

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

██████ DOE (P),¹
(True Name and Address)
Classified),

Plaintiff

v.

Hon. PORTER GOSS,

CENTRAL INTELLIGENCE
AGENCY,

JAMES PAVITT,

JOHN DOES NOS. 1 & 2,

and,

UNITED STATES,

Defendants

Civil No. 04 CV 2122 (GK)

PLAINTIFF DEMANDS
TRIAL BY JURY

SECOND AMENDED COMPLAINT

NOW COMES Plaintiff, ██████ Doe (P) by and through undersigned counsel, pursuant to Rule 3, Fed.R.Civ.Proc., and for his Second Amended Complaint against Defendants Hon. Porter Goss ("Goss"), the Central Intelligence Agency ("CIA"), James Pavitt, John Does Nos. 1 & 2, and United States, avers as follows:

JURISDICTION

1. The jurisdiction of this Court is based upon the existence of a Federal question

¹ The notation "(P)" indicates that the preceding name is a litigation pseudonym assigned to a covert employee of the Central Intelligence Agency.

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NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

and/or an agency and employee of the United States as a Defendant. Plaintiff is a citizen of the United States of America and a former employee of the Central Intelligence Agency ("CIA"). Defendant Goss is the Director of Central Intelligence ("DCI"). Defendant CIA is an agency of the United States.

Defendants Doe Nos. 1 & 2 are current or former agents, officers and employees of the United States acting under color of Federal law at all times pertinent hereto.

2. Beginning in 2001 and continuing to the present, Defendant Goss has injured and continues to injure Plaintiff through acts and omissions violating Plaintiff's rights under the Administrative Procedures Act, 5 U.S.C. §§ 706(1) & (2)(A) - (D).
3. Beginning in 2001 and continuing to the present, Defendant CIA has injured and continues to injure Plaintiff through acts and omissions violating Plaintiff's rights under the Privacy Act, 5 U.S.C. § 552a(g)(1).
4. Beginning in 2001 and continuing to the present, Defendants have injured Plaintiff through breach of contract.
5. Beginning in 1995 and continuing until August 6, 2004 Defendant United States has injured Plaintiff through negligent acts and omissions.
6. Beginning in 2001 and continuing to the present, Defendants James Pavitt and John Does Nos. 1 & 2 have injured Plaintiff through violation of his rights under the Constitution of the United States and Amendments thereto.
7. Defendants' complained of acts and omissions have occurred within the District of Columbia, the Commonwealth of Virginia, Domestic Location A, and Foreign

Locations A, B, & C.²

8. Plaintiff seeks injunctive and declaratory relief, as well as money damages.
9. Jurisdiction exists pursuant to 5 U.S.C. §§ 552a(g); 701 *et seq.*; 28 U.S.C. §§ 1331, 1346, 2401(b) & 2671 *et seq.*; and, the doctrine of pendant jurisdiction.
10. Defendant Goss is sued in his official capacity as DCL. The official duties of Defendant Goss are performed at various locations, both domestically and abroad, but primarily in the District of Columbia and the Commonwealth of Virginia. The residence of Defendants Pavitt and John Does Nos. 1 & 2 are presently unknown.
11. Defendant CIA is sued as an agency of the United States.
12. Pursuant to 28 U.S.C. § 2401(b), Plaintiff submitted his claim in writing to CIA on or about April 20, 2005. CIA denied said claim on or about October 20, 2005. This action is brought within six months thereafter.
13. Venue is proper pursuant to 5 U.S.C. § 552a(g)(5); 28 U.S.C. § 1391(b), (e) & 1402(b); and, the doctrine of pendant venue.
14. Service of process on all Defendants may be accomplished pursuant to Rule 4, Fed.R.Civ.Proc.

FACTS

15. Plaintiff is being subjected to retaliation by Defendants for his refusal to falsify intelligence collected by him. [REDACTED]

² Throughout Plaintiff's Complaint, classified locations (foreign and domestic) will be designated by letter.

