far had to undergo more than seven surgeries due to the injuries she has suffered which were caused by discriminatory treatment of her at Guantanamo. SA Foley had been an avid runner and athlete. She now walks only with difficulty. Numerous painful medical procedures have been conducted on SA Foley from the beginning of her contracting this disease in October 2003 until the present time, and further procedures will be required in the future. The losses SA Foley has suffered and will continue to suffer are extreme. At the present time SA Foley is totally disabled, and is living in her parents' home in Boston. She is assigned to the Boston Field Office of the FBI (where she has been assigned since December 2005), but she is not working, and is receiving workers compensation benefits. She continues to receive treatment for her

medical condition. Many of her various physical injuries are permanent, and her emotional distress due to the actions of the FBI set forth in this Complaint, are severe.

43. SA Foley contacted an EEO Counselor with the FBI regarding the matters set forth in this Complaint in March 2005. By letter dated April 17, 2006, and in accordance with 29 CFR Section 1614.604, the FBI agreed to waive any time limits which might otherwise be applicable under 29 CFR to the initial contact with an EEO Officer regarding this matter. For a substantial period of time her claims were not acted upon in any manner by the FBI's EEO Office. Once her claims were finally investigated, the investigation of her claims was not completed until January 2008. A final Department of Justice decision regarding SA Foley's EEO complaint took over a year to complete, was issued on April 13, 2009, and was received by SA Foley on or after April 14, 2009. SA Foley has fully exhausted her administrative remedies in this matter, has done so in a timely manner, and has timely invoked the jurisdiction of this Court.

44. The actions set forth above for which Defendant is responsible, constitute discrimination against Plaintiff due to her gender, in violation of 42 U.S.C. §§2000e-2000e-16.

45. The actions set forth above for which Defendant is responsible, constitute discrimination against Plaintiff due to a real or perceived disability and the failure to accommodate a disability, in violation of 29 U.S.C. §791 et. seq.

46. The actions set forth above for which Defendant is responsible, constitute retaliation against Plaintiff for having invoked her rights under the civil rights laws and for having opposed discriminatory practices, and having engaged in protected EEO activities, in violation of 42 U.S.C. §§2000e and 2000e-16, 29 U.S.C. section 791 et seq., and 29 CFR section 1614.101(b).

47. Defendant is fully responsible and liable for all of the actions set forth above which were engaged in by Plaintiff's supervisors or managers.

48. The actions of Plaintiff's supervisors or managers as are set forth above for which Defendant is responsible, constitute illegal discrimination on the basis of a real or perceived disability, the failure to accommodate a disability, discrimination on the basis of gender, and retaliation for exercising protected rights under the civil rights laws, engaging in protected practices, and opposing discriminatory practices.

49. The actions of Plaintiff's supervisors or managers for which Defendant is responsible as set forth herein were intentional, willful and knowing.

50. The actions of Plaintiff's supervisors or managers for which Defendant is responsible as set forth herein, have caused Plaintiff to suffer severe emotional pain and suffering as well as substantial financial injuries. Those injuries will continue into the future.

COUNT I

AGAINST DEFENDANT FOR DISCRIMINATION ON THE BASIS OF GENDER

IN VIOLATION OF 42 U.S.C. §§2000e et seq. and 2000e-16

51. The Plaintiff realleges and incorporates by reference as if fully set forth herein ¶¶ 1-50 above.

52. By the actions set forth above, including but not limited to being assigned to unsanitary housing, being required to undergo firearms qualification, being required to undergo firearms qualification without modification, being subjected to disparate terms and conditions of employment when compared to her male coworkers, having had her workers compensation benefits delayed, and being subjected to a hostile working environment, Plaintiff has been subjected to discrimination on the basis of gender by the FBI, in violation of 42 U.S.C. §§2000e and 2000e-16. Defendant is responsible and liable for this discrimination.

WHEREFORE, Plaintiff demands that this Court enter Judgment in her favor and against Defendant, in an amount to be determined by this Court, including monies to compensate her for lost pay, lost benefits, emotional pain and suffering, injury to her career, lost future earning capacity, interest, costs, attorney's fees and such other and further relief that this Court deems just and proper.

