

## CLAIMANT'S ADDITIONAL STATEMENT OF FACTS 01/09/2017

1. There is no dispute that Mr. [REDACTED] is and at all relevant times was disabled within the meaning of the Rehabilitation Act, having been diagnosed with and at all relevant times being medicated and otherwise treated for obsessive compulsive disorder, major depression, and anxiety.
2. There is no dispute that his disability was known to the Agency, and disclosed to the United States Secret Service (hereafter "Secret Service", "USSS" or "Agency") multiple times in his application, interview, security interview, security clearance paperwork, and polygraph examination.
3. There is no dispute that his disability was known to Special Agent Ellen Ripperger, who administered his polygraph examination.
4. The United States Secret Service requires by its own internal policy that all polygraph examinations of employment applicants have an audio recording made of them. *Deposition of Special Agent Ellen Ripperger, October 18, 2016, page 21, line 11 to page 23 line 6. Attached hereto as Exhibit A.*
5. The Secret Service has admitted that if a polygraph examiner does not administer a polygraph examination consistent with the professional standards of the National Center for Credibility Assessment (NCCA) and the Agency, the results of the polygraph examination may not be correct.

*Response to Request for Admissions number "11". Attached hereto as Exhibit B.*

6. A review of the polygraph charts in and of its self is not a proper quality control review procedure. Without a review of the audio inflection, pace, timing, and consistency of answers the exam cannot be thoroughly reviewed.

*Affidavit of Danny Seiler, dated October 4, 2016, Paragraph 8.b. Attached hereto as Exhibit C.*

7. There is no dispute that the audio files of Mr. [REDACTED] examination are unintelligible.

8. A significant response to even one question disqualifies an applicant from employment as the entire exam will be evaluated as having a significant response. *USSS Polygraph Examination Procedures. Attached hereto as Exhibit D.*

9. According to Agent Ripperger, Mr. [REDACTED] showed a "significant response" to only one question, *i.e.*, the second time he was asked about the commission of "serious crimes." *Deposition of Special Agent Ellen*

*Ripperger, October 18, 2016, page 105, line 14. Attached hereto as Exhibit*

*A.*

10. When asked the question on serious crimes for Item R4, Mr. [REDACTED] was evaluated as having a “significant response” by Agent Ripperger. *Deposition of Special Agent Ellen Ripperger, October 18, 2016, page 92.*
11. When Mr. [REDACTED] was asked the question on serious crimes for a second time Item R6 his results were interpreted as “inconclusive” by Agent Ripperger. *Deposition of Special Agent Ellen Ripperger, October 18, 2016, pages 92.*
12. In accordance with Secret Service policy, a second polygraph examiner, Special Agent Edward Alston, evaluated Mr. [REDACTED] answers. He scored Mr. [REDACTED] second answer to the serious crimes question as inconclusive. *Deposition of Special Agent Ed Alston, October 18, 2016, page 75, line 8 to page 76 line 1. Attached hereto as Exhibit E.*
13. Danny Seiler, a former supervisory sergeant and polygraph examiner for the Maryland State Police and a qualified expert on polygraph examinations in several courts, interpreted Mr. [REDACTED] answer the second time he was asked about serious crimes question as inconclusive. *Affidavit of Danny Seiler, dated October 4, 2016, Paragraph 8.d. Attached hereto as Exhibit C.*
14. When results of the polygraph examination are inconclusive, an applicant can and often is offered a retest.
15. Special Agent Ellen Ripperger interpreted the responses given by at least one other applicant for employment with the Secret Service, viz., Stephen Tignor

as showing a significant response. *Deposition of Special Agent Ellen Ripperger, Id., page 132, line 14 to page 133, line 6.*

