



DEPARTMENT OF THE AIR FORCE  
WASHINGTON DC

OFFICE OF THE ASSISTANT SECRETARY

SAF/MR  
1660 Air Force Pentagon  
Room 4E1010  
Washington, DC 20330-1660

9 December 2019

The Honorable Henry J. Kerner  
Special Counsel  
United States Office of Special Counsel  
1730 M Street N.W., Suite 300  
Washington, DC 20036-4505

Re: OSC File Nos. DI- 17-3277, DI-18-3883, and DI-18-1621

Dear Mr. Kerner:

As agency head, the Secretary of the Air Force delegated to me her authority to review, sign, and submit to you the report required by Title 5, U.S.C. Section 1213(c) and (d). I am responding to your September 6, 2018 correspondence, referring for investigation whistleblower disclosures from [REDACTED] and two other anonymous whistleblowers regarding the U.S. Air Force Equal Employment Opportunity (EEO) Office at Hill Air Force Base (AFB) in Utah. You requested that the Air Force investigate the whistleblowers allegations that the EO Director, [REDACTED] violated a law, rule, or regulation, engaged in gross mismanagement, and abused [REDACTED] authority in [REDACTED] management of the EEO Office at Hill AFB. The allegations to be investigated were:

- (1) Whether [REDACTED] actively discouraged employees from filing EEO complaints;
- (2) Whether [REDACTED] inappropriately modified or rejected EEO complaints and/or allegations;
- (3) Whether [REDACTED] gave employees false and/or misleading information about the EEO process; and
- (4) Whether [REDACTED] failed to identify conflicts of interest by management during the EEO mediation process.

For allegation one, the evidence showed [REDACTED] actively discouraged WB#2 from filing an informal complaint in violation of AFI 36-2706 Chapter 4, paragraph 4.5.1.1. The evidence did not show that [REDACTED] actively discouraged any of the other complainants that were part of the investigation.

In regards to allegation number two, the evidence showed [REDACTED] did improperly reject at least 10 of 11 EEO complaints made by [REDACTED] in the formal stage in violation of 29 C.F.R. § 1614.107(a) and MD 110, Chapter 5 § IV because [REDACTED] unknowingly applied the

wrong standard. In reference to WB#2, the evidence showed [REDACTED] 1) inappropriately performed both the EEO counseling and the acceptance/dismiss functions for WB#2's complaint in violation of AFI 36-2706, Paragraphs 1.19 and 1.20.21; 2) failed to recognize the different standard used for continuing violation claims such as sexual harassment and hostile work environment, and improperly dismissed WB#2's sexual harassment/hostile work environment claims in violation of MD-110, Chapter 5, § III(A)(3); and 3) failed to take action on WB#2's dissatisfaction with the processing of [REDACTED] EO complaint and failed to verify and ensure that a record explaining why no action was taken was included in the casefile in violation of MD-110, Chapter 5, § IV (A)(1), (D) and AFI 36-2706, paragraphs 4.10.2 and 1.20.17. Furthermore, the evidence also showed [REDACTED] improperly dismissed an additional complainant's entire complaint when [REDACTED] eliminated language regarding the date of discovery of the alleged wrong, thereby determining the claims untimely, in violation of 29 C.F.R. 1614.105(a)(2).

For allegation three, the evidence showed several violations. First, [REDACTED] did give false information to [REDACTED] in regards to amending [REDACTED] complaint in violation of 29 U.S.C. § 1614.106(d); MD 110 Chapter 5 § III(B); and AFI 36-2703, paragraph 4.10.3. Second, the evidence showed that [REDACTED] gave misleading information to WB#3 during the informal stage of [REDACTED] complaint by not informing [REDACTED] of [REDACTED] right to remain anonymous in violation of 29 C.F.R. § 1614.105(g), MD-110, Chapter 2 § III, para 7, and AFI 36-2706, paragraph 4.22. Finally, the evidence also showed that [REDACTED] gave false information when [REDACTED] told a contractor [REDACTED] could not file a claim because the EO office did not handle claims for contractors in violation of AFI 36-2706, paragraph 4.3.2.

In regard to allegation four, the evidence did not show that [REDACTED] violated any law, rule, or regulation. While [REDACTED] did fail to identify a conflict of interest by management during the EEO process, there is no law, rule, or regulation that affirmatively assigns this duty to the EO Director. Similarly, the evidence did not show that any of [REDACTED]' actions constituted gross mismanagement or an abuse of authority under AFI 90-301 and AFI 51-1102.

The Air Force plans to make several departmental policy changes, related to the issues raised in this investigation, through new and revised provisions in the instruction on Equal Opportunity. The Air Force proposes a new provision that will assign responsibility to the EO Director to notify the commander of the EEO requirement to avoid any actual or perceived conflicts of interest in naming the settlement authority for EEO ADR/mediations and identify all named responsible management officials in the case to be mediated. Additionally, another proposed provision will require the legal office to review accept/dismissal determinations from the EO office with neutrality in mind, defined as requiring a claim be accepted if there is any conceivable basis for acceptance. A third proposed provision will distinguish a contact with the EO office from a general assistance visit, and require the EO office to issue a Notice of Right to File a Formal Complaint letter 30 days from the date of contact where the individual, after contact, does not engage in the EEO informal counseling process. Finally, with regard to investigations of civilian complaints of sexual harassment, the proposed revision clarifies the interaction of the EEO process and the Section 1561 requirements.

In addition, the Air Force proposes to revise the annual training for EO personnel to place special emphasis on how to put the claims in proper form, how to avoid fragmenting complaints,

and how to analyze timeliness issues, including in sexual harassment and hostile work environment claims where the claim may be based on a continuing pattern of behavior where some of the events are outside the 45-day window.

Finally, the Air Force will refer the subject of the investigation to appropriate command channels within AFMC for consideration of any disciplinary action.

I am enclosing the Report of Investigation for your official use. I understand you will provide the full copy of this Report to the President and the House and Senate Armed Services Committees for their review and to the three whistleblowers. As directed by OSC in its Appendix to the September 6, 2018 referral letter, we will also provide a redacted version of the Report where agency employees have been identified by position title in the Report with an attached key identifying the employees by name and position. The redacted copy will be published on your webpage.

We appreciate your efforts to bring this matter to our attention. If the Air Force can be of any further assistance, please contact Mr. Douglas D. Sanders, Deputy General Counsel for Fiscal, Ethics and Administrative Law at (703) 697-7430 or [douglas.d.sanders.civ@mail.mil](mailto:douglas.d.sanders.civ@mail.mil).

  
SHON J. MANASCO  
Assistant Secretary  
(Manpower and Reserve Affairs)

**Department of the Air Force**

**OSC DI-17-3277, DI-18-3883, and DI-18-1621**

Report of Findings

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## **INFORMATION INITIATING THE INVESTIGATION<sup>1</sup>**

By letter dated 6 September 2018, and signed by the Special Counsel, the Office of Special Counsel (OSC) referred to the Secretary of the Air Force for investigation whistleblower disclosures “regarding the U.S. Air Force (USAF) Equal Employment Opportunity (EEO) Office at Hill Air Force Base (AFB) in Utah.” According to OSC, three whistleblowers alleged that “the Hill AFB EEO Director has been executing the responsibilities of the office improperly and inappropriately.” OSC has opened up three disclosure cases (OSC File Nos. DI-17-3277, DI-18-3883, and DI-18-1621), one for each whistleblower, but combined the allegations into one referral letter to USAF.

According to OSC, one of the whistleblowers, **Whistleblower 1** a “Technical and Programmatic Integration Embed for the Air Force Nuclear Weapons Center’s Nuclear Command, Control and Communications Directorate, has consented to the release of **█** name.” OSC stated that “the other two whistleblowers chose to remain anonymous (hereinafter referenced as [WB#2 and WB#3]).”

After review and based on the information disclosed by the whistleblowers, OSC “determined that there is a substantial likelihood that the allegations disclose a violation of law, rule or regulation; gross mismanagement; and an abuse of authority.”

### **OSC SUMMARY OF DISCLOSURE INFORMATION**

According to the OSC Referral Letter, the allegations to be investigated include:

- Hill AFB EEO Director **EEO Director** actively discouraged employees from filing EEO complaints;
- **EEO Director** inappropriately modified or rejected EEO complaints and/or allegations;
- **EEO Director** gave employees false and/or misleading information about the EEO process; and
- **EEO Director** failed to identify conflicts of interest by management during the EEO mediation process.

According to OSC, the “whistleblowers have indicated they can provide investigators with the names and contact information of other employees who allege similar misconduct by **EEO Director** █”

In its referral letter, OSC also provided the following information:

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<sup>1</sup>By statute, 5 U.S.C. § 1213, the disclosure report must include the following information:

- 1) A summary of the information with respect to which the investigation was initiated;
- 2) A description of the conduct of the investigation;
- 3) A summary of any evidence obtained from the investigation;
- 4) A listing of any violation or apparent violation of any law, rule, or regulation; and
- 5) A description of any action taken or planned as a result of the investigation, such as,
  - (A) Changes in agency rules, regulations, or practices;
  - (B) The restoration of any aggrieved employees;
  - (C) Disciplinary action against any employee; and
  - (D) Referral to the Attorney General of any evidence of a criminal violation.

Federal EEO programs are required to provide ‘prompt, fair and impartial processing of complaints [citing to 29 C.F.R. §§ 1614.102(a)(2) and 105(g)]. EEO counselors should be ‘information gatherer[s]’ and ‘educator[s]’ without providing any opinion as to whether discrimination or harassment has occurred [citing to EEO Management Directive 110, at Ch. 2 §III, IX (Aug. 5, 2016) hereinafter MD-110)]. According to Whistleblower Two, however, EEO Director argued with █████ extensively about whether a certain personnel action was ‘an adverse action’ and told █████ not to file an EEO complaint and that disciplinary action had already been taken against the alleged wrongdoer.

According to OSC “another USAF employee was with the whistleblower at the time and independently corroborated this information to OSC [citing to 5 U.S.C. § 552a(b)].” OSC further stated that “Whistleblower Three alleged EEO Director similarly defended management and told █████ ‘I know who you are,’ in a hostile tone before █████ introduced █████ or spoke about the complaint.”

OSC indicated that

The whistleblowers all alleged that EEO Director inappropriately modified or rejected their EEO complaints. For example, they all alleged EEO Director altered and deleted multiple incidents of alleged discrimination or harassment from their complaints without explanation or justification. Whistleblower 1 also alleged EEO Director improperly rejected █████ amended formal EEO complaint until █████ attorney got involved. Whistleblowers Two and Three both alleged that EEO Director repeatedly tried to replace the names of the alleged wrongdoers in their informal and formal complaints with “management,” explaining it could harm their reputations, and they had to fight with EEO Director to keep the names in the documents. Whistleblower Two documented EEO Director’s improper rejection of █████ harassment allegations as untimely even though the whistleblower had alleged they were part of a related pattern by the same individual, and █████ initial contact with the EEO office was timely.

Citing MD-110 at Ch. 5 § III(A)(3), OSC stated that “although EEO Director later permitted the whistleblower to file a complaint based on another incident, █████ refused to investigate the harassment allegations.”

OSC also provided the following information:

The whistleblowers further alleged that EEO Director gave them incorrect information about the EEO process. For example, Whistleblower 1 and Whistleblower Two alleged EEO Director told them they could not amend their filings to include new related incidents of discrimination or harassment and would instead have to file new complaints as each new incident occurred [citing 29 C.F.R. § 106(d) (“A complainant may amend a complaint at any time ...”); MD-110, at Ch. 5 § III]. Whistleblower Three alleged EEO Director advised █████ that █████ identity would be revealed to agency management, including the alleged wrongdoers, during the informal complaint stage [citing 29 C.F.R. § 1614.105(g), MD-110, at Ch. 2 § VII(E) (“[T]he EEO Counselor should explain that unless the aggrieved authorizes or files a formal complaint, the EEO counselor will not reveal their identity.”)].

OSC further stated that

**EEO Director** also failed to identify conflicts of interest by management during Whistleblower Two's EEO mediation process. Specifically, and despite Whistleblower Two's objections, **EEO Director** allowed a then-named responsible party in Whistleblower Two's EEO complaint to be the agency's representative and settlement authority at mediation [citing MD-110, at Ch. 6 §III(A) ("The EEO Director [ ] must ensure that there is no conflict of interest or appearance of a conflict of interest..."); and Ch. 1 § V ("The agency's official with settlement authority should not be the responsible management official or agency official directly involved in the case.")].

In its referral letter, OSC also noted, "that specific allegations and references to specific violations of law, rule, or regulation are not intended to be exclusive."

### **CONDUCT OF THE INVESTIGATION**

The OSC Referral Letter was forwarded for investigation through the Air Force Inspector General (SAF/IG) to the Air Force Material Command (AFMC) Inspector General. It is noted that this Section 1213 disclosure case was related to and interconnected with a Section 1214(e)<sup>2</sup> investigation at Hill AFB, which had been initiated by the Secretary of the Air Force in response to OSC's May 7, 2018 Report of Violation.<sup>3</sup>

Many of the allegations<sup>4</sup> at issue and much of the evidence obtained in the Section 1214 investigation related to the allegations set out in OSC's Section 1213 Referral letter. Specifically, the Section 1214 investigation related to, among other things, the sexual harassment claims of WB#2. During the course of OSC's Section 1214 investigation, OSC:

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<sup>2</sup> Section 1214(e) states, "If, in connection with any investigation under this subchapter [5 USC §§ 1211 et seq.], the Special Counsel determines that there is reasonable cause to believe that any violation of any law, rule, or regulation has occurred other than one referred to in subsection (b) or (d), the Special Counsel shall report such violation to the head of the agency involved. The Special Counsel shall require, within 30 days after the receipt of the report by the agency, a certification by the head of the agency which states – (1) that the head of the agency has personally reviewed the report; and (2) what action has been or is to be taken, and when the action will be completed."

<sup>3</sup>According to the OSC's May 7, 2018 Report, OSC "[w]as investigating allegations that [Former Vice Director ALC] and [Supervisor], 309 Software Maintenance Group (SMXG) Director, retaliated against [WB#3], the [REDACTED] within OO-ALC at Hill AFB."

<sup>4</sup>OSC referred six allegations focused on four subjects: 1) [Former Commander ALC #1], the former Commander (CC) of OO-ALC at Hill AFB who served as the OO-ALC/CC from September 1, 2015 through September 1, 2017; 2) [Former Vice Director ALC], a GS-15 who served as the Vice Director; 3) [Former OB Director], a NH-04, Tier 2, who at the time served as the Director of Business Operations (OO-ALC/OB); and 4) [Former Chief of ALC/OB], a long time, senior civilian employee at Hill AFB who served as the Chief of Business Operations Contracting Office (OO-ALC/OBC), a GS-14 position, for the primary time period of the allegations. Five of the six allegations were substantiated, finding that [Former Commander ALC #1], [Former Vice Director ALC] and [Former OB Director] failed to investigate WB#2's allegations of sexual harassment, that [Former Vice Director ALC] had an actual and apparent conflict of interest when [REDACTED] served as the sole settlement authority in the WB#2 EEO mediation; and that [Former Chief of ALC/OB] sexually harassed WB#2.

[R]eceived evidence that [Former Vice Director ALC]<sup>5</sup> and other senior leaders at Hill AFB engaged in the following apparent wrongdoing, which is outside of OSC's jurisdiction: 1) failed to investigate allegations of sexual harassment made by numerous female employees [including WB#2] against senior manager [Former Chief of ALC/OB] [who was the Chief of the Acquisition Management Support Office (AMSO) at OO-ALC at the time]; and 2) permitted [Former Vice Director ALC] to serve as the agency's settlement authority and sole negotiator in an Equal Employment Opportunity (EEO) matter in which [Former Vice Director ALC] was named.

During the course of the Section 1214 investigation, the Investigating Officer (IO) interviewed 47 witnesses including Brig [Former Commander ALC #1]. The IO did not interview [Former Vice Director ALC]<sup>6</sup> as [REDACTED] retired on June 2, 2018 and declined the IO's request for an interview. The IO also collected and examined relevant documentation including organizational structures, emails, complaints, WB#2's EEO file, an OSI report of investigation, and substantial excerpts from a related commander directed investigation (CDI) as well as a director directed investigation (DDI).

As the Section 1214(e) investigation was on-going in September 2018, appointment of the investigation officer (IO) for the Section 1213 investigation was delayed while the IO conducted the Section 1214(e) investigation. On December 12, 2018, the AFMC Inspector General appointed the same IO to conduct the Section 1213 investigation. During the course of the Section 1213 investigation, the IO obtained information and/or testimony from 30 witnesses.<sup>7</sup> The IO also collected and examined relevant documentation including emails, complaints, relevant EEO cases files, as well as substantial evidence and excerpts from the Section 1214 Report of Investigation (ROI). The IO researched and reviewed pertinent legal authorities, including applicable EEO and Air Force (AF) regulations, and received assistance from an assigned legal advisor.

The standard of proof used in determining the finding for each allegation was the preponderance of the evidence, i.e. was it more likely than not that the alleged violation occurred.<sup>8</sup>

Pursuant to 5 U.S.C. § 1213(c), an agency is afforded 60 days to complete the required report of investigation. The AF has been granted extensions for its response to the OSC Referral Letter, which is now due on December 9, 2019.

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<sup>5</sup> [Former Vice Director ALC] received delegated authority from [Former Commander ALC #1] to handle all matters related to movements, promotions, and disciplinary actions of civilian personnel within [REDACTED] command. In this capacity, [Former Commander ALC #1] relied heavily on [Former Vice Director ALC] for input and decision-making regarding all civilian matters.

<sup>6</sup> [Former Vice Director ALC] did consent to a narrow interview by SAF/IGS during their limited review of the allegations against [Former Commander ALC #1], a senior agency official.

<sup>7</sup> In interviewing the three whistleblowers, the IO obtained eight (8) additional names of civilian employees who may have had similar complaints of misconduct by [EEO Director]. The IO conducted additional witness interviews of these employees. Five (5) of those employee interviews did not contain information relevant to [EEO Director]. Those witnesses were [Complainant #3], [Complainant #4], [Complainant #5], [Complainant #6], and [Complainant #7].

<sup>8</sup> While the IG often conducts the Section 1213 OSC disclosure investigations for the Air Force, the conclusions in an IG report may differ from what is submitted to OSC because the IG standard looks for whether there is misconduct, which, under the IG definition, requires intent. In the OSC context, the conclusions are based on whether there was a violation of law, rule, or regulation, regardless of whether the violation is based on intentional conduct or negligence.

## **LEGAL FRAMEWORK**

AF EEO Offices handle complaints of unlawful discrimination based on race, color, religion, sex, national origin, age (40 or older), disability, genetic information, or reprisal for participating in the EEO process or opposing discriminatory practices. Their processes are governed by Federal Statutes, U.S. Equal Employment Opportunity Commission (EEOC) regulations and AF rules and instructions.

The AF rules regarding equal opportunity are set out in Air Force Instruction (AFI) 36-2706, *Equal Opportunity Program, Military and Civilian*, 5 October 2010, with interim guidance changes as set out in Air Force Guidance Memorandum (AFGM) dated 9 February 2017; AFGM was reissued 29 January 2019. Chapter 1 sets out the Air Force Equal Opportunity (EO) Program including the assignment of roles and responsibilities. It should be noted that EO and complaint processing rules for military members and civilians are not identical. Chapter 3 of the AFI sets out the Military Equal Opportunity (MEO) assistance and complaint processing rules for military members. Chapter 4 sets out the Civilian Equal Opportunity complaint process.

### **The Process for Filing a Civilian EO Complaint – Two stages: Informal and Formal**

#### ***The Informal Complaint Process***

An AF employee seeking to file an EO complaint starts the process by contacting an EO specialist and letting them know that he/she has been subjected to unlawful discrimination. This starts the *informal* complaint process (referred to as the “Pre-Complaint” stage”). 29 C.F.R. § 1614.105 states that an aggrieved person “must consult a Counselor prior to filing a complaint in order to try to informally resolve the matter.” Timing is important; the complainant “must initiate contact with a Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within 45 days of the effective date of the action.” 29 C.F.R. § 1614.105. This time limit may be extended under the following circumstances under 29 C.F.R. § 1614.105(a)(2):

- (1) the individual shows that he or she was not notified of the time limits and was not otherwise aware of them;
- (2) that he or she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred;
- (3) that despite due diligence he or she was prevented by circumstances beyond his or her control from contacting the counselor within the time limits; or
- (4) for other reasons considered sufficient by the agency or the Commission.

This time limit may also be extended for incidents that are part of a pattern of harassment behavior. EEOC guidance set out in MD-110, Chapter 5 § III(A)(3) provides:

With regard to the timeliness of a claim of harassment, because the incidents that make up a harassment claim collectively constitute one unlawful employment practice, the claim is actionable, as long as at least one incident that is part of the claim occurred within the filing

period. Such a claim can include incidents that occurred outside the filing period that the complainant knew or should have known were actionable at the time of their occurrence.

If the AF employee engages an EO professional for information about filing a complaint, but does not elect to engage in the informal complaint process, the EO professional records the visit as a contact and labels it “EO General Assistance.” AFI 36-2706, para. 4.5.1.3. Regardless of whether the AF employee decides to start the informal process, the EO professional has many responsibilities during that first encounter. 29 C.F.R. § 1614.105(b)(1) states:

Counselors must advise individuals in writing of their rights and responsibilities, including the right to request a hearing or an immediate final decision after an investigation by the agency in accordance with § 1614.108(f), election rights pursuant to §§ 1614.301 and 1614.302, the right to file a notice of intent to sue pursuant to § 1614.201(a) and a lawsuit under the ADEA instead of an administrative complaint of age discrimination under this part, the duty to mitigate damages, administrative and court time frames, and that only the claims raised in pre-complaint counseling (or issues or claims like or related to issues or claims raised in pre-complaint counseling) may be alleged in a subsequent complaint filed with the agency. Counselors must advise individuals of their duty to keep the agency and Commission informed of their current address and to serve copies of appeal papers on the agency.

Counselors also have a responsibility to gather information during that initial meeting. EEOC MD-110, Chapter 2, § III (3) directs counselors to “conduct a limited inquiry during the initial interview with the aggrieved individual for the purpose of determining jurisdictional questions. This includes determining whether there may be issues relating to the timeliness of the individual’s EEO Counselor contact and obtaining information relating to this issue. It also includes obtaining enough information concerning the claim(s) and basis(es) so as to enable the agency to properly identify the legal claim raised if the individual files a complaint at the conclusion of the EEO counseling process.”

AFI 36-2706 also addresses assisting a complainant to perfect his/her complaint during the informal process. Paragraph 1.21.5 directs that EO Specialists assist the “complainant with determining their basis(es), framing claim(s), and clarifying any ambiguities.” The AFI, paragraph 4.5.1.1, also dictates that all claims must be processed “through the informal complaint process, regardless of timeliness, merit, or other considerations.”

There are several regulations that address whether and when to reveal the identity of the complainant and to whom. 29 C.F.R. 1614.105 (g) states, “the Counselor shall not reveal the identity of an aggrieved person who consulted the Counselor, except when authorized to do so by the aggrieved person, or until the agency has received a discrimination complaint under this part from that person involving that same matter.” MD-110, Chapter 2, § III, para 7, instructs the EO professional to “advise the aggrieved person that their identity will not be revealed unless the aggrieved person authorizes them to reveal it or they file a formal complaint with the agency.” A claimant has the option of making an anonymous complaint. AFI 36-2706, para 4.22 states:

The EO office will ensure that an anonymous complaint of discrimination on any basis is documented on the AF Form 1271 as EO General Assistance/Contact and if the complaint is pursued, ensures that the complaint intake form reflects sufficient details to

clarify the complaint and indicate that the source is reliable. As in all EEO complaints, the EO director has responsibility of informing the installation/center commander (director) and briefing him/her on complaints raised by employees (complainants) when brought to the EO office, whether or not they relate to EEO matters. The Commander may decide an investigation outside of the EEO realm is appropriate (e.g. CDI, talk to the RMO of the shop involved, etc.). Keep in mind those interviewed in connection with the matter may be able to determine the identity of the individual making the complaint. However, in accordance with 29 C.F.R. 1614.105(g), the EO specialist/counselor will not reveal the identity of the accuser. Additionally, complainants have the right to anonymity only up to the point of filing a formal civilian EO complaint.

AFI 36-2706 at paragraph 4.5.1.9, further states the EO Specialist has the responsibility to “inform the complainant of her/his right to remain anonymous during the informal stage. If anonymity is elected, take appropriate measures to protect the identity of the complainant until a formal complaint is filed or complainant grants written permission to cease anonymity.”

According to regulation, once an aggrieved person states their intent to file an informal complaint, there is a 30-calendar day informal processing period. According to paragraph 4.5.1.4 of the AFI, that 30-day period starts as of the “first date the complainant contacts an installation EO specialist/counselor, EO Director, or other official designated to receive discrimination complaints.” It is during this 30-day period that the complainant may elect to have his/her complaint processed through the Alternative Dispute Resolution (ADR) process or continue with counseling. Participation in the ADR process by both the complainant and management is not mandatory but rather encouraged. If ADR is offered and accepted, the 30 days extends to 90 days for processing. AFI 36-2706, paragraph 4.5.1.10 states, “if the matter is not resolved before the authorized period, including extensions,” the EO official will notify the complainant of his/her right to file a formal complaint.

That same process is also described in 29 C.F.R. § 1614.105(c) – (f):

(c) Counselors shall conduct counseling activities in accordance with instructions contained in Commission Management Directives. When advised that a complaint has been filed by an aggrieved person, the Counselor shall submit a written report within 15 days to the agency office that has been designated to accept complaints and the aggrieved person concerning the issues discussed and actions taken during counseling.

(d) Unless the aggrieved person agrees to a longer counseling period under paragraph (e) of this section, or the aggrieved person chooses an alternative dispute resolution procedure in accordance with paragraph (b)(2) of this section, the Counselor shall conduct the final interview with the aggrieved person within 30 days of the date the aggrieved person contacted the agency's EEO office to request counseling. If the matter has not been resolved, the aggrieved person shall be informed in writing by the Counselor, not later than the thirtieth day after contacting the Counselor, of the right to file a discrimination complaint. The notice shall inform the complainant of the right to file a discrimination complaint within 15 days of receipt of the notice, of the appropriate official with whom to file a complaint and of the complainant's duty to assure that the agency is informed immediately if the complainant retains counsel or a representative.

(e) Prior to the end of the 30-day period, the aggrieved person may agree in writing with the agency to postpone the final interview and extend the counseling period for an additional period of no more than 60 days. If the matter has not been resolved before the conclusion of the agreed extension, the notice described in paragraph (d) of this section shall be issued.

(f) Where the aggrieved person chooses to participate in an alternative dispute resolution procedure in accordance with paragraph (b)(2) of this section, the pre-complaint processing period shall be 90 days. If the claim has not been resolved before the 90th day, the notice described in paragraph (d) of this section shall be issued.

Several regulations caution against discouraging a person from filing a complaint. Under 29 C.F.R. § 1614.105(g), “the Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint.” Similarly, AFI 36-2706, at paragraph 4.5.1.1, states the EO Specialist “processes all claims through the informal complaint process, regardless of timeliness, merit, or other considerations,” and in paragraph 4.6, directs that they “do not attempt in any manner to encourage or dissuade the person from filing a complaint.”