- [REDACTED]
16. Plaintiff is a male of Near Eastern ancestry who joined the CIA as a contract covert Operations Officer in 1982. During the ensuing twenty-two year period Plaintiff has conducted numerous successful covert operations against a variety of intelligence targets while serving in the CIA Directorate of Operations ("CIA/DO"). This service and his significant contributions resulted in his eventual approval for promotion to the rank of GS-15 and for receipt of the CIA Special Intelligence Medal in recognition of his [REDACTED] recruitment of an [REDACTED] [REDACTED] penetrating a target country's WMD program [REDACTED] [REDACTED]
17. In 1995 Plaintiff was advised by Defendant CIA that his employment had been converted from that of a contractor to a staff employee. Thereafter, Plaintiff received regular GS promotions, bi-weekly payment stubs and other related documents reflecting his current "GS" status, salary and benefits. At all times subsequent thereto, Defendants continued to lead Plaintiff to believe that his employment status was that of GS staff employee and not that of contractor.
18. In 1995 Plaintiff was assigned to the CIA/DO Counter Proliferation Division ("CIA/DO/CPD") where his mission was to collect intelligence on and interdict the proliferation of WMD, [REDACTED] [REDACTED]
19. At all times pertinent hereto CIA/DO/CPD served as the primary collection point at CIA/DO for Near Eastern WMD programs, [REDACTED]

20. While serving at CIA/DO/CPD Plaintiff recruited many "hard-target" human "assets," [REDACTED]

21. Plaintiff was first subjected to a demand that he alter his intelligence reporting in 2000, [REDACTED]

[REDACTED] Plaintiff reported this information via formal CIA cable channels. Plaintiff was subsequently advised by CIA management that his report did not support the earlier assessment

[REDACTED] and instructed that if he did not alter his report to support this assessment it would not be received well by the intelligence community. Plaintiff was aware that earlier reporting underlying the assessment was less-than-genuine and refused to alter his report. As the result, CIA/DO/CPD refused to disseminate his report to the intelligence community despite Plaintiff's efforts.

22. In 2001, Plaintiff met with a highly respected human asset [REDACTED]

[REDACTED] Plaintiff

immediately reported this information to his supervisor who in-turn met with CIA/DO/CPD management. Plaintiff was later instructed that he should prepare no written report of the matter and that the Deputy Director of Operations ("DDO"), Defendant Pavitt, together with the Chief of CIA/DO/CPD, Defendant

John Doe No. 1, would personally brief the President. Upon information and belief, Plaintiff avers that no such briefing ever occurred and therefore the President was misled by the withholding of vital intelligence. Subsequently, in 2002, Defendant John Doe No. 1 advised Plaintiff that his promotion to GS-15 and receipt of the Special Intelligence Medal had been approved by Defendant Pavitt but were being withheld until Plaintiff removed himself from further handling of this asset.

23. In 2001, Plaintiff, attempted to report "actionable" intelligence [REDACTED]
[REDACTED]
[REDACTED] Defendants Pavitt and
John Does Nos. 1 & 2. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Plaintiff reported this
information to CIA/DO/CPD via formal cable channels. However, the CIA never
disseminated this information in the intelligence community despite Plaintiff's
pleas to do so, effectively sequestering intelligence [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]. Later, a co-worker of Plaintiff warned him that CIA management planned to "get him" for his role in reporting intelligence contrary to official CIA dogma [REDACTED].

24. In 2002, Plaintiff attempted to report routine intelligence [REDACTED] [REDACTED] but was thwarted by CIA superiors, Defendants Pavitt and John Does Nos. 1 & 2. Plaintiff had met with a human asset [REDACTED] [REDACTED] Plaintiff reported this information to CIA/DO/CPD via formal cable channels. Plaintiff was subsequently approached by a senior [REDACTED] desk officer, Defendant John Doe No. 2, who insisted that Plaintiff falsify his reporting of this [REDACTED] [REDACTED] Plaintiff refused. Subsequently, CIA/DO/CPD management determined that Plaintiff should remove himself from any further "handling" of this asset.

25. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

██████████ After Plaintiff reported this information via formal CIA cable channels, John Does Nos. 1 & 2 in CIA/DO/CPD instructed Plaintiff to remove himself from further handling of the asset ██████████

26. Subsequently, in 2003 Plaintiff learned that he was under a counter-intelligence ("CI") investigation for allegedly having sex with a female asset, which Plaintiff did not do. In addition, Plaintiff was told five days after he began a new position at CIA that the position had been canceled because of pressure from the DDO, James Pavitt. Plaintiff also was told by the Chief of CIA/DO/CPD that the DDO was angry with Plaintiff because he believed Plaintiff was blackmailing him ██████████

██████████ which Plaintiff did not do.

27. In September, 2003 the Chief of the CIA Counter Intelligence Center ("CIA/CIC") placed Plaintiff on paid administrative leave without explanation, barring Plaintiff from entering any CIA facilities or engaging in any further operations on behalf of CIA.
28. During this period Defendant Pavitt determined to withhold from Plaintiff his previously approved promotion to GS-15 and award of the CIA "Medal of Intelligence."
29. Some eight months later Plaintiff was contacted by the CIA Office of Inspector General ("CIA/OIG"), which advised him that he was under investigation for diverting to his own use monies provided to him for payment to human assets, which Plaintiff did not do. These allegations were made by Defendants Pavitt and

John Does Nos. 1 & 2, the same CIA/DO/CPD managers who managed the operations and reporting [REDACTED] in which Plaintiff had been involved as described above. Plaintiff subsequently cooperated with requests for detailed financial information from the CIA/OIG.

30. During the week of July 26, 2004 Plaintiff again met with investigators from CIA/OIG who presented him with a list of financial items to explain, including one outgoing check for \$30.00 that predated the time period of any of the CI issues. Plaintiff explained all of the deposits.
31. On August 6, 2004 Plaintiff met with two representatives from CIA who presented him with a letter of termination for unspecified reasons, effective September 10, 2004. The letter described Plaintiff as a contractor whose services were no longer required. The characterization of Plaintiff as a contractor surprised Plaintiff as was the first indication he had received since 1995 that his employment status was anything other than that of GS staff employee. Because of his alleged status of contractor, Defendants did not provide Plaintiff the ordinary administrative process afforded staff employees prior to termination of employment. This deprived Plaintiff of any opportunity to contest or refute the allegations against him. Defendants actions in this regard were arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law. To date, Plaintiff remains unemployed.
32. On or about December 8, 2004, two investigators from CIA/OIG further interviewed Plaintiff at the offices of undersigned counsel regarding his alleged

diversion of funds.

33. On information and belief, Plaintiff avers that both the CI and OIG investigations of him were a sham, initiated for the sole purpose of discrediting him and retaliating against him for questioning the integrity of the WMD reporting [REDACTED] and for refusing to falsify his intelligence reporting to support the politically mandated conclusion [REDACTED]. [REDACTED] The fact that his employment was summarily terminated before either investigation was complete, and before Defendants even conducted their final interview of Plaintiff, further indicates the ulterior purpose of the investigations.
34. On information and belief, Plaintiff alleges that the information about him gathered during the course of the CI and OIG investigations is contained in records stored in a system of records, retrievable by his name or other identifier. Absent the information so stored, Plaintiff would not have been terminated from his employment because Defendants would have lacked a plausible pretext for so doing.
35. On information and belief, Plaintiff avers that the termination of his employment at CIA was in further retaliation for, and to contrive a pretext to discredit, his refusal to falsify his intelligence reporting to support the politically mandated conclusion [REDACTED].
36. On or about April 19, 2005 Plaintiff was advised that the OIG investigation of him was terminated with no finding of any wrongdoing on his behalf.
37. Because of [classified] statements made to Plaintiff by representatives from

CIA/CIC and CIA/OIG, as well as those by certain co-workers, Plaintiff is certain that intentional, material inaccuracies exist in his Official Personnel File, Counter-Intelligence Center file, Office of Medical Services file, Center for CIA Security file and other CIA files. Upon information and belief, Plaintiff alleges this adverse and inaccurate information has been widely disseminated throughout the intelligence community by or at the direction of Defendants Pavitt and John Does Nos. 1 & 2. Upon further information and belief, Plaintiff alleges that the March 28, 2005 demand by Defendants that he not personally attend any in-court proceedings in this matter was made at the direction of John Does 1 & 2.