16. Mr. Tignor was retested by another examiner, passed his polygraph exam, and was hired by the Secret Service. *Id. page 133 lines 7-9.*
17. Mr. Tignor is not disabled. *Id., page 154, lines 8-10.*
18. Instead of offering Mr. [REDACTED] a retest for an inconclusive polygraph examination, a third agent, Sgt. William Magnuson, was asked to review his answers. He concurred with Agent Ripperger, that there was a significant response to the question regarding serious crimes. *Deposition of Special Agent Ed Alston, October 18, 2016, page 39, line 5 to page 40 line 14.*  
*Attached hereto as Exhibit E.*
19. Mr. [REDACTED] scored a high “truthful” (+3) that he did not lie on any aspect of his written application. *Seiler Affidavit, paragraph “8.a” Attached hereto as Exhibit C.*
20. According to Agent Ripperger, the audio recording of Mr. [REDACTED] examination is unintelligible because of microphone failure. *Deposition of Special Agent Ellen Ripperger, October 18, 2016, page 25, line 4 to page 26 line 5. Attached hereto as Exhibit A.*
21. The Lafayette polygraph software contains two mechanisms to allow the examiner to monitor the audio recordings and prevent failures. *Affidavit of*

*Brent Smitley, Lafayette Instrument Company, January 6, 2017, Item 7, Attached hereto as Exhibit F.*

22. The software contains a built-in feature that will warn the examiner when the audio recording level is too low. That feature can only be disabled by the examiner who must click on audio/video preferences, choose the general tab, and uncheck the “warn on low audio” option. *Id.*, *Attached hereto as Exhibit F.*
23. If the software cannot recognize the audio being recorded it will display a pop up message saying the audio is too low, and give the examiner an opportunity to adjust the audio accordingly. *Id.*, *Item 9, Attached hereto as Exhibit F.*
24. The Lafayette Polygraph Software contains a second mechanism to monitor the recorded audio, which is a meter that is clearly visible to the examiner and shows the decibel (or intensity) levels of the recorded sounds in real time. *Id.*, *Item 10, Attached hereto as Exhibit F.*
25. The meter is rectangular and contains colored bars that display the intensity level of the recorded audio. *Id.*, *January 6, 2017, Item 11, Attached hereto as Exhibit F.*

26. The meter rises and changes colors as the intensity level of the recorded audio increases and decreases. *Id.*, January 6, 2017, Item 11, Attached hereto as Exhibit F.
27. In recording Audio\_02, the meter will exhibit significant time periods of full scale deflection, where it is at a maximum level and red, indicative of distortion. Affidavit of [REDACTED] Senior Member Institute of Electrical and Electronics Engineers, January 8, 2017, Item 20 & Affidavit Exhibit 2, Attached hereto as Exhibit G.
28. The audio recording sound levels in the Audio\_03 file remained at a near constant -13dB for the first 47 minutes of the recording, the indicator remained a near constant green and barely, if at all, moved up and down, all of which indicate that nothing other than background noise (and not conversation) is being recorded. *Id.*, Item 21 & Affidavit Exhibit 3.
29. In minutes 48-1:17 of recording Audio\_03, the meter will stay yellow and red for prolonged periods and “bounce” between yellow and red, and is almost never green. *Id.*, Item 22 & Affidavit Exhibit 3.
30. In minutes 48-1:17 of recording Audio\_03, the meter will exhibit significant time periods of full scale deflection, where it is at a maximum level and red, indicative of distortion. *Id.*, Item 23 & Affidavit Exhibit 3.

31. Agent Ripperger claimed that “On my computer screen, when we hit "record," it shows that we're recording. Throughout the exam, it showed me that I was recording the exam, and there's a dialogue box that shows the volume being recorded.” *Deposition of Special Agent Ellen Ripperger, October 18, 2016, page 28, line 15 to page 28 line 21. Attached hereto as Exhibit A.*
32. Agent Ripperger also claimed that when she reviewed the audio file in August of 2016, “I heard me talking to Mr. [REDACTED] about the polygraph exam and the questions that we were going to be going over.” *Id. page 31, lines 12-14.*<sup>1</sup>
33. None of the audio files of Mr. [REDACTED] 2014 examination contain her talking about the polygraph exam or the questions that she and Mr. [REDACTED] were going to be going over. *USSS Audio Files Audio\_01, Audio\_02, Audio\_03 submitted in response to Discovery Request.*

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<sup>1</sup> See Agent Ripperger’s Deposition, *op cit.*, page 121, lines 12-21.