### ***The Formal Complaint Process***

EO directors are responsible for processing formal complaints and 29 C.F.R. § 1614 governs that process. Once the informal process has completed and come to no resolution, the employee has the right to file a formal complaint. The formal complaint can be signed and submitted by the complainant or by the complainant’s attorney. AFI 36-2706, at paragraph 4.10.1, states that the complaint “must describe the action(s) or practice(s) that form the basis of the complaint that was discussed with the EO specialist/counselor during the Informal phase of the process.” The EO Director “advises the complainant, in writing (within 5 days), of receipt of the formal complaint, the date that the complaint is considered filed, and the right to appeal to Equal Employment Opportunity Commission, Office of Federal Operations (EEOC/OFO) any full dismissal of the complaint.” Once received and given the proper notifications to the complainant, the EO Director has 15 days to submit a report of counseling (issues discussed and actions taken during the informal complaint stage) to the complainant and the processing agency. 29 C.F.R. § 1614.05(d). Under paragraph 4.11.3, the EO Director “reviews the complaint file to determine that it has all required forms and supporting documents with signatures including the counselor’s report, verifies the employment status of the complainant, perfects the claims, and ensures information covered by the Privacy Act is protected.”

AFI 36-2706, paragraph 4.12.3, requires that the EO Director review the claims individually and make a “determination whether to accept, dismiss, or partially dismiss a complaint or portion of a complaint.” Under paragraph 1.20.21., it is the responsibility of the EO Director to

Ensure recommendations for dismissal of civilian EO complaints are coordinated with the servicing legal office, in every case, and CPS or HRO, as needed, prior to final determination and issuance. Dismissal authority is exercised by the installation/center commander (director) or, through proper delegation, the vice commander or EO director. The EO director may not exercise delegated dismissal authority for any complaint in which he/she participated as a counselor.

The EO director does not have the authority to sign a decision letter unless delegated by the wing commander. AFI 36-2706, paragraph 4.12.5.5 states, “the authority to sign decision letters is vested with the installation/center commander (director) and can only be exercised by the EO Director if delegated this authority in writing. Copies of written delegations must be provided to AFPC/EO and AF/A1Q for coordination with the supporting SJA.” If a claim is dismissed in whole or in part, the EO Director must provide appeal rights and information to the complainant. If a complaint is dismissed in part, the complainant may request a hearing before an EEOC Administrative Judge (AJ). After final adjudication of the complaint, the complainant may appeal to the EEOC/OFO. If a complaint is dismissed in whole, the complainant is notified of his/her right to immediate appeal to the EEOC/OFO. AFI 36-2706, paragraph 4.12.4 and 29 C.F.R. 29 § 1614.108.

MD-110, Section IV (A)(B) also explains the role of the EO Director in evaluating the formal complaint. For partially dismissed complaints,

The agency must notify the complainant in writing of its determination, set forth its rationale for that determination, and notify the complainant that the allegations will not be investigated ... The agency should advise the complainant that an Administrative Judge shall review its dismissal determination if s/he requests a hearing on the remainder of the complaint, but the complainant may not appeal the dismissal until a final action is taken by the agency on the remainder of the complaint. See 29 C.F.R. § 1614.107(b) ... If a complainant is dissatisfied with the processing of their pending complaint ... they should be referred to the agency official [EO Director] responsible for the quality of complaints processing. Agency officials should earnestly attempt to resolve dissatisfaction with the complaints process as early and expeditiously as possible.

At the formal complaint stage, there is no longer the option for the complainant to remain anonymous. MD-110, Chapter 2, Section VIII(E) and 29 C.F.R. § 1614.105(b)(2)(g) states, “the EEO Counselor should explain that unless the aggrieved authorizes or files a formal EEO complaint, the EEO Counselor will not reveal their identity. Once the complaint is filed, the complaint file, or part of it, may be shared only with those who are involved and need access to it. This includes the EEO Director, agency EEO officials, and possibly persons whom the aggrieved person has identified as being responsible for the actions that gave rise to the complaint.”

MD-110, Chapter 5 provides guidance to EO Directors for helping a claimant to put a claim in the proper form and in regards to the 45-day time limit:

A claim refers to an assertion of an unlawful employment practice or policy for which, if proven, there is a remedy under the federal equal employment statutes ... When defining a claim, two components must be identified. First, the claim must contain a factual statement of the employment practice or policy being challenged. The second component of a legal claim is the identification of the basis (because of race, color, national origin, sex, religion, reprisal, age, disability, or genetic information) for a violation of an equal employment statute.

Furthermore, MD-110, Chapter 5 § III(A)(3), explains that even if some incidents complained of are outside the 45-day window, they may be included as part of a continuing pattern of harassment:

With regard to the timeliness of a claim of harassment, because the incidents that make up a harassment claim collectively constitute one unlawful employment practice, the claim is actionable, as long as at least one incident that is part of the claim occurred within the filing period. Such a claim can include incidents that occurred outside the filing period that the complainant knew or should have known were actionable at the time of their occurrence.

Within 30 calendar days of receiving the formal complaint, the EO Director must refer all complaints accepted in whole or in part to the DOD Investigations and Resolutions Division (IRD) for an investigation. 29 C.F.R. § 1614.106(d) provides, “a complainant may amend a complaint at any time prior to the conclusion of the [IRD] investigation to include issues or claims like or related to those raised in the complaint. [Alternatively], after requesting a hearing, a complainant may file a motion with the administrative judge to amend a complaint to include issues or claims like or related to those raised in the complaint.” Amendments to complaints are also addressed in MD-110, Chapter 5 § IV(D), “at any time prior to the agency’s mailing of the notice required by 29 C.F.R. § 1614.108(f) at the conclusion of the [IRD] investigation, 29 C.F.R. § 1614.106(d) permits a complainant to amend a pending EEO complaint to add claims that are like or related to those claim(s) raised in the pending complaint.”

MD-110, Chapter 5 § III(B) also discusses the possibility of amending a complaint and when it is appropriate to amend the complaint versus when it is appropriate to file a new complaint:

This situation [amending a complaint] most frequently occurs when an alleged discriminatory incident occurs after the filing of an EEO complaint. In the past, agencies usually made these subsequent incidents the basis of a separate EEO complaint. A separate EEO complaint is not appropriate, however, if the new incident of discrimination raises a claim that is like or related to the original complaint. Rather, the original complaint should be amended to include the new incident of discrimination. When a complainant raises a new incident of alleged discrimination during the processing of an EEO complaint, it must be determined whether this new incident:

1. provides additional evidence offered to support the existing claim, but does not raise a new claim in and of itself;
2. raises a new claim that is like or related to the claim(s) raised in the pending complaint; or
3. raises a new claim that is not like or related to the claim(s) raised in the pending complaint.

MD-110, Chapter 5, § III(B)(2) provides further explanation:

While a complaint is pending, a complainant may raise a new incident of alleged discrimination that is not part of the existing claim, but may be part of a new claim that is like or related to the pending claim. In deciding if a subsequent claim is "like or related" to the original claim, a determination must be made as to whether the later

incident adds to or clarifies the original claim, and/or could have reasonably been expected to grow out of the investigation of the original claim. [Citations omitted] In accordance with 29 C.F.R. § 1614.108(f) and guidance set forth in Section II(A)(1) of this Chapter, if the EO Director or designee concludes that the new incident(s) raises a new claim, but that this new claim is like or related to the claim(s) raised in the pending complaint, the agency must amend the pending complaint to include the new claim.

In cases where subsequent acts of alleged discrimination do not add to or clarify the original claim, and/or could not have been reasonably expected to grow out of the investigation of the original claim, the later incident should be the subject of a separate EEO complaint. In such cases, fragmented processing of an EEO complaint is not at issue because there are two distinct and unrelated legal claims being alleged. If the EO Director or designee concludes that the new claim raised by the complainant is not like or related to the claim(s) raised in the pending complaint, then the complainant must be advised in writing that s/he should seek EEO counseling on the new claim.”

According to paragraph 4.14.1 of the AFI, the EO Director is responsible for requesting an IRD investigation within 30 days of the receipt of the formal complaint. The IRD investigation should last no longer than 180 days. Once IRD completes its investigation, IRD provides the ROI and investigative file to Air Force Civilian Appellate Review Office (AFCARO), who then sanitizes it to remove Privacy Act information and provides copies to complainants and their designated representatives, along with notification of their rights to request a hearing or receive a final agency decision without a hearing. If the complainant requests a hearing, the EEOC appoints an administrative judge (AJ) to hear and adjudicate the case. AFI 36-2706, para. 4.14 and 4.15. If the complainant does not request a hearing or final AF decision without a hearing within 30 calendar days after receipt of the ROI, AFCARO prepares the AF’s final decision for review and signature by Assistant Secretary of the Air Force Manpower and Reserve Affairs (SAF/MR).

The Commander/director or designee – here the EO Director, **EEO Director** – is responsible for handling complainants’ dissatisfaction with the processing of complaints. Paragraph 4.10.2. states:

If a complainant is dissatisfied with the processing of his/her pending complaint, whether or not it alleges prohibited discrimination as a basis for dissatisfaction, s/he should be referred to the installation/center commander (director) or designee. The commander/director or designee promptly resolves the concerns of dissatisfaction. A written response should be provided to the complainant indicating the actions the agency took to promptly resolve the concerns and attach a copy of the letter to the complaint files maintained on the under[lying] complaint. Complaints alleging dissatisfaction are processed as required by 29 C.F.R. 1614.107(a)(8). A record of the complainant’s concerns and any actions taken to resolve the concerns must be made part of the complaint file. If no action is taken, the file must contain an explanation for not taking any action.

Paragraph 1.20.17 provides that the EO Director has responsibility to “[v]erif[y] and ensure a record of the complainant’s concerns and any actions taken to resolve the concerns are included as part of the official complaint file when the complainant alleges dissatisfaction with the

processing of his/her complaint.” Under Paragraph 1.20.30, the EO Director is also responsible for “[m]aintain[ing] and safeguard[ing] complaint files as the custodian of the official record.”

## **Sexual Harassment and Section 1561**

Section 1561 of Title 10 of the United States Code (10 U.S.C. § 1561) places requirements on commanders and officers in charge to investigate complaints of sexual harassment against military members or civilians under their supervision. Under Section 1561(b), the commanding officer or officer in charge, within 72 hours of receiving the complaint, must:

- (1) forward the complaint or a detailed description of the allegation to the next superior officer in the chain of command who is authorized to convene a general court-martial;
- (2) commence, or cause the commencement of, an investigation of the complaint; and
- (3) advise the complainant of the commencement of the investigation.

The completed report of investigation, including any action taken, must be sent to the next superior officer designated in 10 USC § 1561(b) within 20 days of the start of the investigation, if practicable. Alternatively, a report on the progress made in completing the investigation must be sent within 20 days of starting the investigation and again every 14 days until the investigation is completed to that next superior officer.

AFI 36-2706 also addresses the requirements of 10 USC § 1561. Under paragraph 1.20.14 it is the responsibility of the EO Director to “[n]otif[y] the SJA [staff judge advocate] and installation/center commander (director) of sexual harassment claims where the civilian complainant invokes his/her right to request an investigation under the authority of 10 U.S.C. Section 1561.

Under paragraph 1.21.4, EO Specialists “advise the civilian complainant who uses the EO process in sexual harassment claims he/she had the right to request an investigation under the authority of 10 U.S.C. Section 1561, in addition to initiating an EO complaint.” This responsibility is reiterated in Chapter 4, paragraph 4.5.1.7., which states that, “[i]f the complainant alleges sexual harassment, [the EO Specialist] advises aggrieved persons of their right to request a Commander Directed Investigation (CDI) under 10 U.S.C. Section 1561, and advises the CDI would run concurrently with the EO complaint.” Pursuant to paragraph 1.21.7, the EO Specialist also “serves as subject matter experts (sic) (SME) for CDIs, commander work issues or IG investigations involving military complainants.”

The AFGM to AFI 36-2706, dated February 9, 2017 and reissued January 29, 2019, added Section 4K – Allegations of Sexual Harassment (10 USC § Section (sic) 1561 and 29 C.F.R. 1614). Section 4K provides guidance on counseling of potential sexual harassment complaints. Paragraph 4.25.1 provides that, when a civilian employee initiates contact with an EO Specialist regarding a complaint of sexual harassment, the EO Specialist “must advise him/her of his/her rights and responsibilities under both statutes (Title VII, as implemented by 29 C.F.R. 1614, and 10 USC Section 1561).”

Paragraph 4.25.5. is among the provisions added by the AFGM; it provides an extension to filing an informal complaint until after the CDI is completed. Paragraph 4.25.5 states,

If an employee elects to exclusively pursue a complaint under 10 USC § Section 1561, the EO Specialist will document the contact in iComplaints and refer the employee to his or her responsible commander to request a CDI under 10 USC § Section 1561. If the employee does not express intent to pursue an EEO complaint, counseling activities as identified in MD-110, should NOT occur. The 30-day counseling period for an EEO complaint commences when the employee expresses intent to begin the EEO process and obtains counseling. (Emphasis in original).

Paragraph 4.25.5.1. provides:

EO Specialists must inform civilians in writing if they wish to pursue the EEO process after the CDI is completed, they must contact the EO Office within 10 calendar days from the notification that the CDI is complete, to state their intention to begin the EEO process and obtain counseling on the EEO process. This applies when the employee has initiated contact with an EO Counselor within 45 days of the alleged discriminatory event (or of the effective date of the personnel action leading to the discrimination). It is ultimately the employee's responsibility to make contact, in a timely manner, with the EO Office to pursue complaints of discrimination.

### **Dispute Resolution and Conflicts of Interest**

Settlement negotiations can occur during both the informal and formal stages of the EO process. 29 C.F.R. § 1614.603 states, "each agency shall make reasonable efforts to voluntarily settle complaints of discrimination as early as possible in, and throughout, the administrative processing of complaints, including the pre-complaint counseling stage. Any settlement reached shall be in writing and signed by both parties and shall identify the claims resolved." AFI 36-2706, para. 4.17.1 also provides guidance in regards to negotiating a settlement:

The EO director, working with the SJA [Staff Judge Advocate], management representative, the complainant and his/her representative, may negotiate a settlement of the complaint during the pre-complaint stage of the process (prior to the filing of a formal complaint) within the parameters set by the settlement authority. After a formal complaint has been filed, the agency representative has the authority to negotiate settlement of the complaint through negotiation, ADR or other approach.

AFI 36-2706, para. 4.17.1 continues with special guidance for complaints against persons of higher rank:

In complaints filed against persons in the grades of Colonel and above (or civilian equivalents), the commander with administrative control over the complainant is the primary settlement authority, but such authority may be delegated to subordinate personnel in coordination with SAF/GCA and the management representative. Investigators and AJs may also seek to resolve a complaint with the parties during the investigation and/or hearing.

AFI 36-2706, para. 8.1.2 further discusses who can serve as a settlement authority. “An AF official is properly a settlement authority if s/he has the authority to grant the scope of the remedy requested and/or provided. If an expenditure of funds is contemplated and installation commanders wish to delegate their authority for complaint resolution, such delegation must be in writing.” MD-110, Chapter 1 § V also provides guidance on choosing a settlement authority:

The agency must designate an individual to attend settlement discussions convened by a Commission Administrative Judge or to participate in EEO alternative dispute resolution (ADR) attempts. Agencies should include an official with settlement authority during all settlement discussions and at all EEO ADR meetings (Note: The agency's official with settlement authority should not be the responsible management official [RMO] or agency official directly involved in the case. This is not a general prohibition on those officials from being present at appropriate settlement discussions and participating, only that they are not the officials with the settlement authority.) The probability of achieving resolution of a dispute improves significantly if the designated agency official has the authority to agree immediately to a resolution reached between the parties. If an official with settlement authority is not present at the settlement or EEO ADR negotiations, such official must be immediately accessible to the agency representative during settlement discussions or EEO ADR.”

Conflicts of interest can occur during the settlement process and should be avoided. AFI 36-2706, para. 1.47.3 states, “if a situation arises where the installation/center commander (director), MAJCOM [Major Command] EO Strategic Advisor, EO Director, and/or an EO specialist is named in a discrimination complaint, the case must be coordinated with AFPC/EO within 24 hours prior to processing the case. AFPC/EO will coordinate with A1Q and designate an EO Specialist from a disinterested office to process the case and advise other appropriate offices of the nuances of the case.” MD-110, Chapter 1 § IV discusses the importance of avoiding conflicts of interest and describes situations in which a conflict of interest may occur:

A conflict of interest may exist when the responsible management official [RMO] alleged to have engaged in discriminatory conduct is the agency head or a member of the immediate staff of the agency head, or occupies a high-level position of influence in the agency. Real or perceived conflict may occur as a result of the undue influence that the high-level official may have over the EO Director and other involved agency personnel. Whether this conflict is real or presents the appearance of a conflict, the matter must be addressed through procedures designed to safeguard the integrity of the EEO complaint process. For example, when an EEO complaint alleges that the agency head or a member of his/her immediate staff has engaged in discrimination, the agency head should recuse himself/herself from the decision-making process, and engage an official outside his/her chain of command to issue a final action on the case. Agencies with questions regarding unique conflict issues may contact the Office of Federal Operations (OFO) for additional guidance.

MD-110, Chapter 3, § I also states that a manager who has been accused of discrimination has a duty to cooperate with the process, “but may not be the agency official that has settlement authority.” Finally, MD-110, Chapter 6 § III(A), places the responsibility on the EO Director to ensure there is no

conflict of interest, stating “the EO Director also must ensure that there is no conflict of interest or appearance of conflict of interest in the investigation of complaints.”

## **Contractors**

AFI 36-2706, paragraph 4.3 explains who may file civilian EO complaints. In regards to contractors, paragraph 4.3.2. states:

Under EEOC and Air Force policy, independent contractors, contingent employees and ANG technicians performing military functions are generally not considered Agency employees for Federal Sector EEO purposes.

However, there may be cases in which an independent contractor is considered an Agency employee. Paragraph 4.3.2.2. provides the following guidance:

The EEOC has adopted the common law agency test applied in *Ma v. Department of Health and Human Services* to determine whether an individual qualifies as an Agency employee. The test takes into account the following factors:

- (1) the extent of the employer’s right to control the means and manner of the worker’s performance;
- (2) the kind of occupation, with reference to whether the work usually is done under the direction of a supervisor or is done by a specialist without supervision;
- (3) the skill required in the particular occupation;
- (4) whether the employer or the individual furnishes the equipment used and the place of work;
- (5) the length of time the individual has worked;
- (6) the method of payment, whether by time or by the job;
- (7) the manner in which the work relationship is terminated, i.e., by one or both parties, with or without notice and explanation;
- (8) whether annual leave is afforded;
- (9) whether the work is an integral part of the business of the employer;
- (10) whether the worker accumulates retirement benefits;
- (11) whether the employer pays social security taxes; and
- (12) the intention of the parties.

Paragraph 4.3.2.3 requires that any review for acceptance or dismissal of all complaints by contractors be conducted under the supervision of the Labor Law Field Support Center.<sup>9</sup>

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<sup>9</sup>Paragraph 1.25.5 provides that “Staff Judge Advocates for organizations not supported by the LLFSC provide the legal services as described in paragraph 1.13 of this instruction....” Hill AFB is part of AFMC which is not supported by the LLFSC. The SJA for the 75 ABW Legal Office would be responsible for this review.

## Other Relevant Regulations

In determining whether an AF employee's actions qualified as an abuse of authority or a gross mismanagement of his/her responsibilities, there are two AFIs that provide guidance. AFI 90-301, defines abuse of authority as:

An arbitrary and capricious exercise of power by a military member or a federal official or employee. To qualify as arbitrary and capricious, the following must be met: The action either adversely affected any person or resulted in personal gain or advantage to the responsible management official (RMO) and, the RMO did not act within the authority granted under applicable regulations, law or policy; or the RMO's action was not based on or rationally related to relevant data and factors.

AFI 51-1102, Aytch 1, defines gross mismanagement as "a management action or inaction which creates a substantial risk of significant adverse impact upon the agency's ability to accomplish its mission. It does not include management decisions which are merely debatable, nor does it mean action or inaction which constitutes simple negligence or wrongdoing."

## ANALYSIS

This analysis is based on The Summary of Evidence contained in Appendix A. It sets out evidence obtained in the Section 1213 investigation as well as relevant information reviewed and incorporated from the related Section 1214 investigation. The investigation focused on the EEO process (including interactions with **EEO Director** and the EO office) at Hill AFB as it related to each of the three whistleblowers, three additional complainants identified by the whistleblowers (as referenced in OSC's referral letter), and another potential complainant identified by one of the witnesses. As such, the section contains disparate evidence about the claims brought by each of these individuals as well as the underlying allegations raised by or related to these individuals. Specifically, the Summary of Evidence includes the following subsections: 1) Background on Hill AFB; 2) Background on the Operation and Leadership of the 75<sup>th</sup> ABW EEO Office; 3) Testimony obtained about the EO Complaint process; 4) Evidence related specifically to the claims of each of the whistleblower complainants (**Whistleblower 1**, WB#2<sup>10</sup> and WB#3); and 5) Other EO complainants.

This analysis correlates with the OSC referral letter where OSC set out four specific allegations to be investigated. In addition, OSC's referral letter also references allegations of gross mismanagement and abuse of authority.

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<sup>10</sup>The section related to WB#2 is the longest subsection as **█** case is one of the more complicated, both in terms of process and issues raised (**█** is the only complainant who had issues related to each of OSC's allegations). The summary includes substantial information from the Section 1214 investigation which was reviewed and incorporated into the Section 1213 investigation. The evidence included interactions with the EO office (including the EO case file records), multiple conversations with **EEO Director**, the involvement of the IG's office, the interactions of the Hill legal office with the EO office, management and WB#2, and the settlement of WB#2's claims.

## Violations of Law, Rule or Regulation

**OSC Allegation 1:** Hill AFB EEO Director [EEO Director] actively discouraged employees from filing EEO complaints in violation of AFI 36-2706 Chapter 4, paragraph 4.5.1.1 and 4.6.

OSC's use of the term "complaint" does not distinguish between "pre-complaints" in the informal stage and formal "complaints" in the formal stage. In discussing this allegation, OSC's Referral Letter describes alleged actions taken without specifying whether such alleged action occurred in the informal or formal stage of the EO process.

In the informal complaint stage, both EEOC regulation<sup>11</sup> and the Air Force instruction caution against discouraging a person from filing a complaint. AFI 36-2706, at paragraph 4.5.1.1, states the EO Specialist "processes all claims through the informal complaint process, regardless of timeliness, merit, or other considerations." AFI 36-2706, paragraph 4.6, provides that EEO counselors during the final interview, must "not attempt in any manner to encourage or dissuade the person from filing a [formal] complaint."

The investigation looked into whether [EEO Director] actively discouraged employees from filing "pre-complaints" in the informal stage as well as formal complaints in the formal stage. While the alleged actions set out in OSC allegation 2 (modifying or rejecting complaints/allegations) and OSC allegation 3 (false or misleading information) might also result in actions that could be characterized as "discouraging," these allegations will be addressed below with the respective OSC allegation.

During the relevant time period, [EEO Director] served as the EO Director. It should be noted that during the investigation, the IO asked each of the EO Specialists and the EO Superintendent, all of whom previously worked or currently work for [EEO Director] whether [EEO Director] actively discouraged employees from filing EEO complaints. All the EO Specialists and the EO Superintendent testified that [EEO Director] was professional and courteous to the complainants. When asked whether [EEO Director] had discouraged employees from filing complaints by telling them their complaints were not valid or would not go anywhere, all answered in the negative.

During this time, the evidence showed [EEO Director] involvement in the pre-complaint stage of four (4) civilian employees: WB#2, WB#3 and two other EO complainants, [Complainant #1] and [Former OB Director]. [EEO Director] pre-complaint interaction with each of these individuals is addressed below.

### *WB#2*

WB#2 had two pre-complaint encounters with [EEO Director] – the first in September 2016 and the second, a number of telephone calls in January 2017. The evidence shows that [EEO Director] actively discouraged WB#2 both times in violation of AFI 36-2706, paragraph 4.5.1.1.

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<sup>11</sup> Under 29 C.F.R. § 1614.105(g), "the Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint." An "attempt" implies the counselor had the intent to dissuade someone from filing a complaint. The evidence does not support the conclusion that [EEO Director] intention was to discourage or dissuade any of the complainants.

WB#2 initially met with EEO Director in September 2016 and told █████ that █████ “want[ed] to come forward and file a complaint.” After listening to WB#2 describe what happened, EEO Director told WB#2 that █████ could not file on the sexual harassment as all of those incidents were outside the 45 day window and because [Former OB Director] had already taken care of it. EEO Director admitted that █████ told WB#2 at the September meeting “that the sexual harassment incidents dating from April 2016 to June 2016 were beyond the 45-day limit.” EEO Director also told WB#2 that █████ would not tie the sexual harassment incidents to the latest incident involving [Former Chief of ALC/OB] slamming a chair into WB#2’s desk partition. EEO Director told WB#2 that █████ could only file on the chair being slammed; but because there were no witnesses, the claim “wouldn’t carry any weight” and that “it wouldn’t go anywhere.” [Personal Representative #1] was present during this conversation and confirmed that EEO Director told WB#2 that █████ claims “exceeded the time frame” and that WB#2 “didn’t really have a case.”

The evidence shows that in September 2016, EEO Director actively discouraged WB#2 from filing by improperly telling WB#2 █████ did not have a valid claim (based on timeliness) with regard to the sexual harassment claims. EEO Director also improperly disparaged the nature of the evidence for the chair slamming incident in █████ discussion with WB#2.<sup>12</sup> WB#2 testified that EEO Director comments discouraged █████ from filing an informal complaint because EEO Director was essentially telling █████ “you’re wasting both of our time” because the claims are “not going to go anywhere.”

In January 2017, after contacting [AFSC IG] in the IG’s office, WB#2 again contacted EEO Director by telephone with regard to filing an informal complaint. WB#2 testified that “that’s when EEO Director was really pushing back” indicating that WB#2 “was way out of the 45-day window now,” and that “we’ve already rehash[ed] this and it’s done, it’s dealt with.” WB#2 told [AFSC IG] that “I’m trying to file a complaint and she’s not letting me.” [AFSC IG] told WB#2 encouraged WB#2 to file “if you believe what you have is a valid complaint.” The evidence shows that EEO Director instead of simply accepting the informal complaint, again improperly commented on the validity of the claims as being outside the 45 day window, and thereby discouraging WB#2 from filing.

As discussed above, the evidence shows that EEO Director actions actively discouraged WB#2 from filing an informal complaint on at least two occasions in violation of AFI 36-2706, paragraph 4.5.1.1. The evidence does not show that EEO Director actively discouraged WB#2 from filing at the formal stage and therefore did not violate AFI 36-2706, paragraph 4.6.