COUNT I
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

38. Plaintiff realleges each and every paragraph numbered 1 through 37, inclusive, as if fully set forth herein.
39. The complained of acts and omissions by Defendants Goss have violated [classified] portions of CIA regulations providing for the integrity of intelligence collection and reporting, in violation of 5 U.S.C. §§ 706(1) & (2)(A) - (D).
40. As a direct and proximate result of Defendant Goss's complained of acts and omissions, Plaintiff has suffered damages in the form of loss of employment, loss of wages and benefits, loss of career opportunity, loss of promotion, invasion of privacy, loss of professional and personal reputation, substantial out-of-pocket costs, including attorneys fees, and mental suffering producing physical symptoms.

41. Plaintiff has available to him no internal administrative remedy at CIA to address the complained of acts and omissions. Plaintiff therefore asks this Court to order that Defendants reinstate his CIA employment at the GS-15 staff level to which his promotion was wrongfully withheld and for which he was never properly converted. Plaintiff also asks that this Court order restitution of monies earned by Plaintiff but wrongfully denied because of the withholding of his timely promotion to GS-15.
42. Plaintiff further asks this Court to order Defendant Goss to undertake rule-making to promulgate appropriate regulations to ensure protection of Plaintiff's rights in matters concerning, related to or arising from his employment at CIA, in the absence of which, should he be reinstated, Defendants will only repeat their complained of conduct.

**COUNT II
VIOLATION OF THE PRIVACY ACT**

43. Plaintiff realleges each and every paragraph numbered 1 through 37, inclusive, as if fully set forth herein.
44. Defendant CIA has wilfully and intentionally failed to maintain accurate, timely and complete records pertaining to Plaintiff in his Official Personnel File, Counter-Intelligence Center file, Office of Medical Services file, Center for CIA Security file, Office of Inspector General file and other files so as to ensure fairness to Plaintiff in violation of 5 U.S.C. § 552a(e)(5), as a consequence of which, Plaintiff has suffered adverse determinations and effects as alleged

specifically in paragraphs numbered 22 through 29, inclusive, and for which Plaintiff is entitled to actual damages and costs of the instant action pursuant to 5 U.S.C. §§ 552a(g)(1).

45. As a direct and proximate result of Defendant CIA's complained of acts and omissions, Plaintiff has suffered damages in the form of loss of wages and benefits, loss of career opportunity, loss of promotion, loss of professional and personal reputation, substantial out-of-pocket costs, including attorneys fees, and mental suffering producing physical symptoms.
46. Defendant CIA has wilfully and intentionally failed to the greatest extent practicable to collect directly from Plaintiff information that would have refuted the allegations against him, which has resulted in adverse determinations about the rights, benefits and privileges of Plaintiff under Federal Programs in violation of § 552a(e)(2).
47. As a direct and proximate result of Defendant CIA's complained of acts and omissions, Plaintiff has suffered damages in the form of loss of wages and benefits, loss of career opportunity, loss of promotion, loss of professional and personal reputation, substantial out-of-pocket costs, including attorneys fees, and mental suffering producing physical symptoms.
48. Pursuant to §§ 552a(g)(1), Plaintiff is entitled to actual damages and costs of the instant action for Defendant CIA's violation of § 552a(e)(2).
49. Plaintiff asks this Court to order and provide all the relief to which his is entitled for Defendant CIA's violations of the Privacy Act, as alleged above.

**COUNT III
BREACH OF CONTRACT**

50. Plaintiff realleges each and every paragraph numbered 1 through 37, inclusive, as if fully set forth herein.
51. Defendants' complained of actions constitute breach of Plaintiff's contract of employment, including the implied covenant of good faith and fair dealing, as Defendants have acted in an wrongful and illegal manner in terminating said contract, as the result of which Plaintiff has suffered damages.