COUNT II

**AGAINST DEFENDANT FOR DISCRIMINATION ON THE BASIS OF A REAL
OR PERCEIVED DISABILITY, AND THE FAILURE TO ACCOMMODATE A
DISABILITY, IN VIOLATION OF 29 U.S.C. §791 ET SEQ.**

53. The Plaintiff realleges and incorporates by reference as if fully set forth herein ¶¶ 1-52 above.

54. From prior to May 2004 (when she was denied a reasonable accommodation regarding firearms qualification) to the present date, Plaintiff has suffered from a disability within the meaning of the Rehabilitation Act, 29 U.S.C. §791 et seq., and has also been perceived by her employer as suffering from a disability. That disability has consisted of the infectious disease leptospirosis, chronic orthopedic problems caused by leptospirosis, orthopedic problems regarding her legs, difficulty walking, difficulty bending her legs, and other symptoms related to her suffering from leptospirosis. From prior to May 2004 to the present date, Plaintiff has had a disability as that term is defined in the Rehabilitation Act, as her disability substantially limits one or more of her major life activities, specifically, working, walking and bending her legs. From prior to May 2004 to the present date, Plaintiff has had a disability as that term is defined in the Rehabilitation Act, as she has had a record of having an impairment which substantially limits one or more of her major life activities, specifically, working, walking and bending her legs. From prior to May 2004 to the present date, Plaintiff has had a disability as that

term is defined in the Rehabilitation Act, as she has been regarded by her employer as having an impairment which substantially limits one or more of her major life activities, specifically, working, walking and bending her legs.

55. At all times relevant to this complaint prior to July 2004, Plaintiff has been a qualified individual with a disability in that she was able to perform all of the essential functions of her job with or without a reasonable accommodation.

56. The disability Plaintiff suffered from in May 2004 was not a temporary disability, nor was it intermittent or sporadic.

57. During the time that Plaintiff was working for the FBI at Guantanamo, and during the one year period that she was scheduled to remain at Guantanamo working for the FBI, it was not an essential function of Plaintiff's job that she be able to shoot a firearm from a kneeling or prone position, it was not an essential function of Plaintiff's job that she carry a firearm, and it was not an essential function of Plaintiff's job that she undergo firearms qualification.

58. By the actions set forth above, including but not limited to being required to undergo firearms qualification, being required to undergo firearms qualification without modification and without a reasonable accommodation, being subjected to disparate terms and conditions of employment when compared to her coworkers, having her workers compensation benefits delayed, and being subjected to a hostile working

environment, despite the FBI's knowledge of Plaintiff's disability, Plaintiff has been subjected to discrimination on the basis of a real or perceived disability by the FBI, and the FBI has failed to make a reasonable accommodation to Plaintiff's disability, all in violation of 29 U.S.C. §791 et seq. Defendant is responsible and liable for this discrimination and the failure to make a reasonable accommodation to Plaintiff's disability.

WHEREFORE, Plaintiff demands that this Court enter Judgment in her favor and against Defendant, in an amount to be determined by this Court, including monies to compensate her for lost pay, lost benefits, emotional pain and suffering, injury to her career, lost future earning capacity, interest, costs, attorney's fees and such other and further relief that this Court deems just and proper.

COUNT III

AGAINST DEFENDANT FOR RETALIATION

59. The Plaintiff realleges and incorporates by reference as if fully set forth herein ¶¶ 1-58 above.

57. As is set forth above, Plaintiff engaged in protected EEO activity while stationed at Guantanamo, by complaining of sexual harassment and by requesting a reasonable accommodation to a disability. As a result of engaging in that protected EEO activity, Plaintiff suffered an adverse employment action, and a physical injury, and was subjected

to a materially adverse action which would have dissuaded a reasonable employee from making or supporting a charge of discrimination. There exists a causal nexus (both temporally and otherwise) between the protected EEO activity engaged in by Plaintiff and the adverse action and materially adverse to which she was subjected.

58. By the actions set forth above, including but not limited to being required to undergo firearms qualification, being required to undergo firearms qualification without modification or a reasonable accommodation, being subjected to disparate terms and conditions of employment when compared to her coworkers, having her workers compensation benefits delayed, and being subjected to a hostile working environment, Plaintiff has been retaliated against in the terms, conditions and privileges of her employment by the FBI, because Plaintiff opposed practices made unlawful under 42 U.S.C. §§2000e and 2000e-16 and the Rehabilitation Act, and because Plaintiff engaged in protected EEO activities, This retaliation constituted a violation of 42 U.S.C. §§2000e and 2000e-16, 29 U.S.C. §791 et seq., and 29 CFR section 1614.101(b). Defendant is responsible and liable for this retaliation.

WHEREFORE, Plaintiff demands that this Court enter Judgment in her favor and against Defendant, in an amount to be determined by this Court, including monies to compensate her for lost pay, lost benefits, emotional pain and suffering, injury to her career, lost future earning capacity, interest, costs, attorney's fees and such other and further relief that this Court deems just and proper.

JURY TRIAL DEMAND

**PLAINTIFF DEMANDS A TRIAL BY JURY AS TO ALL COUNTS AND ISSUES
SO TRIABLE.**

Respectfully submitted,
THERESA ANN FOLEY
By her Attorney,

/s/ Mitchell J. Notis

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