### WB#3

WB#3 initially interacted with EEO Director during an intake meeting in the informal complaint stage. Present at the meeting were WB#3, [Personal Representative #2], EEO Director [EO Specialist

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<sup>12</sup> In WB#2’s interactions with EEO Director after the accept/dismiss determination, EEO Director made comments which support the view that EEO Director favored management (discussed more in depth in the Summary of Evidence (Appendix A)). For example, EEO Director made comments supporting [Former OB Director]’s actions. “[Former OB Director] did an investigation, and nothing was found to substantiate that you [WB#2] were stalked, sexually harassed, or really any of your claims.” However, as the evidence shows, [Former OB Director] did not conduct an investigation, and EEO Director as the EO director did not ask for a copy of the investigation report (and therefore would not have known what was found). With regard to WB#2’s only accepted claim regarding the RPA, EEO Director told WB#2, “it wasn’t [[Former OB Director]’] responsibility so █████ couldn’t be retaliating against you because it wasn’t █████ responsibility.”

#2] and [EO Superintendent]. WB#3 indicated that EEO Director was “rude”<sup>13</sup> and “dismissive” and that [redacted] really tried to discourage [redacted]. WB#3 testified that EEO Director told [redacted] that [redacted] really didn’t have a good EEO complaint and stated “[redacted] [EEO Director] didn’t think I should file a complaint.” [Personal Representative #2], who attended the same meeting, said EEO Director made it seem “as complicated as possible” and that made it discouraging. [Personal Representative #2] said EEO Director answers were “very corporate” and [redacted] made statements like “that wouldn’t really work, this wouldn’t really work.” [EO Superintendent] testified that EEO Director was respectful during the meeting and explained the process. [EO Specialist #2] testified that EEO Director was “very respectful” and “explained the process to [redacted]. EEO Director was not asked whether [redacted] discouraged WB#3 from filing a complaint but [redacted] did say that WB#3 was “a very difficult complainant.”

Despite WB#3’s assertion that EEO Director discouraged [redacted] from filing a complaint, the evidence suggests that WB#3 was discouraged by the process itself rather than anything EEO Director said. WB#3 wanted to skip the informal process and file a formal complaint immediately similar to the military EO process of which [redacted] had more familiarity. EEO Director was trying to explain to [redacted] the civilian EO process where you have to follow the informal process first. WB#3 may have felt EEO Director was “dismissive” because EEO Director was explaining to [redacted] that [redacted] could not immediately go to the formal complaint process. EEO Director and other EO personnel perceived WB#3 to be a “difficult complainant,” and this also helps explain WB#3’s perception of [redacted] interaction with EEO Director. The EO personnel present testified that EEO Director was respectful and explained the process.

Therefore, a preponderance of the evidence does not show that EEO Director actively discouraged WB#3 from filing an EEO complaint in violation of AFI 36-2706 Chapter 4, paragraphs 4.5.1.1 and 4.6.

*[Complainant #1]*

[Complainant #1] met initially with EEO Director for about an hour in November 2018 for advice on whether to file a complaint. According to [Complainant #1]’s testimony, EEO Director did not say anything to discourage [redacted] from filing a complaint but merely explained [redacted] options. Based on how long the process would take and what [redacted] described as the overwhelming process, [Complainant #1] elected not to return to EEO to file a “pre-complaint.” Based on the evidence, EEO Director did not actively discourage [Complainant #1] from filing a complaint.

*[Former OB Director]*

[Former OB Director] first met with an EEO Specialist, [EO Specialist #2], who provided [redacted] with an explanation of the process and some paperwork to review. Thereafter, [Former OB Director] met with EEO Director and provided [redacted] with the necessary documentation to file an informal complaint. [Former OB Director] testified that [redacted] was not discouraged from filing a “pre-complaint” by either EEO Director or [EO Specialist #2]. [Former OB Director] indicated that while [redacted] was “disheartened” by [redacted] EEO experience, it had nothing to do with [redacted] interactions with EEO Director or [EO Specialist

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<sup>13</sup> The OSC transmittal letter mentions that WB#3 said EEO Director “told [redacted] ‘I know who you are,’ in a hostile tone before [redacted] introduced herself or spoke about the complaint.” There is no evidence in the record to indicate that this happened and WB#3 did not say this in [redacted] testimony during the investigation.

#2]. Based on the evidence, **EEO Director** did not actively discourage [Former OB Director] from filing a complaint.

In sum, the evidence shows that **EEO Director** did not actively discourage WB#3, [Complainant #1] or [Former OB Director] from filing a complaint. However, while the EO staff did not witness **EEO Director** actively discourage civilian employees from filing informal complaints, the evidence shows that **EEO Director** did actively discourage WB#2 from filing an informal complaint in violation of AFI 36-2706 Chapter 4, paragraph 4.5.1.1. The evidence does not show any violations of AFI 36-2706, paragraph 4.6.

**OSC Allegation 2:** **EEO Director** inappropriately modified or rejected EEO complaints and/or allegations in violation of 29 C.F.R. §§ 1614.103(a), 105(a) and 107(a); MD-110, Chapter 5 §§ III (A) and IV; and AFI 36-2706, paragraphs 1.19, 1.20.21, 1.20.17, 4.10.2.

As the EEO Director, **EEO Director** was responsible for properly framing the claims in the formal “complaint” stage, which often required modifying the claims. [REDACTED] is also responsible for accepting or dismissing claims based on criteria set out in EEOC regulations, 29 C.F.R. § 1614.107(a) (1-9) and MD-110, Chapter 5(IV)(A). **EEO Director** performed these functions with regard to the complaints filed by **Whistleblower 1** WB#2, WB#3, [Former OB Director], and [Complainant #2]. MD-110 Chapter 5, IV provides that the agency should “clearly set forth its reasoning for dismissing the complaint in all dismissal decision and include evidence in the record that supports the grounds for dismissal.” Each is addressed below.

#### **Whistleblower 1**

With regards to **Whistleblower 1** **EEO Director** dismissed 11 of **Whistleblower 1's** 23 submitted claims based on the fact that they failed to state a claim in accordance with the criteria set out in EEOC regulations, 29 C.F.R. § 1614.107(a) (1-9) and MD-110, Chapter 5 § IV(A)(3). **EEO Director** did not provide further information or clarification in [REDACTED] dismissal letter to explain why [REDACTED] believed they failed to state a claim. 29 C.F.R. § 1614.103 allows claims based on discrimination and retaliation. This includes a claim based on hostile work environment. Since **Whistleblower 1** was alleging a pattern of non-sexual harassment and hostile work environment, the removal of those 11 claims substantially reduced the amount of incidents contributing to the work environment, thereby weakening [REDACTED] case as it moved forward. The evidence shows that at least 10 of **Whistleblower 1's** 11 dismissed claims support **Whistleblower 1's** hostile work environment claim and thus, do state a claim under 29 C.F.R. § 1614.103. Thus, it was improper for **EEO Director** to dismiss these claims for failure to state a claim because [REDACTED] unknowingly applied the dismissal criteria incorrectly. In fact, during EEOC proceedings, the parties stipulated to re-instate 10 of the 11 claims that **EEO Director** had dismissed. Therefore, **EEO Director** did improperly reject at least 10 of 11 EEO complaints made by **Whistleblower 1** in the formal stage in 29 C.F.R. § 1614.107(a) and MD-110, Chapter 5 § IV because [REDACTED] improperly applied the listed dismissal criteria.

#### *WB#2*

The OSC referral letter indicates that WB#2 said that **EEO Director** “repeatedly tried to replace the names of the alleged wrongdoers in their informal and formal complaints with ‘management,’ explaining it would not be ‘appropriate’ to personally name such high-ranking employees because it

could harm their reputations, and they had to fight with EEO Director to keep the names in the documents.” The evidence does show that both EEO Director and [EO Specialist #4] sought to use the term “management” or “senior management” in WB#2’s claims instead of naming the individual high ranking employees. However, the process for formulating claims envisions a back and forth between the EO counselor and the complainant. WB#2 engaged the EO counselor in this process and claims did name the high-ranking employees. Thus, while this likely constitutes evidence of discouragement (see OSC allegation 1), it does not show that EEO Director inappropriately modified WB#2’s claims.

As the EO director, EEO Director has delegated responsibility for accepting or dismissing claims based on criteria set out in EEOC regulations. However, exercised this responsibility with regard to WB#2’s formal complaint in violation of AFI36-2706, paragraphs 1.19 and 1.20.21. Paragraph 1.19 allows the delegation of the accept/dismiss function to the EO director “if the EO director has not otherwise counseled the complainant with respect to the complaint.” Paragraph 1.20.21 provides that “the EO director may not exercise delegated dismissal authority for any complaint in which he/she participated as a counselor.” Here, EEO Director counseled WB#2 in September 2016 and again (to a lesser extent) in January 2017 with regard to sexual harassment claims and the reprisal/hostile work environment claim related to the chair slamming incident. These claims were part of WB#2’s formal complaint which EEO Director dismissed as being untimely. As such, EEO Director was negligent in performing both the counseling as well as the acceptance/dismiss functions for WB#2’s complaint in violation of AFI 36-2706, Paragraphs 1.19 and 1.20.21.

On May 17, 2017, EEO Director dismissed 39 of WB#2’s 40 claims as untimely “because the complainant failed to contact the EO Office/EEO Specialist within 45 days of the alleged discriminatory event/action; therefore, these claims are considered to be untimely.”<sup>14</sup> However, the evidence is to the contrary. WB#2 made contact with an EEO counselor on July 6, 2016, which was within 45 days of at least one sexual harassment incident. The evidence further shows that WB#2 made a second contact with an EEO counselor in September 2016, within 45 days of the chair slamming incident.

Section 1614.105(a)(1) provides “[a]n aggrieved person must initiate contact with a Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action.” MD-110, Chapter 5, § IV A(1) states the basis for dismissal based on “Untimely Counseling Contact.” It provides as a basis for dismissal “a claim that was not brought to the attention of an EEO counselor in a timely manner.” Section IV (A)(1)(b) states, “the complainant did not contact an EEO Counselor within forty-five (45) days of the discriminatory event or within 45 days of the effective date of the personnel action...” citing to Section 1614.105(a)(1). AFI 36-2706, paragraph 4.3.1 provides, “[t]he aggrieved person starts the civilian EO process by contacting an EO specialist/counselor or an EO official and advising that s/he has been subjected to unlawful discrimination.” Based on the evidence, WB#2 met this requirement. Further,

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<sup>14</sup> The evidence demonstrates that WB#2 was persistent in efforts to obtain an investigation into claims of sexual harassment and management’s failure to act. The Informal Counseling Report stated the reason for WB#2’s “delay” in contacting the EO office was “Leadership stated they will handle it and complainant believes it was not handled appropriately.” The fact that management did not conduct the Section 1561 (as determined in the Section 1214 investigation) casts a shadow over this entire case. Confusion, misinformation, neglect as well as legal and other mistakes made this case far more difficult. Had EEO Director been attuned to WB#2’s insistence on an investigation, would have asked for a copy of the investigation report – which would have revealed that no investigation had been conducted.

in a review of EEOC regulations, MD-110 guidance and AFI 36-2706, there is no requirement that the complainant actually file an “informal” or “pre-complaint” in order to meet the timeliness requirements of contacting a counselor.

It is clear from the evidence that WB#2 believed [REDACTED] had met the requirements for contacting an EEO counselor within 45 days – and [REDACTED] did. [EEO Director] dismissal of these claims for failure to contact an EEO counselor within 45 days was inconsistent with EEOC regulation, 29 C.F.R. §1614.105(a)(1), and constitutes a violation of MD-110, Chapter 5, § IV A(1). Further, in performing the accept/dismiss function, [EEO Director] failed to recognize the different standard used with regard to continuing violation claims such as sexual harassment and hostile work environment. MD-110, Chapter 5, § III(A)(3) allows claims outside of the 45-day window when they are part of continuing conduct, so long as at least one of the incidents is within the 45-day window. According to the MD-110, these claims are included to show a pattern of ongoing discrimination.

[EEO Director] dismissed 39 of WB#2’s 40 claims as untimely, despite the fact that WB#2 articulated a claim of sexual harassment/hostile work environment and explained to [EEO Director] that these claims were part of a continuing pattern of behavior. Instead, [EEO Director] negligently imposed the 45-day limit without consideration of whether such claims were part of a continuing violation.

Additional evidence in the record supports this finding. [Attorney #1] testified regarding harassment claims.

Because that's the thing about a harassment claim is that it's either a severe act or pervasive so the EEOC essentially says -- it gets accepted if there's an incident that occurred within the 45 days because that's kind of the idea is someone may not feel that they're being harassed until these incidents keep going on and on and on. After a while they may say, hey, I feel I've been harassed. And so the EEOC will say, look, once one of those acts falls within 45 days, then you accept all of the incidents.

[Attorney #1] further testified that [REDACTED] presented training (in part due to cases where the AJ ruled against the Air Force on these types of issues) to the entire EO office on the timeliness of and the acceptance/dismissal of harassment claims where there is a continuing pattern of behavior. This training occurred in or about early May 2018. [Attorney #1] stated that while [REDACTED] believed the EO office is handling these claims correctly now, [REDACTED] “[didn’t] think it was necessarily being handled correctly before [the training in May of 2018].”

In addition, [EO Specialist #4] testified that, at the time [REDACTED] handled WB#2’s informal complaint, [REDACTED] understanding was that the incident had to be within the 45-day window. [REDACTED] testified that [REDACTED] later learned that such incidents may be included when they are part of a pattern of behavior. [EO Specialist #4] testified that [EEO Director] was “very big on timeliness” and the 45-day window and “I’m guessing [REDACTED] [EEO Director] probably didn’t have the knowledge on [pattern of behavior] and went on to the 45-day area and dismissed [WB#2’s claims] because of that.”

Further, evidence from the EEOC shows that errors in the acceptance/dismissal process are common in many federal agencies. The EEOC found that during two of the five years studied, the Air Force was among the agencies that had 25 or more reversals of appellate decisions based on improper dismissals – a rate that exceeded the government-wide reversal rate. EEOC found that two of the more

common errors by agencies included the failure to recognize several claims as a pattern of harassment/hostile work environment and improperly dismissing claims on timeliness.

**EEO Director** testified that the legal office reviews all acceptance/dismiss decisions and concurs in the determinations. However, with regard to WB#2, the casefile did not contain all of the relevant information. Despite WB#2's request to include the records of both of **EO** office visits (in July and September 2016), **EEO Director** did not place those records in WB#2's casefile. Consequently, the legal office would not have necessarily known that WB#2 made contact with the EO office in a timely fashion on **sexual harassment/hostile work environment** claims or discern that **EEO Director** improperly discouraged WB#2 from filing an informal complaint in September 2016.

Pursuant to AFI36-2706, paragraph 4.10.2, "if a complainant is dissatisfied with the processing of his/her pending complaint... s/he should be referred to the installation/center commander (director) or designee" who will "promptly resolve the concerns of dissatisfaction" and provide the complainant a written response. The paragraph goes on to state that "a record of the complainant's concerns and any actions taken to resolve the concerns must be made a part of the complainant's file. If no action is taken, the file must contain an explanation for not taking action." Paragraph 1.20.17 of AFI36-2706 assigns **EEO Director** as the EO director with the responsibility to "verify and ensure a record of the complainant's concerns and any actions taken to resolve the concerns are included as part of the official complaint file when the complainant alleges dissatisfaction with the processing of his/her complaint." MD-110, Chapter 5 § IV (D)(2) reiterates these requirements.

The Agency official responsible for the quality of complaints processing must add a record of the complainant's concerns and any actions the agency took to resolve the concerns, to the complaint file maintained on the underlying complaint. IF no action was taken, the file must contain an explanation of the agency's reason(s) for not taking any action.

WB#2's request to include **prior EO office contacts** is an expression of dissatisfaction with the processing of **complaint**. This is one of many such expressions by WB#2. **EEO Director** failed to take action on this issue (and many of the others raised by WB#2) and also failed to verify and ensure that a record explaining why no action was taken was included in the casefile. **EEO Director** failure to do so is in violation of MD-110, Chapter 5, § IV (D), and AFI36-2706, paragraphs 4.10.2 and 1.20.17.

In sum, **EEO Director** 1) negligently performed both the EEO counseling and the acceptance/dismiss functions for WB#2's complaint in violation of AFI 36-2706, Paragraphs 1.19 and 1.20.21; 2) failed to recognize the different standard used with regard to continuing violation claims such as sexual harassment and hostile work environment and improperly dismissed WB#2's sexual harassment/hostile work environment claims in violation of MD-110, Chapter 5, § III(A)(3); and 3) failed to take action to resolve WB#2's dissatisfaction with the processing of **EO complaint** and thereafter to verify and ensure that a record explaining why no action was taken was included in the casefile in violation of MD-110, Chapter 5, § IV (A)(1), (D) and AFI 36-2706, paragraphs 4.10.2 and 1.20.17.

*[Complainant #2]*

In [Complainant #2]’s case, EEO Director specifically removed the language in each of [redacted] claims regarding when [redacted] discovered that [redacted] had been wronged. In [redacted] testimony for the IO, EEO Director could not provide an adequate explanation for why [redacted] had done this other than what [redacted] removed was just “background information.” EEO Director removal of this information resulted in [redacted] finding all of [Complainant #2]’s claims outside of the 45-day time limit. As such, [redacted] dismissed [redacted] entire complaint. [redacted] dismissal action violated 29 C.F.R. 1614.105(a)(2) which allows the time limit to be extended “if the individual did not know that the discriminatory matter or personnel action occurred.”

*[Former OB Director]*

With regard to [Former OB Director], EEO Director was involved in reframing [Former OB Director]’s claims in [redacted] formal complaint. [Former OB Director] indicated that [redacted] did have some issues with EEO Director during the formal stage about framing [redacted] allegations in that [redacted] did not agree with some of the wording used by the EO office. However, [Former OB Director] also testified that [redacted] and EEO Director were able to work out the issues to [redacted] satisfaction. Therefore, with respect to [Former OB Director], the evidence does not show that EEO Director improperly modified or rejected [Former OB Director]’s EEO claims.

*WB#3*

With regard to WB#3’s formal complaint, EEO Director accepted 42 of WB#3’s 43 claims. The evidence indicated that EEO Director combined two of WB#3’s claims and removed background factual information from the remaining claims. WB#3 had drafted [redacted] claims to include the discriminatory act as well as many of the underlying facts that supported each of [redacted] claims. Pursuant to 29 C.F.R. §§ 1614.103(a), 105(a) and 107(a) and MD-110, Chapter 5 § IV(A), it was proper for EEO Director to remove the underlying facts from WB#3’s formal complaint for the acceptance/dismissal letter for transmission to IRD. The underlying facts still remained in WB#3’s case file and would be there for review by the IRD investigator as well as an AJ if the case went to EEOC for hearing. The evidence does not show that EEO Director improperly dismissed or modified the complaints of WB#3.

The OSC referral letter also indicates that WB#3 (similar to WB#2) said that EEO Director “repeatedly tried to replace the names of the alleged wrongdoers in their informal and formal complaints with ‘management,’ explaining it would not be ‘appropriate’ to personally name such high-ranking employees because it could harm their reputations, and they had to fight with EEO Director to keep the names in the documents.” There is no evidence in the record to indicate that this happened and WB#3 did not say this in [redacted] testimony during the investigation.

Therefore, the evidence shows that EEO Director did improperly modify or dismiss claims for Whistleblower 1 WB#2, and [Complainant #2], because [redacted] applied the wrong standard, in violation of 29 C.F.R. §§ 1614.105(a) and 107(a) and MD-110, Chapter 5, §§ III(A)(1)(3) and IV(A)(D), and AFI 36-2703, paragraphs 1.19, 1.20.21, 1.20.17, and 4.10.2, but did not improperly dismiss or modify claims for WB#3 or [Former OB Director].

**OSC Allegation 3:** EEO Director gave employees false and/or misleading information about the EEO process in violation of 29 U.S.C. §§ 1614.105(g), and 106(d); MD-110 Chapter 2 § III, para 7, Chapter 5 § III(B); and AFI 36-2703, paragraphs 4.10.3, 4.22, and 4.3.2.

A review of the evidence reveals several instances where EEO Director provided false and/or misleading information about the EEO process. Each instance is set out below.

#### Whistleblower 1

With regard to Whistleblower 1 the evidence shows that EEO Director did give [redacted] false and/or misleading information about the EEO process in violation of 29 C.F.R. § 1614.106(d); AFI para 4.10.3; and MD-110, Chapter 5, § III(B). When Whistleblower 1 wanted to amend [redacted] complaint after receiving a reprimand, EEO Director told [redacted] that [redacted] could not because the IRD ROI was complete. Section 1614.106(d) provides that a complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the complaint. MD-110, Chapter 5 § III (B) allows the amendment of a complaint at any time *before* the agency mails the notification of completion of the IRD investigation to the complainant. The complaint must be amended if it is “like or related” to the existing claim. AFI 36-2607 reiterates the language in the MD-110, stating “a complainant may amend a complaint at any time before the mailing of the notice required by 29 C.F.R. Section 1614.108(f) at the conclusion of the investigation, to include claim(s) that are like or related to those raised in the complaint.” According to the evidentiary record, this notification to Whistleblower 1 had not occurred.

While EEO Director did send an email asking [EO Operations Manager] when a complaint could be amended, EEO Director did not wait for the response before denying Whistleblower 1's request to amend. Whistleblower 1's request was denied within five days; EEO Director received [EO Operations Manager]'s response a month later. In the interim, Whistleblower 1's attorney filed a motion for sanctions. It was only after [redacted] had received [EO Operations Manager]'s response *and* a copy of the motion for sanctions entered by the attorney, that EEO Director allowed Whistleblower 1 to amend [redacted] complaint. Therefore, EEO Director did give false information to Whistleblower 1 in regards to amending [redacted] complaint in violation of 29 U.S.C. § 1614.106(d); MD-110 Chapter 5 § III(B); and AFI 36-2703, paragraphs 4.10.3.

#### WB#2

OSC in its referral letter stated that WB#2 alleged EEO Director told [redacted] [redacted] could not amend [redacted] filings to include new related incidents of discrimination or harassment and would instead have to file new complaints as each new incident occurred in violation of 29 C.F.R. § 1614.106(d); AFI paragraph 4.10.3; and MD-110, Chapter 5, § IV(D). Specifically, WB#2's allegation here related to the September 2016 meeting with EEO Director where EEO Director told WB#2, “you can file a complaint on the chair incident...”, suggesting that it would be a “new” claim.

The evidence, however, does not show a violation of 29 C.F.R. § 1614.106(d); AFI paragraph 4.10.3; or MD-110, Chapter 5, § IV(D). At the time of the September 2016 meeting, WB#2 had not yet filed any informal or formal EO complaint. WB#2 wanted to file a pre-complaint on both the sexual harassment incidents as well as the chair slamming incident. However, had WB#2 filed an informal complaint at that time, those claims would have all been contained in the same complaint. As

there was no pre-existing informal complaint, there was no need to amend. Therefore, it is highly unlikely that [EEO Director] would have told WB#2 [redacted] could not amend a non-existence complaint during that meeting.

WB#3

[EEO Director] also gave misleading information to WB#3 during the informal stage of [redacted] complaint in violation of 29 C.F.R. §§ 1614.105(g), MD-110, Chapter 2 § III, para 7, and AFI 36-2706, paragraph 4.22. WB#3 was hesitant to submit [redacted] claims because [redacted] didn't want [redacted] leadership to be informed that [redacted] had filed a complaint. Instead of telling WB#3 that [redacted] had a right to remain anonymous up to the point of filing a formal complaint as described in the above rules/regulations, [EEO Director] told WB#3 [redacted] would be notifying [redacted] chain of command because it was their "procedure." WB#3 was very concerned about [redacted] leadership finding out and expressed that concern on a number of occasions. Neither [EO Specialist #2] nor [EEO Director] mentioned the possibility of remaining anonymous in the informal stage. This may have alleviated some of WB#3's concern and made [redacted] feel more comfortable filing a complaint. Therefore, [EEO Director] violated 29 C.F.R. §§ 1614.105(g), MD-110, Chapter 2 § III, para 7, and AFI 36-2706, paragraph 4.22 by not informing WB#3 [redacted] could file an anonymous complaint at the informal stage.

[Contractor]

A fourth instance where [EEO Director] gave false information about the EEO process to a complainant is when [redacted] told [Contractor] that [redacted] could not file a claim because the EO office did not handle claims for contractors in violation of AFI 36-2706, paragraph 4.3.2. This rule requires that prior to denying a contractor's claim, the agency must consider the *Ma* factors to determine whether the individual qualifies as an agency employee. [EEO Director] spoke to [Contractor] twice by telephone but did not gather the information required to consider [redacted] eligibility under the *Ma* factors as a contractor. [EEO Director] did not allow [Contractor] to file a complaint until [EO Operations Manager] emailed [redacted] to ask [redacted] for the *Ma* factor analysis in [Contractor]'s case. As that analysis had not been completed, [EEO Director] realized [redacted] must allow [Contractor] to file and sent [redacted] the appropriate paperwork. Furthermore, paragraph 4.3.2.3 of the AFI requires [EEO Director] to have the legal office review any acceptance and dismissal of contractor claims. [EEO Director] did not contact the legal office for this review. Therefore, [EEO Director] violated AFI 36-2706, paragraph 4.3.2 by telling [Contractor] [redacted] could not file a complaint before analyzing whether [Contractor] would be considered an Agency employee under the *Ma* factors.

In conclusion, [EEO Director] did give false and/or misleading information to [Whistleblower 1] WB#2, WB#3, and [Contractor] in violation of 29 U.S.C. §§ 1614.105(g), and 106(d); MD-110 Chapter 2 § III, para 7, Chapter 5 §§ III(B) and IV(D); and AFI 36-2703, paragraphs 4.10.3, 4.22, and 4.3.2.

**OSC Allegation 4:** [EEO Director] failed to identify conflicts of interest by management during the EEO mediation process in violation of MD-110, Chapter 1 § V, Chapter 3 § 1, and Chapter 6 § III (A); and AFI 36-2706, paragraphs 4.17.1, and 8.12.

This allegation involves [Former Vice Director ALC]' role as the settlement authority in WB#2's EO mediation. The evidence is clear that [Former Vice Director ALC] had been named as an

RMO in several claims included in WB#2's formal complaint. Further, the 1214 investigation and report found that [Former Vice Director ALC]' role as settlement authority in WB#2's mediation constituted both an actual and apparent conflict of interest. It is also clear that there is an apparent violation of MD-110, Chapter 1 § 5, which provides that "the agency's official with settlement authority should not be the responsible management official or agency official directly involved in the case." The question is whether **EEO Director** is responsible for the violation.

MD-110, Chapter 1, § V addresses an agency's "Delegation of Authority to Resolve Disputes." It provides,

The agency must designate an individual to attend settlement discussions convened by a Commission Administrative Judge or to participate in EEO alternative dispute resolution (ADR) attempts. Agencies should include an official with settlement authority during all settlement discussions and at all EEO ADR meetings (*Note: The agency's official with settlement authority should not be the responsible management official or agency official directly involved in the case. This is not a general prohibition on those officials from being present at appropriate settlement discussions and participating, only that they are not the officials with the settlement authority.*) The probability of achieving resolution of a dispute improves significantly if the designated agency official has the authority to agree immediately to a resolution reached between the parties. If an official with settlement authority is not present at the settlement or EEO ADR negotiations, such official must be immediately accessible to the agency representative during settlement discussions or EEO ADR. (Emphasis added).