**COUNT IV
FAILURE TO CONVERT PLAINTIFF TO STAFF EMPLOYEE**

52. Plaintiff realleges each and every paragraph numbered 1 through 37, inclusive, as if fully set forth herein.
53. Defendants apparently failed to convert Plaintiff to the status of a staff employee to which Plaintiff was entitled, as the result of which Plaintiff was deprived of procedural due process normally afforded staff employees prior to termination through which Plaintiff could have successfully refuted the allegations against him. Consequently, Plaintiff has suffered damages.

**COUNT V
TORTIOUS VIOLATION OF PLAINTIFFS' RIGHTS
UNDER THE UNITED STATES CONSTITUTION
AND AMENDMENTS THERETO**

54. Plaintiff realleges each and every paragraph numbered 1 through 37, inclusive, as if fully set forth herein.
55. The complained of acts and omissions by Defendants Pavitt and John Does, Nos.

1 & 2, have been under color of Federal law at all times pertinent hereto.

56. The complained of acts and omissions by Defendants Pavitt and John Does Nos. 1 & 2, have been willful, malicious or with deliberate indifference to the clearly established rights of Plaintiff under the First and Fifth Amendments to the Constitution of the United States.
57. The complained of acts and omissions by Defendants Pavitt and John Does Nos. 1 & 2, have interfered with and/or deprived Plaintiff of his rights to speech and association, liberty, procedural due process, substantive due process, equal protection, privacy and access to the courts under the First and Fifth Amendments to the Constitution of the United States.
58. As a direct and proximate result of Defendants' complained of acts and omissions, Plaintiff has suffered damages in the form of loss of employment, wages and benefits, loss of career opportunity, loss of promotion, loss of professional and personal reputation, invasion of privacy, substantial out-of-pocket costs, including attorneys fees, and mental and physical suffering producing physical symptoms, compensable through an appropriate award of monetary damages.
59. Plaintiff has available to him no effective remedy for the complained of acts and omissions by Defendants and damages resulting therefrom, other than resort to the court system.

**COUNT VI
FEDERAL TORT CLAIMS ACT**

60. Plaintiff realleges each and every paragraph numbered 1 through 37, inclusive, as

if fully set forth herein.

61. Defendant United States negligently failed to convert Plaintiff's employment status from that of a contractor to that of a staff employee of CIA at all times subsequent to 1995. Plaintiff first learned of these negligent acts and omissions on or about August 6, 2004.
62. Defendant United States would, if a private person, be liable for its negligent acts and omissions, which therefore constitute a claim under the Federal Tort Claims Act.
63. The negligent acts and omissions of Defendant United States directly and proximately caused Plaintiff to suffer damages in the amount of ten million (\$10,000,000.00) dollars.

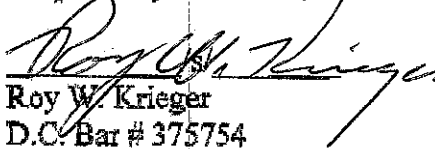
WHEREFORE, Plaintiff prays this Honorable Court grant him the following relief:

- a. Relief specifically sought in Counts I and II;
- b. An award of costs of litigation, including the fees and expenses of attorneys, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(b) & (d);
- c. An award of \$10,000.00 for breach of contract;
- d. Compensatory damages in an amount to be determined by the trier of fact, and,
- e. That the Court order Defendant Goss to immediately restore to Plaintiff his lost employment, salary, promotions and benefits, together with compensatory damages, front pay, back pay, pre and post judgement

interest, and costs of litigation including reasonable attorneys fees.

Plaintiff further prays that the Court provide whatever further, different or additional relief as it should deem just and proper.

Respectfully submitted,



Roy W. Krieger
D.C. Bar # 375754

Mark S. Zaid
D.C. Bar # 440532

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CERTIFICATE OF FILING

I, Roy W. Krieger, do hereby certify that a true and correct copy of the foregoing was electronically filed this 15th day of November 2005.


Roy W. Krieger