The agency has made such designation in two provisions in AFI 36-2706, both of which address settlement authority for EEO mediations. Paragraph 8.12 provides, among other things, that "if an expenditure of funds is contemplated and installation commanders wish to delegate their authority for complaint resolution, such delegation must be in writing." The 75 ABW commander is the installation commander and has issued a delegation memorandum to **EEO Director**. The memorandum delegates the installation commander's authority regarding the accept/dismiss process to **EEO Director** but is silent regarding any delegation of authority for complaint resolution; it does not mention EEO ADR/mediation, settlement authority or conflict of interest.

The second provision, paragraph 4.17.1, provides that "in complaints filed against persons in the grades of Colonel and above (or civilian equivalents), the commander with administrative control over the complainant is the primary settlement authority, but such authority may be delegated to subordinate personnel in coordination with SAF/GCA and the management representative." WB#2 named four RMOs – three of which were equivalent O-6/GS-15s or above. [Former Vice Director ALC] was a GS-15 and named as one of the RMOs. Brig [Former Commander ALC #1] was the commander with authority over WB#2 and would have been the agency's designated "primary settlement authority."

In setting out the EO director's roles and responsibilities, AFI 36-2706, paragraph 1.20.33.5 provides only that the EO director "assists in the coordination of settlement agreements, when requested." The AFI is silent as to any role or responsibility the EO director

might have with regard to identifying conflicts of interest by management during the EEO mediation process.

Two other provisions are cited in this allegation. MD-110, Chapter 3, § 1 requires agencies to establish or make available an EEO ADR program. It further provides, that “once the agency decides to offer EEO ADR, the accused manager has a duty to cooperate, like any witness, in the EEO ADR process, but may not be the agency official that has settlement authority.” This provision is silent as to the role of the EO director in identifying conflict of interests for the agency’s designated settlement authority.

MD-110 Chapter 6 § III does place responsibility on the EO Director to ensure there is no conflict of interest with regard to investigations, stating “the EO director also must ensure that there is no conflict of interest or appearance of conflict of interest in the investigation of a complaint.” This provision, however, does not, by its terms, apply to conflicts of interest in the EEO mediation context; it only applies to EEO investigations.

The evidence shows that [EEO Director] did fail to identify a conflict of interest in WB#2’s case when [Former Vice Director ALC] was allowed to serve as the settlement authority. The evidence also shows that [EEO Director] knew that [Former Vice Director ALC] was named in WB#2’s complaint as an RMO and should have known that there may have been a conflict of interest when management proposed that [Former Vice Director ALC] serve as the settlement authority. While it may have been prudent for [EEO Director] to raise the issue of conflict of interest, no law, rule or regulation has been found that affirmatively places the responsibility to identify such conflicts of interest on the EO director. As such, while the agency likely violated many of the above-cited provisions, [EEO Director] did not violate any law, rule or regulation when [redacted] failed to identify a conflict of interest with [Former Vice Director ALC] serving as the settlement authority in WB#2’s mediation.

### **Abuse of Authority**

AFI 90-301 defines abuse of authority as an arbitrary and capricious exercise of power by a federal employee. To qualify as arbitrary and capricious, the following requirements must be met: the action either adversely affected any person or resulted in personal gain or advantage to [EEO Director]; [EEO Director] did not act within the authority granted to [redacted] under applicable regulations, law or policy; or [EEO Director] actions were not based on or rationally related to relevant data and factors.

The evidence in the record does not support a finding of abuse of authority by [EEO Director]. The violations set forth above are based, in large part, on [EEO Director] lack of knowledge and [redacted] negligent failure to check the appropriate rules and regulations applicable to the situation. The evidence does not indicate that [EEO Director] obtained any gain or advantage in the actions [redacted] took. While many of the civilian employees involved herein expressed dissatisfaction with the EEO process, ultimately, in most cases, despite the violation of rules and regulations by [EEO Director] the situation was remedied. [Whistleblower 1] was able to add back most of [redacted] claims in the EEOC litigation and to amend [redacted] complaint; WB#2 and WB#3 both favorably settled their cases; and the contractor was able to file an informal EO complaint.

In sum, the actions taken by [EEO Director] do not rise to the level of an abuse of authority under AFI 90-301.

## Gross Mismanagement

AFI 51-1102 defines gross mismanagement as “a management action or inaction which creates a substantial risk of significant adverse impact upon the agency’s ability to accomplish its mission. It does not include management decisions which are merely debatable, nor does it mean action or inaction which constitutes simple negligence or wrongdoing.”

The evidence in the record does not demonstrate a substantial risk of significant adverse impact upon the agency’s ability to accomplish its mission. The violations outlined above resulted in large part from **EEO Director** lack of knowledge and **█** negligent failure to check the rules and regulations, especially with regard to the requirements of the EO director’s responsibilities. Part of this may be due to the fact that **EEO Director** was new to the EO director position. For example, the evidence indicated that **EEO Director** was not aware of the rules regarding timeliness of claims involving a continuing pattern of behavior; the requirements for amending formal complaints during an investigation; and the process for determining when a contractor could be considered an employee and eligible to file an EEO complaint. Likewise, **EEO Director** was unaware of **█** EO director responsibilities with regard to settlement authorities and conflicts of interest as well as **█** responsibility to handle complainant’s dissatisfaction with the EO office’s processing of their complaints and to document in the case file what action(s) were taken and/or the reasons why no action(s) was taken.

In addition, the evidence also shows that **EEO Director** did make efforts to close the gaps in **█** knowledge by, for example, obtaining training for herself and **█** staff on accept/dismiss issues for harassment/hostile work environment claims and by reaching out to subject matter experts in the EO field about issues related to amending formal complaints and contractor eligibility. **█** efforts in this regard mitigate any adverse impact the violations may have on the agency’s ability to accomplish its mission.

Based on the above, the evidence in the record does not support a finding of gross mismanagement on the part of **EEO Director**

### ACTIONS TAKEN OR PLANNED

#### Departmental Policy Changes

The Air Force is in the process of revising and consolidating AFI 36-2706, the instruction on Equal Opportunity. As part of the revision, and as set forth below, the Air Force has drafted new and revised provisions related to the issues raised in this investigation.

**Settlement Authority and Conflicts of Interest.** The Air Force has proposed a new provision related to conflict of interest and settlement authority. The proposed provision provides that the EO director will advise the commander with purview over the aggrieved civilian, that under EEOC guidance individuals who have actual or perceived conflicts of interest should not serve as the settlement authority for the agency at EEO ADR/mediations. The EO director will also notify the commander of management officials who have been named as a responsible management official (RMO) in the aggrieved individual’s complaint. Ultimately, the decision of who serves as the settlement authority for the agency at an EEO ADR/mediation lies with the commander.

**Legal Advice to EEO Office on Accept/Dismiss Determinations.** The current AFI 36-2706 requires that the EO office maintain a position of neutrality in the performance of their duties. The Air Force legal office advising the EO office must assist the EO offices in remaining neutral. The Air Force has proposed a new provision which requires the legal office to review accept/dismiss determinations from the EO office keeping in mind the neutral position the EO office must maintain. Neutrality requires that a claim should be accepted if there is any conceivable basis for acceptance. The EO office's neutrality position should also be considered when legal advice on other EO matters is sought or provided directly to the EO office.

**EEO Contacts and General Assistance Visit.** The Air Force has proposed revisions to its guidance with regard to general assistance visits and EO contacts. The proposed revision provides that when an individual visits the EO office only to request general information about the EEO process, the Equal Opportunity Practitioners will provide such information and treat the visit as a general assistance visit. If, however, the aggrieved individual contacts the EO office and articulates a claim, either orally or in writing, the Equal Opportunity Practitioner will provide the aggrieved individual with his/her EO rights and explain the EEO process. The 30-calendar day informal complaint processing period begins as of the first date the aggrieved individual contacted an Equal Opportunity Practitioner to present the complaint. The Installation EO Office will complete informal pre-complaint counseling within 30-calendar days or obtain written approval from the aggrieved individual and the Installation Equal Opportunity Director (prior to the 30<sup>th</sup> calendar day) to extend counseling for no more than 60 additional calendar days. If ADR is elected, informal pre-complaint processing is completed within 90-calendar days. In any case, if the complainant does not file an informal complaint and/or engage in the EO informal counseling process within the 30 day period following the initial contact with the EO office or if the complainant engages in the EEO informal process but the matter is not resolved by the end of the authorized period, including extensions, Equal Opportunity Practitioners will issue a *Notice of Right to File a Formal Complaint* Letter. At no time should informal complaint processing go beyond 90-calendar days.

**Civilian Complaints of Sexual Harassment.** There are two parallel processes for civilian complaints of sexual harassment, the EEO process under 29 U.S.C. § 1614 and the Section 1561 process under 10 U.S.C. § 1561. With regard to investigations of civilian complaints of sexual harassment, the proposed revision clarifies the interaction of the EEO process and the Section 1561 requirements. As set out below, the revisions, among other things, allow the aggrieved party to remain anonymous at the informal stage without triggering the 1561 requirements; provide the complainant at the formal complaint stage with the opportunity to request in writing that the Section 1561 investigation be accomplished through the EEO process by IRD; and require the commander to provide a copy of the Section 1561 report to the EO office and notify the complainant in writing when the investigation is complete.

Section 1561 requires a CDI when the commander receives a complaint from an aggrieved individual or a third party alleging sexual harassment. If a commander, upon conferring with a Subject Matter Expert from their servicing equal opportunity office, determines the allegation(s) meet the definition of sexual harassment, regardless of severity, the commander will commence an CDI pursuant to 10 U.S.C. § 1561, and forward the allegations to the General Court Martial Convening Authority (GCMCA) within 72 hours. All GCMCA notifications will be reviewed by the Installation Commander prior to being released to the GCMCA. Once notification is complete, the commander will initiate a CDI and advise the complainant in writing of the start of the investigation. Additionally,

commanders will notify the Installation EO Office and Installation Staff Judge Advocate prior to conducting a CDI. The Installation EO Office will be courtesy copied on all GCMCA notifications to ensure pertinent information is input into Air Force Equal Opportunity Case Management System.

Command decisions with respect to CDIs are final with no right to appeal. Monetary damages are not available through the CDI process. CDIs will be completed no later than 14 calendar days after the start of the investigation. If the investigation is not completed within 14 calendar days, a progress report regarding the status of the investigation must be submitted to the GCMCA within 20 calendar days and every 14 calendar days thereafter until the investigation is closed. Once the investigation is closed, the commander must submit a final report to the GCMCA with a copy to the EO office. In addition, the commander must notify the aggrieved individual in writing that the investigation has been completed.

If the complaint of sexual harassment is made (orally or in writing) directly to the Commander (by the aggrieved civilian or by a third party), the Commander has a legal requirement under Section 1561 to initiate an investigation and notify their GCMCA. Anonymity is not afforded in investigations initiated pursuant Section 1561. Commanders who receive complaints directly from the aggrieved civilian will notify the EO Office and advise the aggrieved civilian in writing to contact the Installation EO Office to ensure the individual aggrieved preserves his or her rights regarding the civilian equal opportunity complaint process. It is the responsibility of the aggrieved civilian to contact the Installation EO Office within 45 calendar days of the alleged event or awareness of the event. The Installation EO Office will attempt to initiate contact with an aggrieved individual who has contacted the Commander to ensure the aggrieved is aware of his or her options and rights. A CDI requested by the aggrieved individual and/or initiated by the Commander does not serve to satisfy the administrative exhaustion requirement with respect to the EEOC complaint process.

If the aggrieved civilian initially makes contact with the EO office alleging sexual harassment, the process under 29 C.F.R. § 1614 requires the informal complaint be processed by the Installation EO Office in accordance with EEOC regulations. The aggrieved individual is entitled to anonymity in the informal stage of the equal opportunity pre-complaint process under 29 C.F.R § 1614.105(g). If the aggrieved individual does not choose to remain anonymous, the EO office will notify command of the informal complaint, disclosing the identity of the individual complainant, thereby triggering Section 1561 notification and investigation requirements.

If the aggrieved individual chooses to remain anonymous in the informal counseling process, the EO office will notify command of the informal complaint without revealing the identity of the aggrieved individual. The EO office notification to the commander withholding the identity of the aggrieved individual does not trigger the Section 1561 requirements. However, the EO practitioner must advise the aggrieved individual of the legal requirement that the Unit Commander who receives a complaint of sexual harassment must initiate an investigation and notify their GCMCA, pursuant to Title 10 U.S. Code § 1561. If the aggrieved individual wants the Commander to initiate a CDI investigation during the informal pre-complaint process, s/he must consent to the release of her/his name as anonymity is not afforded in a Section 1561 CDI.

If a CDI is conducted during the informal pre-complaint process, the EO practitioner will advise the aggrieved individual that the Section 1561 CDI will run concurrently with the EEO pre-complaint process initiated through the Installation EO office. However, the aggrieved individual may

agree to an extension of 30 (or more) days to allow the CDI to be conducted before informal counseling or ADR takes place; however, at no time should informal complaint processing go beyond 90-calendar days. In any case, if the complainant does not engage in the EO informal counseling process within 30 days following notification of completion of the investigation or if the complainant engages in the EEO informal process but the matter is not resolved by the end of the authorized period, including extensions, Equal Opportunity Practitioners will issue a *Notice of Right to File a Formal Complaint* Letter.

Anonymity is not an option in the formal complaint stage of the civilian equal opportunity complaint process. Once an aggrieved civilian files a formal complaint with the EO office alleging sexual harassment, the EO office must notify the Commander of the sexual harassment claim as well as the identity of the complainant. This notification triggers Section 1561 notifications and investigation requirements. At this stage, an aggrieved civilian may request that the investigation requirement of Section 1561 be carried out through an EEO investigation by IRD. Such a request must be made in writing and be signed by the aggrieved complainant. The request will be transmitted by the EO Practitioner to the Commander. Allowing the investigation requirement of Section 1561 to be carried out through an EEO investigation spares the complainant from participating in two overlapping investigations. In making the decision whether to grant the complainant's request, the Commander's written decision must: 1) accord great weight to the aggrieved individual's desires, including his/her concerns about retaliation, and re-victimization, while 2) balancing that with the need to ensure safety, good order and discipline, and the welfare of all personnel in the workplace.

If a request is granted by the Commander, the Commander will direct the Installation EO Office to process the complaint in accordance with EEOC regulations, and provide updates to the Commander and the complainant on the progress of the investigatory process. The Commander will still provide progress reports and a final report to the GCMCA as described above. If the EEO process is resolved before the conclusion of the IRD investigation, then the requirements of 10 U.S. Code § 1561 have not been met, and a CDI must be initiated. If a request that the Section 1561 investigation requirement be carried out through an EEO investigation is not made or not granted, the Installation EO Office will proceed with the traditional equal opportunity formal complaint process concurrent to the CDI.

### **Training Initiatives**

The Air Force is in the process of revising its annual training for EO practitioners. As part of the revision, there will be a block of instruction dedicated to the acceptance and dismissal of complaints. Special focus will be placed on MD-110, Chapter 5 which explains how to put the claims in the proper form, how to avoid fragmenting complaints, and how to analyze timeliness issues. Additional emphasis will be placed on sexual harassment and hostile work environment claims and their possible acceptance even though some incidents complained of are outside the 45-day window because they are part of a continuing pattern of behavior.

### **Disciplinary Action**

Based on the investigation into the allegations contained in OSC's Report of Violation, the Air Force has referred the matter to the appropriate command for consideration of disciplinary action against **EEO Director**

## **CONCLUSION**

Upon review of the evidence and testimony obtained during the underlying investigation as well as relevant evidence and testimony obtained in the related Section 1214 investigation, and based upon a preponderance of the evidence, the Air Force found violations of 29 C.F.R. §§ 1614.105(a) and (g), 106(d), and 107(a); MD-110 Chapter 2 § III, para 7, Chapter 5 §§ III(B), IV(A) and (D); and AFI 36-2706, paragraphs 1.19, 1.20.17, 1.20.21, 4.3.2, 4.5.1.1, 4.22, 4.10.2 and 4.10.3.

The investigation did not reveal a criminal violation. Therefore, referral to the Attorney General, pursuant to 5 U.S.C. §§ 1213(c) and (d) is not appropriate. This Report is submitted in satisfaction of my responsibilities under 5 U.S.C. §§ 1213(c) and (d).

## APPENDIX A

### SUMMARY OF THE EVIDENCE

#### **Hill Air Force Base**

Hill Air Force Base is an Air Force Materiel Command (AFMC) base located in northern Utah, 30 miles north of Salt Lake City. It is the Air Force's second largest base by population and geographical size, and is home to many operational and support missions.

The 75th Air Base Wing (75th ABW) oversees 1,000,000 acres and more than 1,700 facilities. It provides installation support for the Ogden Air Logistics Complex (OO-ALC), Air Force Life Cycle Management Center, Air Force Nuclear Weapons Center, Air Force active duty 388th and Reserve 419th Fighter Wings and more than 50 mission partners that employ more than 21,000 personnel. The OO-ALC provides logistics, support, maintenance, and distribution for fighter aircraft, employs approximately 8,100 military, civilian, and contract personnel, and is the largest organization supported by the 75th ABW EEO office.

It is important to understand with the host/tenant support construct, tenant units often rely on the host unit to provide services. This arrangement is designed to save resources, reduce duplication of effort, and create a consistent application of law and policy on the installation. The commander (leadership) for these services will then be the host unit's commander. In some cases the host unit's commander may be outranked by the commander of a tenant unit. This is the case with the OO-ALC which is commanded by a general officer, and receives services from the host unit, 75th ABW, which is commanded by a colonel.

The 75th ABW EEO office is charged with the implementation of federal laws and AF policy to eliminate unlawful discrimination and sexual harassment for the 21,000 military and civilian employees at Hill AFB.

#### **Operation and Leadership of the 75<sup>th</sup> ABW EEO Office**

The EO Director is the head of the EEO Office and responsible for overseeing the processing of both military and civilian EO complaints. **EEO Director**<sup>15</sup>, the EO Director, assumed leadership of the 75th ABW EEO office in August 2016 when the prior EO Director, [Prior EO Director #1] retired. During the timeframe covered by this investigation, the EEO Office consisted of the **EEO Director** five EO Specialists, and one EO Superintendent. All had comments to make regarding the leadership and operation of the office.

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<sup>15</sup> **EEO Director** was an Air Force active duty military equal opportunity specialist from 1994 to December 2007 when **█** retired from active duty. **█** worked in the 75th ABW EO office as an EO Specialist from 2008 until August 2016, when **█** took over as the EO Director. **█** is an NH-03. **EEO Director** served as the ADR program manager prior to becoming the EO Director.

When asked about how **EEO Director** was different from [Prior EO Director #1], [EO Specialist #1]<sup>16</sup>, one of the five EO Specialists, testified that **EEO Director**

has a softer nature in terms of she's not confrontational. **████** takes on more of a collaborative approach. She's going to let you say what you're going to say and then do whatever she's going to do ... more passive/aggressive ... **EEO Director** is a little more easier going in terms of the office. The comfort level in the office has increased greatly with **EEO Director** because of that and because of what we endured through before.

[EO Specialist #1] also stated, "I think **EEO Director** has worked to bring back our office with a sense of team. I feel **████** has been successful. It's not flawless. However, I would not necessarily say that **EEO Director** was like the prior director. Probably the biggest thing is that **████** came in under [Prior EO Director #1], and it's hard when you come in underneath someone who isn't necessarily doing right because you will adopt and learn their ways." The IO asked [EO Specialist #1] about discouraging complainants from filing:

IO: Have you ever heard them [other specialists] say things like this complaint is not going to go anywhere; it's not a valid complaint; it's just going to go back to your leadership; you can file a complaint but it's just going to go back to your leadership? Anything that might be discouraging to a complainant?

[EO Specialist #1]: Yes. I believe we've had a few specialists and individuals in the office that have had an attitude or a disposition that would reflect somewhat those types of -- in effect, to those comments.

[EO Specialist #1] further explained that these statements and attitudes occurred during the prior [Prior EO Director #1]'s tenure and not under **EEO Director**. **████** stated that [Prior EO Director #1] would use terms like "rice burners" and have "terminology and attitudes" that were negative toward complainants.

Another EO Specialist, [EO Specialist #2]<sup>17</sup>, also had information in regards to **EEO Director** and **████** leadership style. [EO Specialist #2] testified that **EEO Director** is "more open" in **████** leadership style and "**EEO Director** was very receptive to the people. **████** listened to what they had to say, and **████** was very professional." [EO Specialist #2] further stated that **EEO Director** "would hold staff meetings, and we'd discuss the status of our case. If we had an issue, we would go to **EEO Director** to get **████** guidance on how to resolve it. If we're having difficulty with a complainant, **████** would sit down with me and the complainant, and kind of try to get some resolution as to the way forward." When asked if **EEO Director** did anything to make things better when **EEO Director** took over, [EO Specialist #2] stated "**EEO Director** had more of an open door policy. I know in my case I felt more comfortable going to **████**. I thought **████** was a great boss." When asked what **EEO Director** expectations were of **████** when

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<sup>16</sup> [EO Specialist #1] is an NH-03. **████** started working at Hill AFB in 2000 when **████** was hired as an equal employment opportunity program manager in a satellite office until 2006 when that office merged with the 75th ABW EO office and **████** title changed to EO Specialist.

<sup>17</sup> [EO Specialist #2] testified **████** is a "GS-12, NH-03" who works as an EO Specialist at the 75th ABW EO office since around 2009. Prior to that, [EO Specialist #2] was the EO administrative assistant. On the date of **████** interview, **████** had worked in that office for 32 years.

working a complaint, [EO Specialist #2] replied “to process it in the correct manner, and to do it in a timely manner,” as well as to not discourage complainants.

[EO Specialist #3]<sup>18</sup>, a third EO Specialist, testified that [EEO Director] was very knowledgeable and by the book. As to EO Specialists’ requirement to remain neutral during the complaint process, [EO Specialist #3] testified EEO s specialists “have to remain neutral.” When asked if [redacted] had heard other specialists discourage complainants, [EO Specialist #3] stated, “we can’t discourage anyone. I don’t care if they come in and say the sky is green. We have to take that complaint for civilians.”

Another EO Specialist, [EO Specialist #4]<sup>19</sup>, testified that [EEO Director] “seems more like doing the right way, she’s more confrontational. We had issues within our office with civilians, and [Prior EO Director #1] would never write them up because, again, [Prior EO Director #1] was not confrontational at all ... So when [EEO Director] took over, [redacted] had to start from scratch, like slowly, and [redacted] was handling it. So I think [redacted] was slowly fixing the little stuff that the prior director never wanted to deal with.”

The fifth EO Specialist, [EO Specialist #5]<sup>20</sup>, testified that [EEO Director] is:

awesome. [EEO Director] cares about it [the process]. She’s passionate about the process. She’s passionate about making sure it’s right. Even if [EEO Director] doesn’t have the answer, she’s going to get the answer. She’s going to ask the right people to get the right answer. She’s great with us. I mean, the office is completely changed. The morale and the attitude in the office is completely changed. [EEO Director] a hard worker. She’s here all the time. She’s by the book.

The EO Superintendent, [EO Superintendent]<sup>21</sup>, testified [redacted] had worked in the EO career field since 2013 and worked under three directors. [EO Superintendent] stated that [EEO Director] is “one of the best EO directors I’ve worked for.” As far as [EEO Director] policies, [EO Superintendent] stated [redacted] agreed with them. When asked about [EEO Director] handling of intake interviews, [EO Superintendent] stated [EEO Director] is “very natural as far as getting the side of the story of that person and after observing [redacted] I had learned to always be calm and have the person keep talking.” [redacted] further stated

[EEO Director] is all very natural as far as I’m going to introduce myself, I’m going to tell the process, this is what our process is as the EO office, it’s a very natural like you’re talking to me...I think their [complainants’] heartburn is when something is dismissed and they see their name -- [redacted] [EEO Director] name on it, it's like automatic, you know, you have a personal agenda, why do (sic) you dismiss my complaint or why didn't (sic) take my -- why did my [responsible management officials] RMOs not grant my

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<sup>18</sup> [EO Specialist #3] worked at the 75th ABW EO office from August 2010 to September 2016. [redacted] started as an EO Specialist, then became the Non-Commissioned Officer in Charge, and left as the superintendent.

<sup>19</sup> [EO Specialist #4] worked as an EO Specialist at the 75th ABW EO office from May 2015 until May 2017. Hill AFB was [redacted] first duty station and [redacted] first experience working in an EO office.

<sup>20</sup> [EO Specialist #5] is an NH-03 who works as an EO Specialist at the 75th ABW EO office. On the date of [redacted] interview, July 23, 2018, [EO Specialist #5] had been working as an EO Specialist for four years. [redacted] testified that [redacted] collateral duty is also the ADR program manager for Hill AFB.

<sup>21</sup> [EO Superintendent] is the EO Superintendent at the 75th ABW EO Office and started there in August 2017. [redacted] cross-trained into the EO career field in 2013 and has worked in the EO offices at Tinker AFB and in Korea.

remedies because of you, you're the director? It feels like it's always targeted on -- the one who signs.

[EO Superintendent] testified that [REDACTED] had not heard specialists during an intake tell a complainant their complaint is going to be dismissed, does not hold any weight, is invalid or discourages anyone. Lastly, [EO Superintendent] testified:

[EEO Director] is one of my best supervisors as far as caring about [REDACTED] people. She's very involved and hands-on as far as people matter to [REDACTED] as far as taking care of us ... but as far as our process, we try to maintain neutrality (sic) and if we do cross it at times, mainly just to having them reality check, maybe that challenges them ... I feel like we are neutral and [EEO Director] embodies that as far as being a true professional in our career field. She's really a good asset.

[EO Operations Manager]<sup>22</sup> is the Air Force Personnel Center (AFPC) Equal Opportunity Operations Manager and a subject matter expert for the Air Force. [EO Operations Manager] testified, "My main responsibility is providing operational guidance to my EO specialists out in the career field. So if they have like questions or concerns that they need additional guidance on that, they usually contact me." [EO Operations Manager] has been in the EO career field since 2000 and has served at all EO command levels including as a Wing EO Director. [EO Operations Manager] provides training to EO Specialists at Equal Opportunity Worldwide Conferences and authors "*the civilian EEO part of the AFP*" [36-2706]. [EO Operations Manager] was very knowledgeable of the 75 ABW/EO office products, [EEO Director] experience as a Director, and lastly, was able to answer all the IO's technical-related process questions.

[EO Operations Manager] testified that not dissuading complainants from filing a complaint is "elementary to an EO specialist." They learn it in the first 32 hours of training.<sup>23</sup> [EO Operations Manager] stated, "I think when [EEO Director] took over, there were some challenges. Challenges in regards to, like I said, basically just not understanding things that we, as neutrals,<sup>24</sup> should be careful in talking with the complainant or, you know, turning them away." Further, [REDACTED] stated, "we do not want to dissuade the individual from filing a complaint, but you do want to be up front with them ... you can say there could be a possibility your complaint could be dismissed for untimeliness." [EO Operations Manager] testified regarding the regulations and training "doesn't say that we can't be up front with them [complainants], let them know that this is what it says in the regulation. You know, in order for your complaint to go formal, it has to be within the 45 days of the alleged incident or the discriminatory action." Lastly, [EO Operations Manager] testified "sometimes what we can do or say in an MEO complaint, military complaint, we can't do or say the same things in an EEO complaint. And there may have been some challenges with the Hill office in regards to that. You can't tell a person, you know, you don't have a complaint. You just can't say that. Not for EEO. You know, so it -- little things like that."

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<sup>22</sup> [EO Operations Manager] is a GS-13 who is the EEO Operations Manager at the Air Force Personnel Center. [REDACTED] main responsibility is providing operational guidance to EO specialists at the bases. [REDACTED] started in the EO career field in 2000, working as an EO Specialist and EO Manager at various bases until 2008 when [REDACTED] obtained [REDACTED] current position.

<sup>23</sup> See MD-110, Chap 2, § II(B) for items covered during the 32 hours of training.

<sup>24</sup> MD-110, Chap 3 § V, defines a "neutral as an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy."

## Testimony About the EO Complaint Process

### *Overall Process*

[Attorney #1]<sup>25</sup> is an attorney advisor on labor law matters at the 75<sup>th</sup> ABW Legal office. ■ advises the Hill EO office on legal matters related to EO complaints. ■ gave a very succinct explanation of the process during ■ testimony:

When they come in and file what's called the informal complaint, they're a counselee at that point and that's when the EO office is primarily involved is at the informal stage. They'll interview witnesses, they'll try to do ADR and try and get it resolved. And then if they -- after interviewing witnesses and they can't get it resolved, they'll get the employee, the counselee a notice that they have 15 days to file a formal complaint.

When they file the formal complaint, that's where the EO office then reviews it for acceptance/dismissal, makes a decision on that, and sends it over to our office. If it's concurred with, then it gets -- any part of the claim that gets accepted for investigation, it goes to IRD for the investigation and the report of investigation will be put together. That's then sent to the employee, and the employee can, with a notice that says if you'd like to request a hearing before the EEOC return this form. If you don't want a hearing, then let us know as well. And then they have different options on that.

So if after the investigation is done and they say they want a hearing, it then goes over to the Equal Employment Opportunity Commission where after a year or so a judge will be assigned to it, and they will begin to work the case. So that's where the judge would end up reviewing it is the acceptance/dismissal will be in the report of investigation and they will review that.

During the EO process, the EO office will interact and get legal advice from the base legal office on a regular basis. [Attorney #1] testified that ■ works with Wing EO specialists from time to time. "So we'll review settle agreements that they have when they settle cases. If there's an ADR mediation in their office in which an attorney is going to be representing the counselee, we will often be invited to come and represent management in that ADR...then we'll also review acceptance and dismissals when they have a formal complaint that's been filed." When asked who ■ normally corresponds with at the EO office, [Attorney #1] indicated that with regard to ADR matters, ■ deals with [EO Specialist #5]. "So ■ is the one who handles their mediation. Well, I guess when it comes to settlement agreements, it's [EO Specialist #5]. ■ is the one who coordinates their ADR program and will send over the settlement agreement for review. But when it comes to acceptances and dismissals, it's ■ EEO Director

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<sup>25</sup> [Attorney #1] is an NH-03 attorney advisor on Labor Law matters in the 75th ABW Legal Office. ■ has worked in that capacity since October 2016 and ■ advises EO specialists on occasion regarding EO matters. ■ worked on labor law matters for the U.S. Post Office prior to coming to the Air Force.

[Attorney #2]<sup>26</sup>, another attorney in the base legal office, testified regarding the legal office's interactions with the EO office and [EEO Director]. The IO asked [Attorney #2] what kinds of questions [EEO Director] would ask him. [redacted] responded:

[redacted] may call up and ask, you know, what's our understanding of an AFI. I know recently we discussed procedures for reporting sexual harassments according to 10 USC 1561. So we worked on things like that. [redacted] office will send our office, you know, complaints or reports for us to review. I just recently reviewed a military EO complaint, verification report. We're also supposed to review -- anytime there's complaint, whether it should be accepted or dismissed, we do those reviews. Just talk about a lot of different matters related to the EO office and issues that come to [redacted] attention.

### *Status of Office as Neutral*

Both [EO Specialist #1] and [EO Specialist #3] testified regarding their role in the complaints process and their obligation to remain neutral, neither being an advocate for management nor for the complainant. [EO Specialist #3] indicated that this fact can be frustrating for the complainants. [EO Specialist #1] testified:

Civil service, it's totally neutral on the civilian side. All the programs are pretty much neutral that I operate in. That's what would allow me to move through the different functions and capacities that I operate in. So not to confuse the population I process for, I always make that clear that I am neutral. My role is to inform you of your rights, inform you of the process, and I'm basically an instrument of that process. So my personal feelings and attitudes are exempt from when I'm doing that type of work.

[EO Specialist #3] stated, "we have to remain neutral, so we don't represent management, commanders, nor the complainant, so I think that probably rubs people wrong sometimes, but at the end of the day, we don't represent. We can't advocate for anyone, so we can only tell them what our guidance reflects."

### *Initial Intake/Commenting on Validity of Complaint*

Both [EEO Director] and [EO Specialist #2] testified in detail in regards to how they handle intakes. They were both asked by the IO about commenting on the validity of a complaint and their responses are contained below. [EO Specialist #2] testified:

IO: So when a intake comes in, are you assigned a complaint or does [EO Director] assign you a complaint?

[EO Specialist #2]: Yes. [redacted] assigns the complaints. We send out -- when a person

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<sup>26</sup> [Attorney #2] (an NH-04 employee) is a supervisory attorney in the 75 Air Base Wing, Office of the Staff Judge Advocate (75 ABW/JA) at Hill AFB. [Attorney #2] became the Chief of the Civil Law Division in 2014. While labor and employment law is one of the areas that fall under the civil law division, and [redacted] advises the base EO office occasionally on EO matters, [Attorney #2]'s areas of expertise are more in government ethics and civil/administrative law. [redacted] also handles legal issues related to CDIs and DDIs (e.g. drafting allegations, appointment letters, etc.).

calls in, we send out a intake form, and when they send it back, I give it to [EO Director], and then [REDACTED] assigned the specialist.

IO: Okay. And that's -- is that based on workload at the time?

[EO Specialist #2]: Yes.

IO: Okay. About how many complaints do you typically work at a time?

[EO Specialist #2]: Two informals typically, and then, you know, once they go formal then you work them through the formal stage. I have taken -- when the military has PCS or if civilian has been reassigned out of our office, got a new position, I've taken over their formal caseload. So I've been kind of taking care of their formal complaints.

IO: All right. How does your director [verbatim] normally facilitate the complaint process? What's their involvement, their responsibilities when it comes to ensuring the complaints resolved appropriately?

[EO Specialist #2]: We keep [REDACTED] informed of everything we're doing. [REDACTED] would hold staff meetings, and we'd discuss the status of our case. If we had an issue, we would go to [REDACTED] to help [REDACTED] get [REDACTED] guidance on how to resolve it. If we were having difficulty with a complainant, [REDACTED] would sit down with me and the complainant, and kind of try to get to some resolution as to on the way forward.

The IO asked [EEO Director] about evaluating complaints and whether [REDACTED] talked to complainants about the validity of their complaints:

IO: Are you allowed to give your thoughts about a complaint based on your experience and whether it will go anywhere or anything like that, or whether it will be dismissed on anything?

[EEO Director] We don't ever do that. We don't ever tell them up front their complaints are not valid complaints. We have to accept everything.

IO: Correct.

[EEO Director] So we do not make that determination. You know, we have a standard list of things that we go over with complainants as, you know, on their initial intakes. We explain the process. We do explain to them that if, you know, there's a possibility, if their claims don't meet the requirements, you know, as far as C.F.R. 1614, that those complaints -- those claims could possibly be dismissed, because there's strict criteria for them to be valid complaint -- or claims. So we explain that. So that might be the only thing where we might say that there's a possibility that something could be dismissed based on the fact that they didn't have a Title VII basis or there's no harm or, you know, there's strict things that are part of a claim that have to be present. And that's the guidance that's provided in 1614. But we never tell a complainant that they can't file or that they shouldn't file or that they have a good case or anything of that nature.

**EEO Director** also testified in regards to bring allegations and dealing with difficult complainants. [REDACTED] stated:

Well, bringing allegations is difficult. It's even more difficult when you have a complainant who is extremely difficult and does not want to cooperate appropriately. That -- I do have conversations with EO specialists about issues like that as far as throughout the complaint process. Because especially if a complainant has numerous concerns or claims, 40, 50, you know, and to draft them and to get agreement from the complainant and to, you know, get them to understand that they have to be drafted in a specific way. You know, we have had some complainants who have been very difficult and made that process not a very positive experience.

The IO also asked **EEO Director** further about whether the EO office advises individuals to seek other avenues for their claims:

IO: During the intake, do you have the ability to -- or to suggest that they should use another avenue to resolve their claim?

**EEO Director** We give them all their options. We do -- you know, if they don't have a Title VII basis, things that are required in the EO, we might suggest to them to look into other options. We don't tell them that they can't file with us. You know, we might say, you know, you can check with the union, because you don't have to have a Title VII basis to file with the union. You know, if it looks like it's something that might be in the IG lane, we might suggest, you know, for them to look at those options also and then make a decision where they feel it fits best.

IO: Okay, but you --

**EEO Director** And they can come back to us, you know, after they look at -- because, I mean, they need to look at all their options, so we would typically tell them what those options are.

You know, if it's a wage grade, you know, a bargaining unit, then we talk to the about the union. We talk about non-bargaining. We would maybe suggest or give options for administrative grievances. It just depends on the details of that claim, you know, and the conversations that we're having. You know, because sometimes they'll say, well, I don't really think it's EO, you know, because I don't think it's because of my [race]; I don't think it's because of this. Then we'll say, well, there's other options you can -- you know, there's administrative grievance, there's IG or whatever --

IO: Right

**EEO Director** -- depending on what the issues are. But we don't say it's not valid and we won't take it. We would never say that.

***EEO Process with a Potential Complaint of Sexual Harassment and 1561 Rights***

[EO Specialist #5] was asked how [REDACTED] as an EO specialist, would typically handle a civilian coming to the EO Office to lodge a complaint of sexual harassment. [REDACTED] responded,

As the EO specialist I'm going to make sure they get their rights for their complaint, which, you know, the Title VII rights and their responsibilities. And we have a checklist we go through. We've got a sheet we read off of basically what it talks about, you know, you have the right to representation and on a – and anonymity. And so we go through that checklist. First thing we do is we talk about that, make sure they are aware.

We at that point, let them tell their story, you know, where they're at. If they came to us without notifying management we give them their 1561 rights, which entitles them to an investigation by the commander. And they can waive those rights because they still have their anonymity if they come to us first. If they go to management first they've given up that right and so they don't get the opportunity to be anonymous.

After I get those statements and things as far as intake, what we call an intake interview, then I would get with the director and we would make proper notification back to the command that we've had a complaint of sexual harassment. And then it's up to the command, so the responsibility to make sure that they notification within 72 hours to GCMCA. And then we kind of help them through that process. Legal comes and gets involved helping them through that process to make sure notifications are made, making sure that it is sexual harassment, meets the definitions of sexual harassment. And then proceed from there with the complainant as far as go through the steps of witnesses and all that stuff. Typically, with a sexual harassment complaint what we find is that there's going to be a command-directed investigation, a CDI right away. We normally run concurrent with that our investigation, but we let them do their part typically before we get in very deep.

[EO Specialist #3] was also asked how the EO Office would handle a civilian employee who came directly to the EO Office to discuss potential sexual harassment allegations. [EO Specialist #3] responded as follows:

[I]f an individual comes in and articulates that they've been sexually harassed or have allegations of sexual harassment, we would sit down with them, do the intake, have them fill out the intake sheet. The complainant can either articulate whether they would want to invite – invoke their Title 10 [§]1561 rights, and that is to do – have a commander directed investigation, or they can elect to do – proceed to go through the informal complaint process. Now with that being said, even if they invoke to do – they can still do both of the processes, they just can't run at the same time. So if they do elect to do a commander directed investigation, we then inform the complainant's leadership of what steps that they need to take in order to address the complainant's concerns. Now, once that CDI has been concluded, then we will proceed with the informal EEO process.

[EO Specialist #3] testified that the EO office will advise the employee of their 1561 rights and “we do provide them with an election form, whether or not they – and it’s primarily for civilians, so we will have it documented, yes.” [EO Specialist #3] further testified that “there have been times where a complainant does not want to file an EEO complaint. They just want to have a CDI conducted. Like if they invoke their Title 10 1561 [rights] and then they may elect not to have an EEO case initiated.”

[EO Specialist #3] also testified about the Section 1561 notification requirements. “we have to do the general court-martial conven[ing] authority notification, but we do not do it in our office, and that wouldn’t apply for – well, it would; we would still do a general court-martial convening authority notification, but the commander is responsible for making that notification to the installation commander.” ■ further testified,

According to our guidance, we’re not supposed to be involved in the notification process, but leadership does reach out and ask us how to coordinate that and we do inform the installation commander on how they should be processed from the – providing a synopsis of the allegations that have taken place, and the commander of the complainant will provide that synopsis to the installation commander, and the installation commander will then forward that to the general court-martial convening authority.

[EO Specialist #3] indicated that the Section 1561 notification has to be done “within 72 hours, they have to do that general court-martial convening authority, so we have to – it’s a speedy process. So we have to send that notification to the commander if the complainant elects to invoke their right to do the Title 10 1561, to have the commander conduct the CDI.”

■ stated that once a CDI is completed, “the EO office isn’t responsible for providing the complainant with the outcome of the CDI.” That is usually done by command. [EO Specialist #3] stated that the EO office has “requested a copy of the [CDI] report and the – along with the case file ... [but] we have to request it.”

The IO asked what happens if the employee goes directly to the command first and does not come to the EO office. [EO Specialist #3] stated,

The command is supposed to – according to Title 10 [§]1561, they’re supposed to initiate an investigation. And when I say CDI, the Title 10 says investigation; it doesn’t say commander directed investigation. So I know we get caught up on our words when we say commander directed investigation, because that’s completely different from just investigation alone, but the commander is responsible for conducting an investigation into the matter.

■ also stated that the commander can “advise the complainant of their rights to contact the EO office to further address their concerns, to let them know that they have a right to file an EEO complaint.”

[EO Specialist #3] testified that the AFI 36-2706 was changed in February 2017, adding paragraph 4.25 which required the commander “to get an EO SME [subject matter expert] appointed for the investigation and then they’re, you know, encouraged to send the employee to EO.” Prior to the 2017 change, the EO office “[was not] required to add that SME for civilian cases,” citing to paragraph 3.3.1 of AFI36-2706.

Even with the new requirement, [EO Specialist #3] indicated that oftentimes the commanders never contact the EO office.

It happens quite often. They – because we’re supposed to be a SME, not only for sexual harassment, for all cases that fall within the EO purview. ... but the majority of the time, what takes place, the appointing authority and appointed investigation officer, the investigating officer gets all the information that they need to proceed with conducting the investigation. Now, there have been times where I have spoke with an investigating officer and have advised them, and told them what the steps that they need to take, and who they need to interview, to help frame the allegations, and so on, and I will tell them, and the appointing authority, that they need to provide that case file to me prior to going to legal so I can provide my technical review. ... Well, the IO has bypassed the EO office numerous of times, and will send their information right over to legal.

[EO Specialist #3] indicated that “it [bypassing the EO office] has definitely happened [at Hill AFB].”

### *Notifying the Chain of Command of the Complaint*

Since November 20, 2009, it was 75 ABW/EO policy to notify the first three levels of the complainant’s supervisory chain when a complaint is filed. This also applied if one or all of the supervisory levels were considered a responsible management official or subject of the complaint. The IO asked [EEO Director] about how [REDACTED] notifies the chain of command:

IO: Do you give them [leadership] any extra information other than just the notification or claims and remedies? Like, do you keep in contact with them more as the complaint evolves or –

[EEO Director] I mean, if there's a reason to, we would. But typically, it's the standard notification, you know, three above the RMO. And sometimes that's adjusted depending on who the individual is. You know, we wouldn't typically -- you know, if it was a GS-15, they may be in a position where the third level may be AFSC commander. So depending on that, you know, we may not notify that individual in our notification. If it's going to a general at the base at this level, then we typically wouldn't -- like [Former Commander ALC #2] or whoever is in that position, then we wouldn't go above them.

IO: But the -- I understand the guidance says to go two above.

[EEO Director] I don't know if there's specific guidance that says -- I mean, that was the

standard practice, Ms. Birkle [the EO Director prior to [Prior EO Director #1]], [Prior EO Director #1], was to go three above, depending on where the complaint was, you know, where the complainant sat.

IO: Do you have a written policy stating that?

**EEO Director** Personal written policy in my office? No. It's just a standard practice.

[Prior EO Director #2], the EO Director prior to [Prior EO Director #1], sent out an email on November 20, 2009, providing a format for the notification that **EEO Director** testified about. The header stated, "Staff, I would like the following format (or very similar) used when informing management of an EEO complaint. Address it to the first line and cc: the 2nd and 3rd level." The email continues with a sample notification letter. This is as close to a written policy as the EO office had. Testimony indicates notifying three levels was standard practice starting with [Prior EO Director #2].

**EEO Director** testified further on the same topic:

IO: If someone comes in with a complaint during the informal stage and in their claims it states some of the RMOs are actually maybe in the top three that you would typically notify, would you still notify that person even though they were named in the complaint?

**EEO Director** I know that we have done it.

IO: What's the guidance say?

**EEO Director** I don't know if there is anything specific in the guidance that says how to do that notification. I'm --

IO: Well, there is stuff in the guidance that tells you how to do that.

**EEO Director** And it says specifically how many levels, because I -- that was an office policy, and we didn't have a letter saying that, but --

IO: From what I understand, it's two levels, from what I've read the guidance. And unfortunately, I can't point that to you right now. I think it also discusses not notifying the RMOs if they're named in the complaint. Would that surprise you?

**EEO Director** Would that surprise me? That that's -- I'd have to read it and --

IO: Sure.

**EEO Director** -- see it, because -- I mean, I know that we have in some cases notified RMOs who were named in actual claims. I know that we've done that.

The IO also discussed notification with [EO Specialist #1] who explained:

We do notification. I don't think that that is a big deal. In fact, I'm an advocate that we stick to consistency, which we normally notify the three levels. In this case, because there was so much I think hostility and animosity about notifying the person I'm filing against -- well, complainants don't understand this, but when we notify the agency management, because the complaint's against the Agency not against the person, but oftentimes there's an RMO, a responsible management official, that's in one of those one, two, three levels. So they are going to see the claims. That's not on our program to shield the way and pull away the chain of command for the complaint.

A lot of complainants feel like we are ratting them out, perhaps, by sharing it. But that's the process, is the complaint's against the Agency and we have to notify the Agency of two things: the requested remedies and claims. Anything else that's discussed should not be part of that notification...And we have basically a standard letter for that letting them know these complaints or claims and requested remedies have been filed on such and such date in our office. So we are not sharing all the intimate details that the complainant may share with us while we are processing it. We are not sharing their documents, their intake statement. Those are all part of the case file. So when we do notification, we are notifying the Agency of the claims and remedies that are being filed.

### *Modification/Framing of Complaints*

Modification and framing of complaints is common in both the informal and formal complaints process. Both **EEO Director** and [EO Specialist #1] testified about their experiences with helping complainants craft their complaints. **EEO Director** testified as follows:

IO: Okay. Well, I understand, I know it was -- that you, during that initial intake process when they -- you actually do help them craft their claims.

**EEO Director** Uh-huh.

IO: Okay. Is there -- how does that process typically work when you're sitting down with them?

**EEO Director** I think, like a typical complainant, they would come in with a couple of issues and it's, you know, it's typically not very complicated. You know, non-selection, you know, specific easy things to frame.

IO: Sure.

**EEO Director** And others come in with just, you know, stories and stories and lots and lots of information and then trying -- some come in with documentation, you know, they've journaled it and they have pages and pages of things that have occurred. And then, we try to work with them through that information to decide or get them to identify what are the specific issues that they have, because they come in with -- well,

often they come in with lots of background information that may not specifically be a claim, but just supports a claim that they might have.

IO: Uh-huh.

**EEO Director** And we would typically work with them to frame it, give it to them to review, and sometimes you go back and forth a couple times.

**EEO Director** further testified that even though [REDACTED] may put them in the correct format, all of the information the complainant originally submitted is still placed in the case file:

And I have the responsibility to perfect those claims and put them in the correct format and have the additional information -- nothing ever is thrown away or discarded from the case file. Every set of claims, it's reworked, reworked, reworked. It's all in there...It all stays in there, so it's not like -- even if I perfect those claims and pull that background information out of them, that original set of claims with all that information is still in the case file for review by investigators, judges, and what have you.

### *Acceptance/Dismissal of Claims*

By letter dated April 13, 2018, [Former Wing Commander], Wing Commander, 75 ABW, designated **EEO Director** authority to accept and/or dismiss formal EEO complaints filed within the jurisdiction of the Air Force Sustainment Center. **EEO Director** explains in detail in [REDACTED] testimony the process [REDACTED] goes through during the formal stage when [REDACTED] is looking at the claims and whether to accept or dismiss them:

IO: Okay, let's talk about when the time comes a complaint goes formal and then you have to get involved as far as accepting or dismissing claims. Can you kind of walk me through that, how that's done?

**EEO Director** Just depending on the claims. So when I get the claims and I see them, and before I actually start the acceptance and dismissal process, I will review the claims for proper format, and we kind of talked about that earlier as far as, you know, lengthy claims that have information that's, you know, typically background information. I will perfect those claims and put them in the proper format, write them properly, because it has to be written in a certain way also. And so, I usually work that initially, looking at those claims. And then, once I have the claims in that format, we try to work with the complainant's attorney, if there's an attorney, to get them to agree on the formatting of the claims and all that, all those details. Sometimes they agree. Sometimes they don't. But it's my responsibility to have those claims properly formatted. If there's duplication, we'll talk about the duplication, because sometimes complainants will put the same complaint or claim, but maybe word it a little bit differently, but it's basically the same issue. So we'll, you know, get rid of the one that's a duplicate, things of that -- you know, it just depends on the complainant and the claims. And once they're in the proper format, then I review them and look for specific criteria, was there a Title VII basis, is it timely, is it within the 45-day requirement, is there harm? And that's based

on specific stuff that's spelled out in the C.F.R. And so, I look at that criteria and make a decision as to whether I think it should be accepted or dismissed.

Once I've done that review, then I send it to legal and say, this is my recommendations for acceptance and dismissal. You know, please do a legal review and concur or not concur. And sometimes, we have the same, you know, they concur and everything's the same. Sometimes they disagree with me. We have a conversation about that and, you know, make a determination on what to do in that case. And then, at that point, we take what's accepted, and forward it up to IRD to be accepted as a formal complaint.

IO: As a -- go ahead.

**EEO Director** And then, what is dismissed -- because we'll give the complainant acceptance and dismissal letter. If it is a partial acceptance, then we give them their appeal rights for the dismissed claims, and tell them, you know, what they can do as far as those claims that were dismissed, and they're allowed to bring them to the judge at the point of the hearing.

IO: Right.

**EEO Director** So even though it's dismissed, they're not completely, you know, they don't lose the opportunity to have those looked at again at another point. But it's not until it gets to a hearing.

IO: Has that ever happened?

**EEO Director** Yes. And there's been times when judges have remanded it back and said, you know, look into all these claims that were dismissed. You know, it happens.

[EO Specialist #1] was also asked about the process of notifying a complainant that his/her claims have been adjusted and also about interaction with the legal office:

IO: Now, would you get back with the complainant when that's done to inform them that their claims have been adjusted?

[EO Specialist #1]: Yeah. They'll see that the claims are adjusted in the final draft. In this case, I'm not sure what **EEO Director** -- if [REDACTED] got back with the individuals. I do believe I recall [REDACTED] scheduling some meetings to actually do another session of let me get clear, concise -- right from the complainant rather than just from the files. [REDACTED] would supplement it with direct interaction with them. So in some cases I don't know if that would be a surprise or not.

IO: Well, once when the director perfects the claims, I believe they also send those over to the legal office to be looked at?

[EO Specialist #1]: Yes, sir.

IO: All right. And then they provide some sort of a legal review back. Do they typically agree, as far as you know, the legal with the director as far as claims?

[EO Specialist #1]: I would say typically yes, and typically between that dialogue sometimes the claims can be refined because it is an art to refinement. Again, you're not changing the date; you're not changing the elements, I priorly (sic) spoke about, that make a claim. So a claim that I did an informal that has been redrafted still should state the same claim. In fact, it would be -- arguably, it would state it more clearly.

*Criteria for Acceptance/Dismissal -- 45-Day Time Limit & Stating a Claim*

[EO Specialist #1] also testified regarding the acceptance and dismissal process at the formal stage:

When you're involved with acceptance and dismissal, there's criteria for that and you're looking at those criteria to make sure that the claim is either acceptable based on the time frame; if it's stating harm, an adverse action; if it's in the right jurisdiction. You're just looking at not whether or not you believe it's discrimination, you're looking at is it meeting this criteria or not. There are times where the director may need to rewrite the claim. It shouldn't change necessarily the essence of the claim, but it does get it more to the refinement of a claim.

Another issue discussed during the testimony was the 45 day time limit for filing claims -- calculating the 45 days and how to determine whether a claim has met that requirement. **EEO Director** testified that, "when I'm looking at, you know, acceptance and dismissal in the C.F.R., I'm following it verbatim. If it says 45 days and it's outside of that 45 days unless it's a continuing violation, then there's different ways of looking at that and reviewing that and pulling that in. But you know, I say 45 days, so I'm -- that's what I do." **████** further testified:

IO: Let's talk about that 45 days, because you just made a statement that there is extenuating circumstances where even if it's outside, it could be accepted. What are some examples of that?

**EEO Director** If they have a timely issue and the -- it's worded differently and I'm trying to think of exactly how it's worded in the claim, continuing -- continuing violation, disparate treatment or something of that nature. If all those other ones are kind of similar and leading up to, you know, this current claim, then they can pull it in as a continuing violation.

IO: So if something happens within the 45 days, and it's just a continuation of past treatment, then it can be tolled?

**EEO Director** There's other criteria, too. It has to be -- it can't be a discrete act. If it's a discrete act, then it's not part of a continuing -- because at that time, they could have filed on that discrete --

IO: What's a discrete act?

**EEO Director** Just a -- I'm not very good at explaining it, just a --

IO: An isolated event?

**EEO Director** Yeah.

IO: Okay.

**EEO Director** I mean, and legal, when they do their review, there's oftentimes that's when, you know, they will come back to me and say, okay, well, I think these, you know, could be pulled in as a continuing violation. This issue, this issue, this issue, but not these, because they're discrete acts. And so, we -- I mean, we have a conversation about it, and they're my checks and balance as far as that kind of stuff. Because, you know, I look at one way. They look, you know, maybe look at it from a different perspective as an attorney.

As **EEO Director** testified, there may be some incidents outside the 45 days that will not be untimely because they are part of a continuing violation. [Attorney #1] also describes this in **█** testimony:

Because that's the thing about a harassment claim is that it's either a severe act or pervasive so the EEOC essentially says -- it gets accepted if there's an incident that occurred within the 45 days because that's kind of the idea is someone may not feel that they're being harassed until these incidents keep going on and on and on. After a while they may say, hey, I feel I've been harassed. And so the EEOC will say, look, once one of those acts falls within 45 days, then you accept all of the incidents.

[Attorney #1] testified regarding the legal office's involvement in the acceptance/dismissal process. **█** indicated that the legal office will "review the acceptance/dismissals." [Attorney #1] indicated that the legal review is a formal one in writing. The legal office

do[esn't] keep a copy in our office, but when it comes into our office we'll review it and then we'll send an e-mail back. Normally, if we concur with the EO office's decision, we'll just respond back saying JA concurs and identifying the attorney in our office who will be representing management as the case goes forward. If we don't concur, we'll send back an e-mail indicating in there our thoughts as to why we're not concurring with a particular decision.

When asked whether the labor attorneys chat with each other about those documents, [Attorney #1] responded, "Yeah we will. Well, so here's part of the problem, the EEOC prohibits us from talking with the attorney who will end up being the agency attorney. So that leaves -- since there's three of us, that only leaves one other attorney that we can talk with. It's rare that we will talk about acceptance/dismissals, but I have done it."

[Attorney #1] also discussed the standards used to determine if the determinations on acceptance/dismissals is legally sufficient.

Yeah. So all it has to do is state a claim and then it should be accepted for investigation. So, so long as they are asserting an allegation of discrimination, then we will accept it, or at least depending on what the EO office sends to us, if we look at it and see that it is stating a claim, then we'll say that it should be accepted. The only other – so there's really only two things we look at, and that's whether it states a claim and timeliness. So the timeliness issue is whether or not the – if it's an act of discreet discrimination, did that act occur within 45 days of the person seeking EEO counseling? And if it's an allegation of harassment or hostile work environment, the issue will be whether or not one of those acts of alleged harassment occurred within the 45 days.

█ testified that failure to state a claim and timeliness are the typical reasons why allegations would be dismissed.

That's correct. If it's a discreet – if it's an act of discreet discrimination that did not occur within 45 days, then it should be dismissed as untimely. And if it's harassment, if it didn't fall – one of the acts did not fall within 45 days, it, too, should be dismissed as untimely. And then of course failure to state a claim if they're not alleging a claim of discrimination. So if it's a discreet act of discrimination and they're not alleging a claim of discrimination that touches a term or condition of employment, then that should be dismissed as well. And then if it's harassment, essentially it's going to come in as long as it's severe or pervasive, it should be accepted for investigation.

[Attorney #1] was asked whether █ ever discussed dismissal or acceptance letters with the EO director. █ responded,

Yeah. So often what will happen is if we get an e-mail and we disagree with it and send [it] back saying we're not concurring with an aspect of it, sometimes it will just remain via e-mail correspondence. But every now and then we'll pick up the phone and call each other and discuss why we're viewing it differently than their office is viewing it. ... So sometimes it's been – yeah, one example would be harassment. So on the issue of harassment, I actually went over to their office about sometime last year. I don't remember when during the year, and presented training to them on harassment because I think there was some confusion about that. And we clarified for them when allegations of harassment should be accepted for investigation. But that's usually the examples because harassment is – I think it was something that was not quite thoroughly understood. And so if I would e-mail back and say I'm not concurring with a dismissal because there were incidents of harassment that exceeded the 45 days, because there was an act of harassment with the 45 days, so it all gets accepted.

█ further testified,

So that's the odd thing about harassment that I think I – when I presented the training, I

think I clarified for [the EO office]. And that's that when you have an incident of harassment that falls within the 45 days, they're pretty much going to – then all of the incidents of harassment that occurred older than 45 days should also be investigated, should be accepted as part of the investigation. So every now and then there would be an issue about, okay we're not accepting these incidents of harassment because they're old. And then I would not concur and say, yeah, but there were acts of – incidents of harassment within the 45 days so, therefore, all of the incidents of harassment come in because that's the thing about a harassment claim is that it's either a severe act or pervasive so the EEOC essentially says – it gets accepted if there's an incident that occurred with[in] the 45 days because that's kind of the idea is someone may not feel that they're being harassed until these incidents keep going on and on and on. After a while they may say, hey, I feel I've been harassed. And so the EEOC will say, look, once one of those acts falls within 45 days, then you accept all of the incidents.

[Attorney #1] stated that the harassment would be based on “one of the protected purviews. So if it's – as long as the person's alleging race, sex, age, religion, disability, prior EEO activity, those types of claims, so as long as they're alleging harassment based upon those protective purviews, then that is – that's stating a claim.”

According to an April 30, 2018 email produced to the IO, the legal office was to meet with the EO office in early May 2018. The email is from [Attorney #1] to other attorneys in the office seeking assistance in ensuring the interpretation of certain cases was accurate. ■ addressed both failure to state a claim and timeliness. On the timeliness issue, [Attorney #1] stated:

The next several cases essentially state that in the harassment/HWE [hostile work environment] analysis, so long as one incident of that claim is within the 45-day period, the rest are timely so long as the rest are part of the same unlawful practice.

I have not found cases on the term “same unlawful practice,” but I believe it essentially means there must be a commonality between the timely incident(s) and each untimely incident. I am trying to remember whether cases borrow the “like or related” language used to determine whether to add in a new claim to an existing case. As I have understood it, this means that if somehow you can break the commonality between incidents, you may be able to argue those that are not common to the timely incidents can still be dismissed as untimely. This would require more research.

Again, if an incident within the harassment/HWE claim is also alleged to be a discrete act of discrimination, if the discrete act claim was dismissed the complainant would not be entitled to damages running from the discrete act but the incident would be considered as to whether the alleged harassment/HWE was sufficiently severe or pervasive and the damages for the harassment/HWE. As an example, if the discrete act was an untimely claim the employee was denied overtime for a few months a year before seeking EEO counseling, the employee would not be entitled to overtime damages if the employee prevails on the harassment/HWE claim but a determination would be made as to whether the denial was severe or pervasive enough and, if so, what

is the relief.

In [redacted] testimony [Attorney #1] stated that while [redacted] thought [EEO Director] was competent in [redacted] role as EO director,

I do think that the harassment issue was something that needed to be clarified and that's why I went over there and presented training last year is because I do think that that was something that was – that they could have used information on. I will say since I went over there and presented that training, I think that's it's (sic) being handled correctly now. I don't think it was necessarily being handled correctly before that, but I do think it's being handled correctly now.

[Attorney #1] further stated,

And the other issue about it is that ... [when] the person requests a hearing before the EEOC, the EEOC – the judge assigned to the case will review the dismissal to the extent any of the claims were dismissed. And may end up disagreeing with the decision to dismiss, and it could be sent back for a supplemental investigation. So, so long as any aspect of it is accepted for investigation, in the end there may be a delay, but it's not – I would say it's not a fatal issue for the person who sought EEO counseling because, as I indicated, the judge will review it and may disagree with any part of the claims that were dismissed and add them back into the case.

The IO asked whether [Attorney #1] was aware of any cases where the AJ had sent the case back for a supplemental investigation. [Attorney #1] replied, "Yes. I had – let me think. I'm trying to remember. I think I had two cases that were that way and that's why I went and presented the training [to the EO office]." [Attorney #1] testified that

I had a conversation in our office about it, and then we went over and presented training on it to the entire EO office as well. And as I indicated, I did actually kind of a twofold training on it. One part of the training was that the incidents of harassment that are older than 45 days should be accepted for investigation so long as there is incidents of harassment within the 45 days. And then the second part of training was on how to frame the allegations of harassment in a way that the EEOC administrative judges prefer.

[Attorney #1] indicated that [redacted] spoke to [EEO Director] before presenting the training and

[thought] there was confusion on it [acceptance/dismissal of harassment claims]. I think that was something that was not quite understood. And they were very receptive to the training. So when I presented the training, it was [redacted] entire office. [EEO Director] brought all of [redacted] office in there, and they all seemed fairly eager to fully understand what I was presenting to them. And they had a lot of questions. And I think the training was well received and quite thorough. I will say my impression was that they really wanted to make sure they got it right.

Evidence from the EEOC shows that errors at the acceptance/dismissal process are common in many federal agencies. In fiscal years 2012-2016, the U.S. Equal Employment Opportunity Commission (EEOC) developed a plan to focus on targeting policies and practices that discouraged or prohibited individuals from exercising their rights under the employment discrimination statutes.<sup>27</sup> As part of their effort, EEOC's Office of Federal Operations (OFO) analyzed its appellate decisions over those fiscal years on federal agencies' procedural dismissal of EEO complaints. The goal was to identify the most frequent errors by agencies that resulted in denying employees access to the complaints process. Among the most common errors committed by federal agencies, two are of particular relevance to this case. First, agencies made errors in dismissing complaints for failure to state a claim. Among the most common issues were fragmentation (failure to recognize several claims as a pattern of harassment/hostile work environment) and improper decisions on the merits (failure to recognize that a complaint did establish a valid claim). Second, agencies made errors in dismissing complaints for failure to comply with applicable regulatory time limits. Among the most common issues was failure to consider a valid excuse, including a complainant's misunderstanding of the relevant time limits, failure to properly notify the complainant of those time limits, and complainant unfamiliarity with the EEO complaint process.

### *ADR Process*

Several witnesses testified about the ADR process. **EEO Director** testified about management participation in the process:

IO: So once you receive the claims, I understand those are sent to leadership with the remedies and any notification, okay. And then they decide -- of course, the complainant decides if they want to do ADR or if they want to do the limited inquiry.

**EEO Director** Uh-huh.

IO: Okay, so if it goes to ADR, then management has to decide if they want to play.

**EEO Director** Uh-huh.

IO: Okay. And if it goes to ADR, typically, does management normally want to participate?

**EEO Director** We have a pretty good, I would say, almost 100 percent participation by management, because it is voluntary, but it's highly encouraged.

IO: Sure.

**EEO Director** Because it's just -- actually, it's just another opportunity to resolve it, so any opportunity you have at whatever point it is, you know, we try to get management to take advantage of that opportunity. Because early resolution is always better.

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<sup>27</sup> The EEOC found that during two of the five years studied, the Air Force was among the agencies with 25 or more reversal appellate decisions from dismissals that exceeded the government-wide reversal rate (which ranged from 30% in 2008 to 45% in 2012). See <https://www.eeoc.gov/federal/reports/dismissals.cfm>

IO: Sure.

**EEO Director** But so, I would say, you know, they make the decision, management does. We don't decide who comes to the table. We ask them if they're willing to participate and if they would name an individual that would be the representative at the mediation. So leadership makes that decision.

In interviewing witnesses about the ADR process, the IO raised the question of whether an individual who has been identified as a “responsible management official” can be the settlement authority for that EO case.<sup>28</sup>

RMO is defined in AFI36-2706 as “a term commonly used by EEOC to refer to the individual(s) who allegedly discriminated against the complainant.” **EEO Director** stated [REDACTED] interpreted “RMO” to mean the person who is responsible for resolving the complaint or “persons that could meet the requested remedy.” **EEO Director** was asked if [REDACTED] had prior RMOs named in complaint be the settlement authorities and [REDACTED] replied, “I think it would depend on, maybe what the remedies – if they want that person fired, it probably wouldn't be appropriate, but if that person can move – if they want to be moved and that person can make that happen, then it could be appropriate.” [REDACTED] further testified,

Because you want somebody to come to mediation that doesn't have, you know, any biases about a particular situation or whatever, so they – you know, actually people say, well, I can't come because I don't know anything about it. That's typically a good candidate, if you come in without, you know, having any kind of biases or whatever that might sway you one way or the other. But also, it's, I guess, good to have some knowledge so you can determine what decision to make.

**EEO Director** also testified that EO specialists notify management and ask if they are willing to participate in ADR; “we don't tell management who to send and who not to send.” **EEO Director** was asked if it was incumbent upon [REDACTED] or a specialist to question a settlement authority designation and [REDACTED] replied, “We'd probably have that conversation with JA.” The IO asked **EEO Director** “what's your responsibility per your guidance as to when to determine there might be a conflict of interest?” **EEO Director** responded that “I'd have to go back and read that. I don't know what it specifically says. I'd be just trying to – and [EO Specialist #5] is the ADR program manager.”

[EO Operations Manager] also indicated that JA does advise and will not approve whether a complaint can go to ADR until a conflict their office has identified is resolved. [EO Operations Manager] defined “RMO” as “the person [who] allegedly did harm to the complainant.” [REDACTED] also stated, “and so you never want the person that is being named as the one that did the harm, the same person that has the settlement authority on a case that they've been named in ... that's the only thing we're concerned about. But we [EO office] don't make the determination as to who should be the settlement authority.”

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<sup>28</sup> See Section regarding WB#2 *supra* at 64.

The IO asked [EO Specialist #1] about the ADR process and who might be chosen as the settlement authority. [EO Specialist #1] explained that a settlement authority might be an RMO named in the complaint and how that might come about:

IO: Sure. All right. Let's say a complaint goes to ADR. Okay. How is it determined who the Agency will send to be the settlement authority?

[EO Specialist #1]: Two requirements: that they have some knowledge of the situation and the authority. And so, that's not on the EO side. That's what ADR -- that's I guess what ADR and EEO when -- let me back up.

EO is going to make the first contact and say, hey, management, do you want to go to mediation? And some of the things that I look at is the level of authority and do they have knowledge. Sometimes you get one in two different people. So you sometimes need to really have both. It's frowned upon a little bit to have two officials on one because it's viewed as maybe dynamic-wise ganging up on. So we try to make sure we just have one official, but ultimately the Agency itself retains the option to send and delegate someone to attend that ADR. I normally make sure that the complainant is somewhat aware of it so I don't have a situation that is set up for a surprise or a uncomfortable type of interaction.

IO: So can the settlement authority be named in the complaint as an RMO?

[EO Specialist #1]: Yes.

IO: Does that happen?

[EO Specialist #1]: Yes. Because each chain of command on every complaint is being alleged at some level. That's what really an EO complaint is. It's not that the incident just happened, but in order to prevail I've got to show that discrimination occurred within my chain of command. So sometimes you will have a first level supervisor sit in on an issue and it will resolve. There's interaction and explanation that goes on in that interaction. So I would say, yes, you would at some level have a selecting official or have a whatever, whoever is doing that action at some level sit in on their own complaint. It's not as common to see someone from another chain of command sit in on someone else's, although that does happen. But generally when you go to having the authority and having some knowledge of it.

Also, ADRs use two joint relationships. It's not a -- unlike the inquiry, where there's just the claims and remedies going forward, in ADR, after those claims and remedies go forward, the intent is for both parties to voluntarily come to an agreement. So at that point no one is being forced to be there. This is voluntarily on both sides. So if a complainant were to have someone attend that really wasn't someone they wanted to meet with, they can voluntarily pull out of that. No one has ever required, in the Air Force program, to -- or mandatorily to be there.

IO: Okay. What happens if a settlement authority has been identified and there might

be a conflict of interest?

[EO Specialist #1]: Then, again, if that's the case where the complainant just says I am not comfortable with meeting with Ms. Doe or John Doe, then they have the right to say no. And in that case, I believe what happens is the ADR manager or the EO specialist may contact management and say, you know, the complainant just isn't comfortable with the setup; you know, would you like to send someone else or would you just like to leave it at that? Then it can default to processing as an inquiry.

[Attorney #1] testified that the legal office is involved in ADR and settlements. "So we'll review settle agreements that they have when they settle cases. If there's an ADR mediation in their office in which an attorney is going to be representing the counselee, we will often be invited to come and represent management in that ADR."

The IO contacted five AFMC Wing EO Directors who were also ADR Managers. They were asked for their understanding of MD-110 as it relates to their responsibilities during ADR to notify leadership of a potential conflict of interest when determining a settlement authority. All but one stated they were aware of MD-110 guidance and their responsibility to inform management. No one could point to specific MD-110 guidance that stated it was their responsibility to inform management, but they indicated it was an inherent responsibility of the ADR Manager and "rudimentary" for EO to perform.

## Whistleblower Complaints

Whistleblower 1 Whistleblower 1<sup>29</sup>

From March 2015 to September 2017, Whistleblower 1 was the 309<sup>th</sup> Maintenance Support Group Director. On May 24, 2016, Whistleblower 1 met with (the prior EO Director) and lodged an informal EEO complaint of discrimination. The EO file contained the following notes from the first meeting describing Whistleblower 1's complaints:

On 24 May 16, Whistleblower 1 and EO Director [Prior EO Director #1] met as scheduled. Whistleblower 1 alleged ■ was discriminated against based on Sex (female), disparate treatment, and subjected to a continuing hostile work environment beginning in Aug 15 and continuing to date. Whistleblower 1 provided the EO director [Prior EO Director #1] with a draft chronology of events statement which contained additional supporting documentation. Whistleblower 1 also provided the EO Director with a copy of a Notice of Proposed Suspension (10 Days), subject: Conduct unbecoming a federal supervisor, signed by [Colonel], Deputy Commander for Maintenance, OO-ALC. Whistleblower 1 stated that ■ was the Director, 309 Maintenance Support Group and [Former Vice Director ALC], Vice Director of Maintenance, OO-ALC, is ■ direct supervisor. ■. Whistleblower 1 indicated that on or around Aug 15, [Former Vice Director ALC] initiated the investigation to gather false information to undermine ■ authority as a senior civilian

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<sup>29</sup> Whistleblower 1 has worked as a civil servant at Hill AFB since March 1989. ■ is currently an NH-04 and works for the NC3 Integration Directorate based out of Hanscom Air Force Base in Massachusetts. ■ job title is the NC3 Integration Technical and Programmatic Embed, "or liaison for Hill Air Force Base and those systems that are actually physically located at this base."

leader and to discredit [redacted] professional reputation and career... Whistleblower 1 stated [redacted] was involuntarily removed from [redacted] official position... was forced to move out of [redacted] office and was issued a no contact order with any employee or military member assigned to the 309 Maintenance Support Group. Whistleblower 1 stated that the Agency emailed/informed all members of the 309 Maintenance Support Group that [redacted]. Whistleblower 1 had been removed from [redacted] position and that [redacted] had been assigned to work a special project under [Former Vice Director ALC].

The meeting concluded with [Prior EO Director #1] providing Whistleblower 1 with documentation of [redacted] rights and information about how to craft [redacted] claims. On June 2, 2016, [EO Specialist #4] received certified mail from Whistleblower 1's attorney, which included a Power of Attorney, Whistleblower 1's claims, the remedies requested, and a statement electing the ADR program for [redacted] case. Upon receipt, [EO Specialist #4] extended the complaint to an additional 90 days.

On June 9, 2016, [EO Specialist #4] sent to [redacted] attorney, Whistleblower 1's claims and remedies written in the EO offices' format and requested Whistleblower 1's attorney review and advise if any changes needed to be made. Later that day, Whistleblower 1 and [redacted] attorney (by teleconference) met with [EO Specialist #4] to discuss [redacted] complaint, including the claims. Whistleblower 1 testified in regards to this meeting:

You know, my actual lawyer was there and present, and we kind of talked the formatting of the individual complaint. And it goes back to what I discussed earlier, where they were basically saying this is how we want the complaint but my legal rep was basically saying this is how I have written complaints, numerous complaints, previously, and this is the context that I would like to continue in.

On June 14, 2016, [EO Specialist #4] placed Whistleblower 1's claims and remedies into the EO format and sent them to Whistleblower 1 and [redacted] attorney for review. The next day the attorney revised the claims and used a format "[the Attorney] preferred to use" and emailed them to [EO Specialist #4]. The record shows that Whistleblower 1 and [redacted] attorney amended Whistleblower 1's informal complaint twice more before their submission of the formal complaint. Although Whistleblower 1 agreed to mediation, on July 22, 2016, management informed the EO office they would deny the request for mediation. On July 25, 2016, [EO Specialist #4] notified Whistleblower 1 and [redacted] attorney via email that management had denied the request for mediation.

[EO Specialist #4] then proceeded to conduct a limited inquiry. Between July 26 and August 22, 2016, [EO Specialist #4] interviewed various witnesses and RMOs from Whistleblower 1's complaint. No resolution was reached and ultimately management did not agree to Whistleblower 1's requested remedies. On August 22, 2016, [EO Specialist #4] sent Whistleblower 1 and [redacted] lawyer a notice of right to file a formal complaint. Whistleblower 1 then filed the formal complaint on September 15, 2016.

On October 14, 2016, EEO Director notified Whistleblower 1 that [redacted] had partially accepted the claims listed in [redacted] formal EEO complaint and stated they would be sent to IRD for investigation. The partial acceptance memo dated October 14, 2017, contained an explanation of Whistleblower 1's rights to appeal in a hearing before the EEOC AJ after completion of IRD's investigation and also contained a

listing of the complaints that were forwarded to the IRD and those that were dismissed. On November 8, 2016, Whistleblower 1's attorney sent a rebuttal to the partial acceptance memo of the formal complaint. In the memo, Whistleblower 1's attorney stated:

The Agency's Partial Acceptance, however, completely changes the form, content, and context of the issues alleged in Whistleblower 1's complaint, without justification... The Agency's Partial Acceptance is contradictory, confusing, dismisses several important claims, and completely changes the form and context of Whistleblower 1's complaint... The Agency's failure to accept all of the claims as stated in Whistleblower 1's complaint is a gross disservice to Whistleblower 1's civil rights.

### *Amendment to Complaint*

On March 30, 2017, after IRD had completed its investigation but before any notice had been mailed to Whistleblower 1, Whistleblower 1's supervisor issued a Notice of Decision to Reprimand for conduct unbecoming a federal supervisor. On March 31, 2017, Whistleblower 1's attorney sent an email to EEO Director requesting to amend complaint to include the Notice of Decision to Reprimand as an additional claim. That same day, EEO Director emailed [EO Operations Manager] to ask how to proceed with the request to amend the complaint. The following is the email chain between [EO Operations Manager], and AFCARO about allowing Whistleblower 1 to amend complaint. On March 31, 2017, EEO Director emailed the following to [EO Operations Manager]:

I had an attorney contact me today with a request to amend a formal complaint (Hamilton 8L1M16031) that has already been completed. This is similar to the one I dealt with a month ago (like and similar issue) however I am wondering if there is an established timeframe/cutoff where we can ask for a supplemental investigation. Please advise (sic). Thanks!

On April 28, 2017, [EO Operations Manager] sent an email to EEO Director stating, "Lori, not sure if I got back with you on this? Has the ROI been completed and mailed? If not, let me know." EEO Director replied on the same day, "The ROI was completed but AFCARO has not mailed it out to the complainant yet." At that point, on the same day, [EO Operations Manager] emailed Carol Hamilton at AFCARO, writing:

We may have to accomplish a supplemental investigation on the Hamilton 8L1M16031, case. I was informed that the ROI had not been mailed, and don't think the [final agency decision] FAD is near. Question: Does AFCARO have a cut off timeframe for a supplemental investigation?

On May 1, 2017, [EO Operations Manager] again emailed Ms. Carol Hamilton, forwarding earlier email: "Resending not sure if you received the below [content above]. Need to know if AFCARO has a cut off for supplemental investigations. The ROI was dispatched and now the complainant wants to add an amendment." On May 3, 2017, [EO Operations Manager] forwarded the same emails (dated April 28<sup>th</sup> and May 1<sup>st</sup>) again to Whistleblower 1 stating, "Resending, not sure if you received previous emails."

On May 3, 2017, Ms. Carol Hamilton responded to [EO Operations Manager]'s emails, "If this complaint is going to be amended, the supplemental investigation must be completed expeditiously by any means necessary." [EO Operations Manager] replied on May 4, 2017, "Roger that!" Ms. Carol Hamilton emailed back the same day, stating, "So, it's going to be amended, yes? If so, we'll hold off issuing the ROI/IF until the supplemental investigation is done."

On May 4, 2017, [EO Operations Manager] forwarded the email from AFCARO to **EEO Director**. During that same time frame, **Whistleblower 1's** attorney prepared a motion for sanctions based on **EEO Director** April 4 refusal to accept an amendment to **█** claim. A copy of that motion for sanctions was served on **EEO Director** on May 3, 2017. **EEO Director** does not mention the motion for sanctions in **█** testimony to the IO.

On April 5, 2017, before receiving [EO Operations Manager]'s reply on May 4<sup>th</sup>, **EEO Director** had replied to **Whistleblower 1's** attorney in an email stating that amending the complaint was not possible because:

**Whistleblower 1's** Report of Investigation (ROI) was completed and dispatched to AFCARO on 8 March 2017. As a result there is no opportunity to amend the existing formal complaint ... The complainant can open a new complaint or if **█** elects to go to an EEOC hearing **█** may be able to bring it to the attention of the administrative judge at that time.

**EEO Director** testified that **█** was trained that once the IRD ROI was complete, you could not amend a complaint:

**EEO Director** It was a timeliness -- so, and I was pretty new at that time. And I didn't know about the option to -- because after 180 days and the investigation is closed, the ROI, and IRD is done with it, my training and what knowledge I had was that at that point, you can't amend the complaint anymore, because the investigation's over. That was my knowledge. But then, I found out after talking with [EO Operations Manager] down at AFPC, that they could do a -- I don't know if it's called a -- a supplemental, I think is what it's called. You can do a supplemental complaint and add a claim, and then they go back and actually do an investigation on that individual claim. So that's how that one ended up. So they ended up doing a supplemental investigation, because **█** had additional claims at some point. ... But that was early, and I was not familiar with what was called a supplemental. ... So once we found that out, then they did -- we did acceptance and dismissal on it and put it through IRD as a supplemental investigation.

On May 4<sup>th</sup>, the same day **█** received the email from [EO Operations Manager], **EEO Director** emailed **Whistleblower 1's** attorney and told the attorney that **█** had received clarification and would send the amended claim to IRD for investigation. On May 5, 2017, **EEO Director** sent **Whistleblower 1** an Acceptance of 31 Mar 17 Amended Claim to Formal EEO Complaint of Discrimination, and sent IRD a request for an EEO investigation of the Amended Claim.

On May 10, 2017, **Whistleblower 1's** attorney told **Whistleblower 1** "the agency [EO] switched gears and is now willing to investigate the reprimand only after we filed the hearing request." On May 18,

2017, Whistleblower 1's attorney sent a memo to EEO Director with the subject line: "Clarified/Amended Informal EEO Complaint." The attorney called it an informal complaint because of the confusion about whether they were going to have to start a new claim or add the new claims to the ongoing formal complaint. Whistleblower 1's attorney then filed an amended claim with EO on May 30, 2017.

The IRD completed its initial investigation on March 8, 2017 and the supplemental on December 19, 2017. In their notice of Agency's Conclusion of Supplemental Investigation, the IRD recommended sanctions against the U.S. Department of the Air Force for refusing to accept a timely submitted amended complaint (discussed below) and numerous errors in both the first investigation and the supplemental.

The letter did not cite problems with the way the claims were altered or concern over improperly dismissed claims. The testimony indicated that once the agency has dismissed the claims, it is unlikely the IRD will re-visit those dismissed claims or check the validity of the dismissal. [EO Operations Manager], EO Operations Manager for Air Force Personnel Center (AFPC), testified in regards to whether IRD does a quality check on the acceptance/dismissal letters when they receive them:

So they, IRD, they do have an intake clerk that basically they look at to ensure all of the supporting documents are in the case, file, make sure, you know, pertinent forms are in the case file, their signatures. So they do kind of like a QA. The investigator now, may look up a little bit more in depth at the case file. And they – and some investigators, if they thoroughly look at the case file and if they see a concern as far as timeliness, as far as the way the claim is framed or missing information, or whatever, they will contact the IRD, or IRD Air Force component, who then contact me...but usually the IRD will investigate what the agency said they – say they want investigated, you know.

### *Stipulation Re-instating Claims*

At some point after completion of the initial and/or supplemental investigation, Whistleblower 1 requested a hearing before an EEOC AJ. During the EEOC proceedings, the parties entered into a stipulation on July 9, 2019, where they agreed to re-instate all but one of the claims that EEO Director had dismissed. The final dismissed claim (and an additional claim) were not addressed by the stipulation.

The chart below details the claims, indicating which ones EEO Director accepted, which ones rejected, and which ones the parties agreed to re-instate in EEOC proceedings. The claims were as follows:

Since in or around August 2015, and continuing to present, the Agency by and through its alleged discriminating official/responsible management official ("ADO/RMO") [Former Commander ALC #1] (hereinafter "[Former Commander ALC #1]"), [Commander #1], [Former Vice Director ALC] (hereinafter "[Former Vice Director ALC]"), and [Colonel] (hereinafter "[Colonel]"), allegedly discriminated against the complainant based on sex (female), a continuing pattern of non-sexual harassment/hostile work environment and reprisal, when:

Claim	Accepted by Grimes	Rejected by Grimes	Re-instated by Stipulation
1 - On or about August 2015 to present, the Agency ([Former Vice Director ALC]) conducted an unauthorized investigation on the complainant which significantly undermined the complainant's ability to successfully complete █ official duties, damaged █ professional reputation, and impacted █ future promotion potential.	X		
2 - On or about December 14, 2015, the Agency ([Former Vice Director ALC] and [Colonel]) issued the complainant a letter informing █ that █ had committed "Serious Misconduct" and that a CDI had been initiated.	X		
3 - On or about December 14, 2015, the Agency ([Former Vice Director ALC]) verbally reprimanded the complainant and falsely accused █ of creating a hostile work environment.		X	X
4 - On or about December 14, 2015, the Agency ([Former Vice Director ALC]) directed the complainant to immediately leave █ GS-15, Director, 309 <sup>th</sup> Maintenance Support Group office; however, no alternate location was provided until December 16, 2015. The office was a lower ranking GS-14 office which was seen by peers and subordinates as a demotion and which significantly undermined the complainant's ability to successfully complete █ official duties, damaged █ professional reputation, and impacted █ future promotion potential.		X	X
5 - On or about January 6, 2016, the complainant emailed [Former Vice Director ALC] informing [Former Vice Director ALC] that █ physical and mental well-being were deteriorating. The complainant asked for a status update on the investigation and estimated date of completion; to date, [Former Vice Director ALC] has failed to respond to the complainant's request for assistance and information.	X		
6 - On or about January 21, 2016, Investigation Officer, [Person #1] provided the complainant with allegations that failed to follow Air Force policy and CDI guidance because they were not specific allegations, nor were the allegations provided verbally to the complainant serious enough to warrant a CDI.		X	X
7 - On or about February 12, 2016, [Commander #1] (WR-ALCCO) verbally criticized, berated, and yelled at the complainant in front of Ogden Air Logistics Complex (hereinafter "OO-ALC") senior leaders. [Commander #1]'s unprofessional conduct/behavior significantly damaged the complainant's professional reputation and impacted █ future promotion potential.	X		
8 - On or about February 12, 2016, the complainant discovered █ name had been prematurely, and unjustly, removed from the OO-ALC senior leadership email listing which was seen by peers and subordinates as a demotion/removal and		X	X

which significantly undermined the complainant's due process and ability to successfully complete █ duties, damaged █ professional reputation, and impacted █ future promotion potential.			
9 – On or about February 12, 2016, the complainant discovered █ name had been prematurely, and unjustly, removed from the Hill Air Force Base senior leadership email listing which was seen by peers and subordinates as a demotion/removal and which significantly undermined the complainant's due process and ability to successfully complete █ duties, damaged █ professional reputation, and impacted █ future promotion potential.		X	X
10 – On or about March 8, 2016, the complainant discovered █ photograph and name had been prematurely, and unjustly, removed from the OO-ALC Organizational Chart. The organizational chart identified the complainant's position as "vacant" which was seen by peers and subordinates as a demotion/removal and which significantly undermined the complainant's due process and ability to successfully complete █ duties, damaged █ professional reputation, and impacted █ future promotion potential.		X	X
11 – On or about March 8, 2016, the complainant requested to meet with [Former Commander ALC #1] to discuss the CDI infractions that had been taken against █ and ongoing deterioration of █ physical and mental well-being. [Former Commander ALC #1] denied the meeting request.		X	X
12 – On or about March 11, 2016, the complainant learned from a co-worker, [Person #2] that the Agency failed to properly consider █ for several management reassignments with impacted the complainant's future promotion potential.		X	X
13 – On or about April 11, 2016, the Agency ([Person #3]) directed the complainant to physically move from the office █ was occupying (lower ranking GS-14 office) to a GS-13 office which was located off of a main hallway, was very noisy, and had minimal privacy which was identified by [Former Vice Director ALC]. The Agency's ([Former Vice Director ALC]) relocation directive were seen by peers and subordinates as a demotion/removal and which significantly undermined the complainant's due process and ability to successfully complete █ official duties, damaged █ professional reputation, and impacted █ future promotion potential.		X	X
14 – On or about April 15, 2016, the complainant was contacted by Air Force Sustainment Center AFSC/IG, [Former AFSC IG], who told the complainant that █ allegations of discrimination, wrong-doing, and abuse of authority were not going to be investigated due to the unfettered discretion of the Commander who ordered the CDI ([Former Commander ALC #1]).		X	X
15 – On or about April 18, 2016, the Agency denied the complainant's Civilian Development Educational Training Package and request to attend Senior	X		

Executive Service Training which significantly undermined the complainant’s due process and ability to successfully complete █ official duties and impacted █ future promotion potential.			
16 – On or about June 2, 2016, to the present, the Agency ([Former Commander ALC #1]) did not provide █ Whistleblower 1’s Appraisal and required one-on-one review for the period 1 April 2014 to 31 March 2015, which significantly undermined the complainant’s due process and ability to successfully complete █ official duties and impacted █ future promotion potential and financially.	X		
17 – On or around June 21, 2016, the complainant discovered, through a search of █ electronic records, that the Agency, by and through [Former Commander ALC #1] and [Former Vice Director ALC], had given █ an “Unacceptable” rating on or around June 1, 2016, which was unjustified and not compliant with policy; indeed, during complainant’s interim/initial review on November 10, 2015 with [Former Commander ALC #1], █ had provided no indication that █ perceived █ performance was unacceptable.	X		
18 – On or about June 30, 2016, █ Whistleblower 1 received a copy of █ appraisal, dated June 22, 2016. [Former Vice Director ALC] was the Rater/Reviewer. [Former Vice Director ALC] had modified █ Whistleblower 1’s appraisal to an “acceptable” rating on June 22, 2016, which was the day after █ inquiry into the status of █ appraisal with [Person #3]. The information provided in the appraisal included several errors (i.e., spelling, lacked that elements █ Whistleblower 1 met and/or exceeded), and did not include █ Whistleblower 1’s accomplishments and/or achievements during the April 1, 2015 to March 31, 2016 performance period. The appraisal also did not include a performance award, notwithstanding █ Whistleblower 1 had received an award every year since 1992. This act was manipulative, undermined the complainant’s ability to successfully complete █ official duties, and impacted █ financially and future promotion potential.		X	
19 – On or about July 1, 2016, all non-bargaining employees, including █ Whistleblower 1, were converted, thus each employee was to develop a contribution plan based on their new Position Requirements Description (PRD). To date, even though █ Whistleblower 1 has been converted in the system to Acquisition Demonstration (Acq Demo), █ Whistleblower 1 has not been given a copy of █ PRD, which was supposed to be reviewed in a one-on-one session, modified to include a contribution plan (coordinated expectations), and signed by on or about July 12, 2016. This deadline was required to ensure the performance evaluation (July 1, 2016 to September 30, 2016), which would equate to a payout and/or performance award.	X		
20 – On or about July 27, 2016, █ Whistleblower 1 was provided a draft copy of the PRD, position, and Tier, OO-ALC was targeting for █ Whistleblower 1’s placement, which as a NH-801-04, Tier 1 position. █ Whistleblower 1’s current position was NH-1601-04, Tier 3, or the highest Tier position. The act essentially demoted █ Whistleblower 1 to an entry level GS-14 position, which was even more severe than	X		

<p>provided on the Notice of Proposed Suspension, and which still had not been finalized or executed due process. This act was manipulative, undermined the complainant's ability to successfully complete [REDACTED] official duties, and impacted [REDACTED] financially and future promotion potential.</p>			
<p>21 – On or about July 25, 2016, [Former Vice Director ALC] requested [REDACTED]. [REDACTED] Whistleblower 1 to remove all personal items from [REDACTED] 309 MXSG/CL office located in Building 843 by no later than close of business on July 29, 2016, while a no contact order was in place. However, [REDACTED] Whistleblower 1 remains the 309 MXSG/CL or Director, of the 309 Maintenance Support Group, until notified otherwise. [REDACTED]. [REDACTED] Whistleblower 1 position description and most recent RPA 309 MXSG/CL pilot rating still reflect 309 MXSG/CL. This act, which was seen by peers and subordinates as a demotion/removal, significantly undermined the complainant's ability to successfully complete [REDACTED] official duties, damaged [REDACTED] professional reputation, and impacted [REDACTED] future promotion potential.</p>	X		
<p>22 – On or about July 27, 2016, [REDACTED] Whistleblower 1 emailed [Former Vice Director ALC] and requested accommodations be made to allow [REDACTED] to remove the belongings after hours, and to reduce contact and further embarrassment due to the no contact order. [Former Vice Director ALC] did not accommodate this request. In the same email, [REDACTED] Whistleblower 1 also asked for the status of a possible reassignment, given the removal of the belongings. [Former Vice Director ALC] stated there was no reassignment; however, the Complex made a decision to place a temporary director in the position. This act, which was seen by peers and subordinates as a demotion/removal, significantly undermined the complainant's ability to successfully complete [REDACTED] official duties, damaged [REDACTED] professional reputation, and impacted [REDACTED] future promotion potential.</p>	X		
<p>23 – On or about September 1, 2016, [REDACTED] Whistleblower 1 was finally informed that [Person #3] had received approval for AFSC/CA for [REDACTED] Whistleblower 1's placement in a vacancy, AFSC/ENR Hill OL or Chief, Science and Engineering resource Management Division. The position is NH-801-04, Tier 2, which is an entry level GS-15 position. [Person #3] stated that [REDACTED] had asked that this be accomplished; however, the placement is less than [REDACTED] Whistleblower 1's initial standing as a Tier 3 (highest), thereby lessening [REDACTED] promotion potential.</p>	X		

As of October 2019, the matter is being mediated through the OSC ADR program, with [REDACTED]. [REDACTED] Whistleblower 1's attorney seeking a global settlement of both the OSC and EEO cases. [REDACTED] Whistleblower 1's latest counteroffer was forwarded to local management the end of October for their consideration. Meanwhile, the EEOC case is still ongoing. The EEOC AJ held a pre-hearing conference on May 7, 2019. [REDACTED] Whistleblower 1 filed a motion for sanctions before the AJ and a ruling on the motion is pending.

**WB#2**

WB#2 worked as [Former OB Director]'s<sup>30</sup> [REDACTED] beginning in October 2015. In this position, WB #2 commonly interacted with [Former Chief of ALC/OB]<sup>31</sup>, head of the Programs Acquisitions Office for OO-ALC/OBC. On or about February 2016, [Former Chief of ALC/OB] offered WB#2 a [REDACTED] WB#2 Job Title position with a GS-09/11 promotion potential. WB#2 accepted the offer as a career-broadening opportunity. [REDACTED] report date was delayed and did not occur until June 1, 2016. According to the evidence and WB#2's testimony, in the interim period before [REDACTED] assumed [REDACTED] new position in OO-ALC/OBC, [Former Chief of ALC/OB] began engaging WB#2 in a progressively unprofessional manner. According to WB#2, [Former Chief of ALC/OB] commented on [REDACTED] appearance, referred to [REDACTED] as "eye candy" and "pretty little thing," sent instant messages (IMs) with comments such as "I love you to death young lady," told [REDACTED] [REDACTED] needed affection, requested [REDACTED] give him hugs, and acted in other ways that made [REDACTED] feel increasingly uncomfortable. WB#2 documented [Former Chief of ALC/OB]' actions through Memoranda for Records (MFRs), IMs, and Facebook messages that showed [Former Chief of ALC/OB]' inappropriate communications.

WB#2 began reporting [Former Chief of ALC/OB]' inappropriate actions to, among others, [REDACTED] supervisor, [Former OB Director] beginning on or about April 13, 2016 and requested on several occasions that [REDACTED] not be moved under [Former Chief of ALC/OB]' supervision. According to WB#2, each request was denied, and no further action was taken by [Former OB Director]. For example, on May 19, 2016, when [Former Chief of ALC/OB] sent WB#2 the instant message stating, among other things, "I love you to death young lady," WB#2 testified, "I begged [Former OB Director] again to allow me to move to OBM [OO-ALC Business Operations Manpower office] instead of [Former Chief of ALC/OB]' organization (OBC) and take action because I was getting scared and was considering quitting." After being shown the instant message, WB #2 indicated that [Former OB Director] responded, "you will be okay; [REDACTED] just really cares about you."

WB#2 testified that [Former OB Director] told [REDACTED] "[REDACTED] was going to push [WB#2] to go over" to work for [Former Chief of ALC/OB]

and [REDACTED] wanted [WB#2] to grow. In a way, it's like [REDACTED] [[Former OB Director]] wanted me, I think, to stick up for myself and tell him kind of knock it off. But I had felt – I told [REDACTED] that I felt that was kind of out of my hands. I had pushed him away, you know, enough for him to know that this was not okay. And [REDACTED] started getting aggressive. [REDACTED] wanted to go to lunch and – when I declined that, [REDACTED] punched [REDACTED] fist into [REDACTED] desk. So to me, that – I think there should be some kind of intervention somewhere besides me.

On or about June 1, 2016, WB#2 moved over to the [REDACTED] WB#2 Job Title position in OBC with [Former Chief of ALC/OB] as [REDACTED] second line supervisor. WB#2 testified that "[Former OB Director] told me to be quiet and stop talking to people about it. The only person [REDACTED] said I could talk to was Alan Nichols [WB#2's new supervisor who worked for [Former Chief of ALC/OB]] to discuss anything. And so I did."

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<sup>30</sup>[Former OB Director] (also referred to as [Former OB Director] or [Former OB Director]) served as the Director of Business Operations (OO-ALC/OB) during the primary timeframe of WB#2's allegations.

<sup>31</sup> [Former Chief of ALC/OB] has been a long time, senior civilian employee at Hill AFB. [REDACTED] served as the Chief of Business Operations Contracting Office (OO-ALC/OBC), a GS-14 position, for the primary period of WB#2's allegations.

On or about June 10, 2016, WB#2 met with [Former Vice Director ALC] in [Former OB Director]'s office<sup>32</sup> regarding [Former Chief of ALC/OB]' behavior. During the meeting, WB#2 showed [Former Vice Director ALC] ■■■ documentation (*i.e.*, MFR dated 10 June 2016, IMs and Facebook messages) ■■■ had compiled of [Former Chief of ALC/OB]' prior communications. According to [Former OB Director], WB#2 provided both ■■■ and [Former Vice Director ALC] with a copy of this documentation, which [Former OB Director] testified ■■■ then provided to the legal office for review.

On June 13, 2016, WB#2 and [Former Chief of ALC/OB] received "No Contact Orders" from [Former OB Director] while leadership considered the appropriate way forward. [Former Chief of ALC/OB] was also temporarily removed as Chief of OO-ALC/OBC. According to WB#2, "I know [[Former OB Director]] went to talk to JAG, and when ■■■ came back from that, ■■■ told me that a colonel would be contacting me because they were going to do a CDI. I waited while [Former Chief of ALC/OB] was not in the office for the colonel to contact me, and it never happened." The IO asked whether WB#2 had been interviewed, and ■■■ stated, "I wasn't. No." and to ■■■ knowledge, no one else was interviewed for such a CDI.

On June 21, 2016, Shannon Kucki, who worked in OO-ALC/OMO for [Former OB Director], emailed [Attorney #2] about "Allegations for DDI," copying, among others, [Former Vice Director ALC] and [Former OB Director].

The Complex will be conducting a Director Directed Investigation into allegations of sexual harassment (during the last six months) against Mr. [Former Chief of ALC/OB], OO-ALC/OBC. [Former OB Director] will sign out the letter as the Director of the Business Office. Mr. Richard Burnett, 309 SMXG/DD will conduct the investigation. If you have any questions, please let me know.

[Attorney #2] responded by email the same day (also copying [Former Vice Director ALC] and [Former OB Director], among others):

Okay thanks. Has the allegation and/or appointment letter been drafted? If yes, can you send them to me. If not, I need some more details about the alleged sexual harassment in order to prepare the allegation. Can you send me whatever information you have about the alleged misconduct?

Also, 10 USC 1561 requires [Commander AFSC] to be notified of the sexual harassment allegation within 72 hours. If that has not been done, I recommend sending him an email notification.

On June 27, 2016, [Person #4] emailed [Attorney #2] (copying, among others, [Former OB Director] but not [Former Vice Director ALC]), stating, "Sir, Did you get a chance to review the allegations with [Former OB Director]?" [Attorney #2] responded to [Person #4] on June 28, 2016, stating, "[Former OB Director] and I spoke this morning. I do not believe a DDI is necessary or helpful in this case. [Former OB Director] agrees and will handle the matter with the evidence that has already been collected." Neither [Former Vice Director ALC]

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<sup>32</sup> [Former OB Director] was not present for this meeting.

nor [Former OB Director] were copied on [Attorney #2]'s email. The same day, [Person #4] then sent a thank-you email to [Attorney #2], copying [Former Vice Director ALC], who sent [Former OB Director] an email stating only "Why?"

The IO's Section 1214 investigation and the Air Force Section 1214 report to OSC found that there was conflicting testimony as to whether the legal office advised the unit to complete a Director Directed Investigation (DDI). [Former OB Director] contended that JA advised against a formal investigation. The legal adviser, [Attorney #2], testified that [Former OB Director] elected to forego the investigation against [redacted] advice. In response to the question of whether [redacted] or anyone at the legal office "discourage[d] [Former OB Director] from doing a DDI or tell [redacted] that one ... would be a waste of time," [Attorney #2] stated, "No, No. (laughed), we – that's why we drafted an allegation because we thought that's what should be done. But once [[Former OB Director]] said that [redacted] had enough information to go forward, then we told [redacted] that was, you know, that was [redacted] decision, [redacted] could do that."

In [redacted] testimony, [Attorney #2] talked about Section 1561.

Under 10 USC §1561, the definition of sexual harassment is pretty broad. Basically says if there's any verbal or non-verbal gesture of a sexual nature in the workplace, then it's – meets the definition of sexual harassment under 10 USC §1561. So that's what I'll be looking for. Is, all right, what was said? What was done? Who was present? When did this occur? Where did it occur?

When asked about criteria for when something did not need a DDI or CDI, [redacted] stated:

You know, it would depend on what evidence we already had to – you know, sometimes, a commander/director would contact us and say I have, you know, I've got this complaint, I've talked to several witnesses, I've got their statements, you know. And then we'll figure, well, there's – they've done an investigation, they've talked to people so maybe we don't need to be as [formal] by doing a CDI and going and getting the same exact statements. So that would be one reason why we'll – I might advise not doing a CDI or it's not necessary.

[Attorney #2] testified that Section 1561 requirements "still would have to occur. We still have to advise them to do that." Those requirements would include the 72 hour "notification up the chain of command to the general court martial convening authority [GCMCA], You know, initiate an investigation and then, provide a copy of the or a summary of the investigation to the GCMCA again or give them status updates. Yep, all of that."

When asked whether [Former OB Director] provided him with documentation, [Attorney #2] stated,

I think it was all verbal, if I remember correctly. ... I don't know. [redacted] might have sent me something, but I don't remember right now ... [redacted] would have had to [provided me with information] Otherwise I wouldn't have been able to draft up an allegation. I just don't remember the specific details or what [redacted] told me or what I received with that

one. ... But I would have received something enough to say yeah, this – that amounts to sexual harassment and let's do an investigation.

[Attorney #2] stated that ■ advised [Former OB Director] to find an IO for the investigation. “Yes. So my, whatever it was that they provided me, I would have told ■ that, all right, we should, probably do an investigation. I'll draft up the allegation and appointment letter. You need to find an IO.” ■ testified that ■ did not “remember them ever identifying one.”

According to [Attorney #2], [Former OB Director] contacted him “saying, you know what, I have enough information to believe that there's a sexual harassment in my – and I'm going to take action based off of that.” ■ indicated that [Former OB Director] did not provide him with any further information at that time. ■ also testified that ■ did not know whether the 1561 notifications and other requirements were met.

[Attorney #2] stated that under the current AFI 36-2706, as revised in February 2017, a CDI now is required. Prior to that it was ■ understanding that “there were occasions where maybe more of an informal investigation was done by a commander or director.” By email dated September 6, 2017, the IO questioned [Attorney #2] about ■ testimony regarding the requirement to conduct an investigation under Section 1516. The IO's email stated, “you had stated during our interview that if a civil servant reports alleged sexual harassment to a commander/director, they do not have to conduct an investigation if they have enough evidence to determine whether sexual harassment has occurred. (i.e., [Former OB Director] not completing one against [Former Chief of ALC/OB].) We have not received the guidance you referenced ...” The IO then goes on to request that [Attorney #2] “please provide the guidance you referenced.” In a September 7, 2018 email response to the IO, [Attorney #2] stated the following:

I am not exactly sure what I said in my testimony, but here are my thoughts. Under 10 USC 1561, there is no requirement to do a CDI. The statute simply states that a commander or officer in charge of a unit must “carry out an investigation.” Therefore, under the statute, the commander/director can do an investigation that is less formal than a CDI/DDI. It is my belief that under the statute, a commander can interview witnesses, gather and review documents such as existing statements, and look at any other existing evidence as part of an investigation. It is my understanding that [Former OB Director] investigated the matter by reviewing the existing evidence and making a determination. I believe ■ told that me that ■ had enough evidence to make a determination.

As for the attached, I don't know if I was aware of that interim guidance, but I don't recall being aware of any requirement to do a CDI if the existing evidence was sufficient to make a determination as to what happened. I know that the current version of AFI 36-2706 makes it clear that a commander must do a CDI when a military member alleges sexual harassment. It is less clear if a CDI is required when a civilian alleges sexual harassment. However, we are now recommending a CDI/DDI for both military and civilian complainants.

To answer your specific question, I don't have any guidance other than the statute itself.

The IO and [REDACTED] legal advisor reached out to [Chief, AFMC EO], Chief, AFMC Equal Opportunity, by email on the question of whether a CDI was required. It was noted that in June 2016, AFI 36-2706, paragraph 4.5.1.7 provided that “if the complainant alleges sexual harassment, ... the aggrieved person ... [has a] right to request a Commander Directed Investigation (CDI) under 10 U.S.C. § 1561.” [Chief, AFMC EO] indicated, in an email response to the IO dated October 2, 2018 that “this requirement has been in place for quite some time...” It was [Chief, AFMC EO]’s view that a CDI should have been done and a report of investigation submitted to the GCMCA.

On June 28, 2016, [Former OB Director] emailed [Attorney #2] requesting [REDACTED] “thoughts” on a draft “oral admonishment for [Former Chief of ALC/OB].” [Attorney #2] responded to [Former OB Director] by email later that same day. [REDACTED] stated that “per AFI 36-704, para 11.4.8, an oral admonishment is annotated in the employees 971. I am not sure a memorandum to [Former Chief of ALC/OB] is necessary. I suggest you work with your ERS on the proper form/process for an oral admonishment.” (Italics in original). [REDACTED] then stated that if [Former OB Director] and ERS feel there needs to be a memorandum to [Former Chief of ALC/OB], “I think it is important to also state that [Former Chief of ALC/OB] had personal contact and interactions with the complainant that made [REDACTED] feel uncomfortable.” [REDACTED] then stated,

As I said to you this morning, I think we would have a hard time establishing a sexual harassment charge. But, I would not say anything about [REDACTED] conduct not amounting to sexual harassment, as you indicate in paragraph 3. It is sufficient for you to mention the complaint alleged sexual harassment, and that [REDACTED] conduct is unacceptable as you did in paragraph 2. I think that is enough to put him on notice that [REDACTED] actions were seen as possible sexual harassment, and that [REDACTED] conduct needs to improve.

In the end, an investigation into the matter was not accomplished. [Former OB Director] took charge of handling the matter and copied [Attorney #2] on an email to [Former Vice Director ALC] dated June 30, 2016, informing [Former Vice Director ALC] that [REDACTED] had “orally admonished [Former Chief of ALC/OB] for conduct unbecoming a supervisor and annotated such in an MFR that will remain in [REDACTED] 971 for up to one year.”<sup>33</sup> The MFR attached to the email stated, “[o]n 30 Jun 16, [Former Chief of ALC/OB] was orally admonished for offenses [sic] conduct unbecoming a supervisor. Discussion focused around correcting behavior and setting expectations for the future.” The MFR was signed by both [Former OB Director] and [Former Chief of ALC/OB]. [Former OB Director] also stated [REDACTED] “had a discussion with [WB#2] on the issue and future expectations.” [REDACTED] indicated that [Former Chief of ALC/OB] “was understanding and remorseful. [WB#2] was very unsure of the entire situation.” [REDACTED] stated that [REDACTED] had “some follow-up work to do as we go along but consider the matter resolved otherwise.”

At no point did [Former Vice Director ALC] or [Former OB Director] characterize the allegation as sexual harassment when reporting the matter to Brig [Former Commander ALC #1]<sup>34</sup>, nor did the wing inform the GCMCA of the sexual harassment allegation as required by 10 U.S.C. § 1561.

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<sup>33</sup> The Section 1214 Report found that “it is unclear whether any notation was made in the 971.”

<sup>34</sup> [Former Vice Director ALC] only informed [Former Commander ALC #1] that there were allegations that [Former Chief of ALC/OB] was “being unprofessional” and that “he’s bothering a certain female.” According to [Former Commander ALC #1], [Former Vice Director ALC] told him in a later conversation that “Legal said that they looked at all

WB#2 testified that [REDACTED]

followed up with [Former OB Director] several times. Then [[Former OB Director]] made an appointment with me to meet with just [REDACTED] alone. [REDACTED] explained that [REDACTED] wants to give him [[Former Chief of ALC/OB]] another chance. I felt that [REDACTED] kind of was changing the gears on things and pointed the finger back in my face, saying this is because of you, you did this; now you need to stay over here and deal with it. I feel that [REDACTED] threatened me. [REDACTED] said, if you be quiet and just let this go, I'll take care of your family, your career.

When asked by the IO if [Former OB Director] or anyone else “advise[d] you about your rights, about EEO option, about – commander investigation option”, WB#2 responded “no.”

[EEO Director] indicated that [REDACTED] was not aware of [Former OB Director] or anyone from leadership informing the EO office about the internal sexual harassment investigation in June 2016. [REDACTED] testified that in June 2016 during the time [Former OB Director] would have been conducting the investigation, there was not an EO subject matter expert from the EO office assigned to [Former OB Director]. [EEO Director] testified that [REDACTED] only learned about [Former OB Director] meeting with WB#2 in June 2016 and the no contact order later from WB#2's statements filed in February 2017 with [REDACTED] informal complaint.

[EO Specialist #4] was asked by the IO about Section 1561 and commander directed investigations where “a civilian went to their leadership and informed them of sexual harassment occurring against them.” [EO Specialist #4] stated, “they have to do a commander directed investigation within 72 hours as soon as they know of a sexual harassment.” [REDACTED] further stated that sending civilians to EO for rights advisement does not take the matter out of command's hands: “No, it does not. [Command] will have to do their CDI, but we [EO] just want to give them their EO rights on top of that.” [EO Specialist #4] indicated that civilians “can concurrently have both [a CDI and EEO informal complaint] going on [at the same time]. ... it's two completely different ones.” According to [EO Specialist #4], if a commander becomes aware of allegations of sexual harassment, there is no discretion. “They have to” do a CDI and “they have to” provide 72-hour notification up the chain of command. When asked by the IO if leadership contacted the EO Office to ask for a subject matter expert, [EO Specialist #4] testified “and they [leadership] never did.”

On July 3, 2016, WB#2 again requested to be reassigned or placed under the leadership of someone other than [Former Chief of ALC/OB]. This request was again denied by [Former OB Director]. WB #2 testified that “after [REDACTED] reached out to [ALC Program Manager],<sup>35</sup> it was --- [REDACTED] immediately said we're going to Equal Opportunity.” On July 6, 2016, WB#2 went to the Hill EEO office to meet [Prior EO Director #1], who at the time was the EEO Director. WB#2 testified that

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the evidence and they said there's not enough here to warrant a CDI, not enough here to warrant any major discipline or any action, because, although it was unbecoming and inappropriate, it wasn't egregious, wasn't assault ....” [Former Commander ALC #1] did not receive a copy of the documentation package until WB#2 filed the formal EEO complaint in March 2017, nor was [REDACTED] informed at the time that the allegations specifically involved sexual harassment.

<sup>35</sup> At the time of [REDACTED] interview, [ALC Program Manager] was a GS-13 program manager in the Corporate Transformation Office (People Development Section), working for [Former OB Director]. Prior to that [REDACTED] served as the SARC (Sexual Assault Response Coordinator) for Hill AFB. [REDACTED] testified that [Former Vice Director ALC] was [REDACTED] mentor.

[ALC Program Manager] “went with me to meet with [Prior EO Director #1] in July.” [ALC Program Manager] confirmed that ■ told WB#2 “you need to go to EEO office go to the EEO office” and “I actually took [WB#2] over there. I introduced ■ did a warm handoff and then I left.” According to WB#2,

■ [[ALC Program Manager]] and I, we met in the office with [Prior EO Director #1]. [ALC Program Manager] kind of just gave ■ overview on why I was there and thanked him for meeting with me, because ■ was on the door out to retire. Then [ALC Program Manager] left the room, and me and [Prior EO Director #1] went over all my documentation that I am – that type of stuff. And I was telling him that I didn’t feel safe. I felt threatened and scared by [Former OB Director]. I felt kind of cornered and I really had, you know – I didn’t know what to do.

WB#2 told [Prior EO Director #1], that ■ new second level supervisor began sending unprofessional emails that contained sexual comments and overtone and that in-person ■ requested hugs. WB#2 also stated that ■ brought the unwanted behavior to the attention of the OO-ALC Business Operations (OB) Director, [Former OB Director], NH-04 (GS-15 equivalent).

According to WB#2, [Prior EO Director #1]

advised me that – you know, ■ felt that those messages from [Former Chief of ALC/OB] did have sexual undertones, and ■ did understand that it would be difficult for an employee to, you know, go against the GS-15s, which is – and keep trying to fight this. ■ said, you know, if you don’t feel comfortable filing a complaint today, you never waive your right to come back, type of thing, especially if you feel reprisal. ■ did warn me that since [Former OB Director] and [Former Chief of ALC/OB], ■ thought, you know, were aware of the situation that – ■ said, just be prepared that there is a potential for retaliation, type of thing. And then I told him, you know, I was scared, but I didn’t want to just be quiet. And hopefully, with the no contact order, [Former Chief of ALC/OB] would leave me alon[e] and there would be no issues. Because I was scared to go against [Former OB Director]’ wishes of not trying to push this.

The EEO Record of Assistance/Contact (AF Form 1271), prepared by [Prior EO Director #1], reflected the interaction as follows:

On 6 July 2016, [WB#2], GS-0343-07, ■ WB#2 Job Title ■ for OO-ALC/OBC, requested an appointment. EO Director, [Prior EO Director #1] made an appointment for [WB#2] for 1100 on 6 July 2016. [WB#2] was provided with a full EEO rights advisement. Also in attendance was [sic] during the meeting was [ALC Program Manager]. [WB#2] stated that during the month of April 2016, [Former OB Director] (Squadron Director) told ■ that ■ was being moved to work in the Program Acquisitions Office and that ([Former Chief of ALC/OB]) was over that department. [Former OB Director] told [WB#2] that the position ■ was being reassigned to was GS-7 pot [with potential to a] GS-11 position. [WB#2] stated that ■ moved to ■ new acquisition position on about the 2<sup>nd</sup> week in May 2016.<sup>36</sup> [WB#2] stated that

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<sup>36</sup> WB#2 actually moved to ■ new acquisition position on or about June 1, 2016.

shortly after being reassigned, [Former Chief of ALC/OB] began sending [REDACTED] unprofessional emails that allegedly contained sexual comments/overtones (e.g., I love you to death, you are like eye candy to me, etc.). [WB#2] also stated that [Former Chief of ALC/OB] asked [REDACTED] for hugs on several occasions. [WB#2] stated that there were not witness[es] to [Former Chief of ALC/OB]' request for hugs. [WB#2] stated that for the last 40 days (starting in the middle of May and lasting through the end of Jun[e]) there was a no contact order in place. [WB#2] stated that [REDACTED] and [Former Chief of ALC/OB] were issued no contact orders. [WB#2] stated that the no contact order was issued because [Former OB Director] was conducting an internal investigation in to [sic] [WB#2]'s allegations of sexual harassment. [WB#2] stated that [Former OB Director] met with [REDACTED] on 30 June 2016 and told [REDACTED] that [REDACTED] was had [sic] completed [REDACTED] investigation/internal review and that [REDACTED] was taking corrective action to address [Former Chief of ALC/OB]' inappropriate emails/behavior; however, [Former OB Director] told [WB#2] that [Former Chief of ALC/OB] was going to be to [sic] returned to [REDACTED] regular position within [REDACTED] work area. [WB#2] stated that [REDACTED] was very concerned that [Former Chief of ALC/OB] was being allowed to return to [REDACTED] work area and that [REDACTED] feared [REDACTED] would reprise against [REDACTED]. The EO Director informed [WB#2] that [REDACTED] never waives a future EEO right and that [REDACTED] has the right to file an EEO complaint whenever [REDACTED] feels [REDACTED] has been subjected to discrimination/reprisal. The EO Director explain[ed] the informal and formal EEO processes to [WB#2] and [REDACTED] asked [REDACTED] if [REDACTED] wanted to file an informal EEO complaint over the issues [REDACTED] raised during their meeting to include the actions or inactions of [Former OB Director]. [WB#2] stated that [REDACTED] did not want to file an informal EEO complaint at this time. [WB#2] stated [REDACTED] wanted to allow [Former OB Director] to address [REDACTED] concerns. [WB#2] stated [REDACTED] will contact the EEO Office if [REDACTED] needs assistance in the future.

On the AF Form 1271, [Prior EO Director #1] characterized the category of assistance as "EO General Assistance/Contact" and indicated that the "time spent" on the meeting was "1 ½ hrs." [Prior EO Director #1] summarized the assistance as follows:

[Prior EO Director], once again provided [WB#2] with [REDACTED] right to file an informal EEO complaint. [WB#2] confirmed that [REDACTED] did not want to file an informal EEO complaint at this time. [WB#2] indicated [REDACTED] understood the EEO rights and information that was briefed to [REDACTED]

According to WB#2's testimony, during the meeting with [Prior EO Director #1] on July 6, 2016, [REDACTED] stated that "if there was ever any reprisal or retaliation, that I could always come back to EO." [REDACTED] asked WB#2 if [REDACTED] wanted to file an EEO complaint at that time and WB#2 stated "I wanted to and then another part was – is, if I remember correctly, [Former OB Director] said that [REDACTED] was going to handle the situation." WB#2 did not file a complaint at that time.

The IO asked [EEO Director] whether, "after [WB#2] met with [Prior EO Director #1] in July [2016], the EO office request[ed] a copy of the internal [1561] investigation report from [Former OB Director]." [EEO Director] responded, "Not that I'm aware of." [REDACTED] indicated that

sometimes we [the EO Office] do it [request a copy] but they're not required. Now, if it's military, they have to provide a copy of the CDI report, but they don't have a

requirement to provide a copy of the CDI report for civilians, and I'm not sure why it's different for civilians. And so sometimes they will provide it to us and sometimes they won't, and depending on what the issues are, you know, we may request it as part of the case file, but it's not part of our case file.

According to the evidence, [Former OB Director] lifted the no contact order on [Former Chief of ALC/OB] and a couple days later, on July 7, 2016, [REDACTED] returned as OO-ALC/OBC Chief. WB#2 also explained that after [Former OB Director]'s inquiry, [Former OB Director] gave [Former Chief of ALC/OB], WB#2's second level supervisor, an oral admonishment and returned [Former Chief of ALC/OB] to the work center. WB#2 stated in [REDACTED] testimony that [REDACTED] did not learn about the oral admonishment to [Former Chief of ALC/OB] until after [REDACTED] received the EO Counselor's report, which was mailed to [REDACTED] on May 17, 2017.

WB#2 stated that [REDACTED] continued to have problems with [Former Chief of ALC/OB]. WB#2 stated:

about a month, month and a half after that, the situation route that [Former OB Director] took was bringing [Former Chief of ALC/OB] back to the Acquisition, AMSO office. And at that time, I wanted to go back to EO, but I felt threatened because [Former OB Director] basically said don't go there or you need to figure out how to make this work with [Former Chief of ALC/OB]. And [Former OB Director] told me not to pursue telling anybody anything else to make it worse.

Over the next several months, WB#2 stated [REDACTED] continued to experience a toxic work environment under [Former Chief of ALC/OB]' leadership, which included [Former Chief of ALC/OB] slamming a chair into WB#2's desk on September 2, 2016. WB#2 provided a basic review of the events surrounding [Former Chief of ALC/OB] from July 7, 2016 to September 29, 2016. WB#2 testified that [Former Chief of ALC/OB] "did make it known that [REDACTED] was upset. [REDACTED] would walk up and down the aisles kind of stomping [REDACTED] feet. Couple times, [REDACTED] would stand over my desk kind of giving a smug look, crossing [REDACTED] arms." In an MFR included in [REDACTED] EO case file [the first page of which indicates it purportedly covers "7 July 16 – 28 Sept. 16"], WB#2 stated,

From the end of July – 2 September, there were no more interactions between [Former Chief of ALC/OB] and I. However, I still did not feel safe. [Former Chief of ALC/OB] would strike up conversations about contracts with my cube mates that had nothing to do with them. ... [Former Chief of ALC/OB] would stand near me and I could see him glaring at me on several different occasions.

According to the IO, while the evidence does suggest that [Former Chief of ALC/OB] was upset with WB#2 after [REDACTED] returned on July 7, 2016, it appears [REDACTED] generally kept [REDACTED] distance. There were a few occasions, however, where [Former Chief of ALC/OB] demonstrated passive aggressive behavior toward WB#2. The September 2, 2016 incident where [Former Chief of ALC/OB] slammed the chair against WB#2 desk was the only example of physical aggression.

After the chair slamming incident, on or about September 12, 2016, [WB#2] was reassigned to the [REDACTED] Office under the Director, Ms. [WB#3].

According to [Former OB Director], [REDACTED] moved [WB#2] due to [WB#2] feeling threatened and to keep [REDACTED] safe.

On September 13, 2016, WB#2, accompanied by [Personal Representative #1],<sup>37</sup> returned to the EO office and spoke with [EEO Director]. WB#2 testified that [REDACTED] “didn’t feel that [EEO Director] was very helpful.”

In the MFR [related to time period between July 7 and September 28, 2016] included in [REDACTED] EO casefile, WB#2 stated,

On or about 13 September I met with the director of EEO. I brought all of my proof and documentation and said I wanted to file for a hostile work environment due to reprisal for reporting sexual harassment. [REDACTED] said I could not file with the sexual harassment incident since [Former OB Director] had already taken care of it. The director said I could only file on the chair being slammed into my desk, and since no one saw [Former Chief of ALC/OB] slam the chair, my claim wouldn’t carry any weight. I left [REDACTED] office in disbelief. The chair incident and hostile work area that [Former Chief of ALC/OB] created is reprisal and retribution for both incidents. The EEO director should have helped and allowed me to file with both incidents. Besides everything else that has unfolded, this is also huge issue on the director of EEO ... The IG agreed that the EEO director did not handle the situation properly, and should have allowed me to file with both incidents on the grounds of retribution.

WB#2 testified that [REDACTED] told [EEO Director] “now I want to come forward and file a complaint.” WB#2 told [EEO Director] about the sexual harassment and that two to three weeks prior to the September meeting, [Former Chief of ALC/OB], [REDACTED] second level supervisor, had “slammed a chair into [WB#2’s] desk.” WB#2 stated [REDACTED] explained what happened – that [Former Chief of ALC/OB]

came back from a funeral and went into [REDACTED] office, came out, grabbed a chair [left by a co-worker who had been working with WB#2 at [REDACTED] desk] and slammed it into my desk partition. And then [REDACTED] was red and [REDACTED] looked mad. And [REDACTED] stomped down the hall ... I was scared. I didn’t know what to do. I was just kind of like, you know, trying to brace for if [REDACTED] was going to do anything else. And [REDACTED] went into [REDACTED] office. I sat there in shock for like 5 minutes ...

WB#2 called a couple of [REDACTED] co-workers who walked [REDACTED] out of the office. WB #2 also testified that, during the September 2016 meeting, [EEO Director] told [REDACTED] that:

You can file a complaint but I don’t think it will go anywhere; it won’t hold any weight. Because [EEO Director] said, if -- you’re telling me that there was only three people there and you don’t think that they saw him do it ...

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<sup>37</sup> [Personal Representative #1] was a GS-13, acquisition program manager for the maintenance director at OO-ALC logistics complex on Hill AFB. [Personal Representative #1] worked in the same office as WB#2, after WB#2’s move to the [REDACTED] office. In February 2017, WB#2 designated [Personal Representative #1] as [REDACTED] representative for [REDACTED] EO complaint. [Personal Representative #1] retired from the Air Force on April 30, 2018.

WB#2 stated EEO Director told [REDACTED] that

since no one physically saw him throw the chair into your desk, your complaint really won't hold any weight. So EEO Director was basically saying, you know, it's not worth filing a complaint for. That's how I felt. ... Because [REDACTED] said that complaint alone wouldn't go anywhere. And I said, well, I said the problem is that might not go anywhere, but there is other things that have led up to this. And [REDACTED] EEO Director said that [REDACTED] wouldn't tie the two incidents or any of the incidents together.

WB#2 indicated that EEO Director would not consider the incidents of sexual harassment "because those were out of the window, the 45-day window."

I remember I argued with [REDACTED] EEO Director. I told [REDACTED] that I had met with [Prior EO Director #1], and I felt that the information [REDACTED] gave me made it seem like I could come back and file for retaliation or retribution. And [REDACTED] said that it was incorrect, and [REDACTED] doesn't – [REDACTED] kept kind of going back and forth saying, well, I don't even know if you ever came here and talked to [Prior EO Director #1]. And I was like, well, I did. And [REDACTED] was like, well – [REDACTED] was like, I can look into the computer system,<sup>38</sup> but we don't have any knowledge of that. So that kind of made me mad.

[Personal Representative #1] testified that WB#2 chose not to file a complaint "because they told [REDACTED] that [REDACTED] had already exceeded the time of all, you know, [REDACTED] 45 days and they tried to downplay it and they told [REDACTED] that if [REDACTED] was really concerned for [REDACTED] wellbeing, [REDACTED] physical wellbeing that [REDACTED] needed to report it to the security police and they tried to make [REDACTED] go a different route and tell [REDACTED] that it wasn't an EEO issue. ... that was EEO Director and [EO Specialist #4]." [Personal Representative #1]'s "impression of the whole thing is that EEO was not on the complainant side. They are on management side and they were there to protect management. They were not there to help WB#2. They were there to protect the supervisor that the allegations were against." [Personal Representative #1] acknowledged the allegations were against [Former Vice Director ALC], [Former Chief of ALC/OB] and [Former OB Director] and stated [REDACTED] felt they were trying to protect "all of them I think." When asked whether [REDACTED] recalled anything that the EO personnel said that you felt was discouraging, [Personal Representative #1] replied, "Well, every time we went over there they would tell [WB#2] [REDACTED] had already exceeded the timeframe and that [REDACTED] didn't really have a case."

WB#2 testified, "I felt like I was discouraged or dissuaded [from filing an informal complaint]. Like, well, it's not going to go anywhere. So kind of like you're wasting both of our time, kind of thing."

[ALC Program Manager] testified that

And I remember at this time, once [Prior EO Director #1] retired, there was so many people that would go to the EEO office, and EEO Director would give them totally wrong information. Like when it was in the actual sexual harassment case, [REDACTED] would say, no, it doesn't fall underneath them. And I'm like, what is [REDACTED] talking about? Yes it does. I just felt like [REDACTED] was not as good as [Prior EO Director #1] was. [Prior EO Director #1]

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<sup>38</sup> [EO Specialist #4] indicated that "we'll [the EO office] will still have them [records from WB#2's visit to [Prior EO Director #1]]. I have some [records] from 10 years ago."

was very, I mean [REDACTED] was a big time reader, and [REDACTED] would read all of the instructions. And Lori, I don't think was giving the same type of attention that basically the individuals that came forward, like victims that came forward and was reporting. I think [REDACTED] was just kind of trying to push off stuff.

In [REDACTED] interview taken on January 10, 2019, WB#2 described the conversation as follows: "[EEO Director] said you can file a complaint on the chair incident, but that incident alone, and it wouldn't stand ... At that time, from hearing that from [EEO Director] I decided to just let it go and maybe try for a fresh start in [REDACTED]" The IO asked what WB#2 thought [EEO Director] meant and WB#2 replied "Like if I were to file the complaint it would just kind of get thrown out."

WB#2 testified that [REDACTED] told [EEO Director] in September 2019, that [REDACTED]

wanted to talk to [Former Commander ALC #1], and [EEO Director] said that – [REDACTED] kind of chuckled and said, 'that won't happen.' And I was like, why wouldn't it happen? And I remember [REDACTED] said that [Former Vice Director ALC] basically does all the civilian stuff and [REDACTED] – and I remember – I don't remember word for word, but what [REDACTED] said shocked me. Because I was in the Air Force and it was – it's something to the extent that [Former Vice Director ALC] protected [Former Commander ALC #1] from the civilian complaints.

The EEO Record of Assistance/Contact (AF Form 1271), prepared by [EEO Director] reflected the interaction as follows:

On 13 September 2016, [WB#2] contacted the EO office and informed the EO director that [REDACTED] had spoke[n] with [Prior EO Director #1] in July 2016 about [REDACTED] EO rights. [REDACTED] stated that that time [REDACTED] had chosen not to file an informal EO complaint. [REDACTED] stated that at this time [REDACTED] wanted to file a complaint for retribution and stated that [REDACTED] had been in a continuous hostile work environment in addition to the sexual harassment [REDACTED] had been exposed to earlier in the year. The EO Director reviewed EO rights and responsibilities with [WB#2] and emphasized the 45 day criteria for making contact with the EO office. [WB#2] stated that [Former Chief of ALC/OB] had walked by [REDACTED] desk and slammed a chair into the desk which [REDACTED] felt was retribution for notifying leadership that [REDACTED] felt [REDACTED] was sexually harassing [REDACTED] [WB#2] stated that a no contact order had been issued to both parties and that [Former OB Director] was working on moving [REDACTED] to a new area where [REDACTED] would also be changing series and getting a promotion.

On the AF Form 1271, [EEO Director] characterized the category of assistance as "EO General Assistance/Contact" and indicated that the "time spent" on the meeting was "1 ½ hrs." [EEO Director] summarized the assistance as follows:

The EO director provided [WB#2] [REDACTED] EO rights and explained that an EO complaint was not against a specific individual but [REDACTED] would be filing against the agency and leadership would be responsible for responding to the allegations of discrimination. At this point [WB#2] confirmed that [REDACTED] did not want to file a complaint against the

agency because that meant [REDACTED] would be filing against [Former OB Director] and [REDACTED] felt [REDACTED] could not do that. The EO director explained that [REDACTED] would not be waiving [REDACTED] future right to file if [REDACTED] felt [REDACTED] was discriminated against or sexually harassed in the future.

In [REDACTED] testimony, [EEO Director] indicated that when [REDACTED] met with WB#2 in September 2016, WB#2 raised the issue that “[Former Chief of ALC/OB] sexually harassed [REDACTED].” [EEO Director] also stated that WB#2 said that [Former Chief of ALC/OB] “slammed the chair up against [REDACTED] and that [REDACTED] felt that that was an act of retaliation,” and that WB#2 “felt it was for notifying leadership about [Former Chief of ALC/OB].” [EEO Director] admitted that at the September meeting [REDACTED] informed WB#2 “that the sexual harassment incidents dating from April 2016 to June 2016 were beyond the 45-day limit.” [EEO Director] explained [REDACTED] reasoning:

So because [REDACTED] [WB#2] had already – [REDACTED] had met with [Prior EO Director #1] earlier on about the same issues and [REDACTED] chose not to file, and then when [REDACTED] came into me, [REDACTED] was bringing forward the exact same claims, wanting to file, [REDACTED] had the opportunity, back in Ju[ly] when [REDACTED] met with [Prior EO Director #1], to file, I mean, bottom-line is, if [REDACTED] really wanted to file, we would take it, because we can’t turn anything away at the informal stage. [REDACTED] made the decision not to file. But I talked to [REDACTED] about the 45-day, and, you know, that when it got to the exceptions and dismissal stage that, you know, there’s criteria that they use for acceptance and dismissal, and that the 45-day criteria is one of them, so that there’s a possibility, at that point, that things may be dismissed if it doesn’t meet the 45-day criteria; a claim would be dismissed. Could be, not would, but could be dismissed.

According to [REDACTED] testimony, [EEO Director] felt that the “only viable claim” was the chair incident.

Right, so when we had a conversation about, again, giving [REDACTED] rights and explaining to [REDACTED] [WB#2], you know, it’s not – the complaint isn’t against [Former Chief of ALC/OB]. You can’t file against him, but you can name him in a claim, I mean, a complaint, that it would be against [REDACTED] – the senior leaders of that agency who have the responsibility to ensure [REDACTED] work environment is free from sexual harassment or discrimination. And then, at that time, [REDACTED] said, well, I don’t want to file against ...

[REDACTED] leadership, [Former OB Director], [Former Vice Director ALC], and [Former Commander ALC #1]. [EEO Director] testified that “[REDACTED] wanted to file against [Former Chief of ALC/OB].” [EEO Director] also stated that “a lot of complainant[s] are surprised when they find out that their complaint is against the agency. It’s not against a specific individual.”

The IO asked [EEO Director] whether the 45 day limit should be adjusted or tolled because the commander directed investigation did not occur and that the 1561 requirements were not followed. [EEO Director] stated, “I don’t really know. That’s something that I’m not sure of because it’s never – it never has come up with me.” The IO asked [EEO Director] “did you consider tolling the 45-day deadline because of the way the 1561 situation was handled?” [REDACTED] responded, “I didn’t consider that at all.”

When asked whether it would have been worth a conversation with legal, EEO Director indicated that ■ did have a conversation with the legal office at Hill AFB and was under the impression that the 1561 had been complied with. “I think they [the legal office] felt that it [the 1561 investigation] was conducted. ... Not a CDI wasn’t conducted, but what [Former OB Director] did was appropriate as far as making a decision based on information ■ already had.” ■ also believed there was no reason to dig deeper into whether WB#2 had been afforded everything ■ was entitled to under 1561 at that time because ■ had been advised that Former OB Director investigation was appropriate. “Appropriate, and action had been taken, and you couldn’t discipline a person for the same actions again.”

The IO asked EEO Director “would that be a reason – rights advisement weren’t properly and timely given, and an investigation and notifications compliant with 1561 were not conducted, would that be something that should at least be considered in, perhaps, tolling the 45 day limit?” EEO Director responded, “I don’t know that. I don’t know the answer to that. ... I don’t have experience with it. And, you know, certainly there is a possibility that, so we dismiss them and then it gets to the judge, and the judge remands them back, and we, you know, do an investigation, because we’ve had, not for that particular scenario, but we’ve had judges remand, you know, claims back.”

The IO also questioned EEO Director regarding tolling the 45 day limit due to misinformation. EEO Director indicated that WB#2 “had been given ■ rights on numerous occasions.” The IO asked, “isn’t it also true that the time limit is tolled for 10 calendar days until after notification to [complainant] that ■ 1561 CDI is completed<sup>39</sup> and if a 1561 CDI was never completed, then that 10-day, calendar day, never started, is that correct?” EEO Director stated in response, “I guess the way you’re explaining is correct, but I’m not, as we discussed earlier, that I’m not aware of that 10-day notification after the CDI.” EEO Director acknowledged that ■ saw the 10 day notification provision in the Air Force Instruction but stated, “yeah, I’m going to need to just review that. Not today necessarily, but -- ... because I’m not familiar...”

On September 15, 2016, [WB#2] had a medical procedure and was out of the office until October 17, 2016.

On September 23, 2016, Brig [Former Commander ALC #1] received an anonymous email with the subject header “Sexual Harassment and Inexcusable Behavior at the Complex.” In ■ interview with the IO, WB#2 admitted ■ sent the email. The email alleged [Former Chief of ALC/OB] was sexually harassing WB#2, gave examples of ■ toxic behavior since returning to the OBC office in July, discussed the September chair slamming incident and claimed Complex leadership was not supporting the zero tolerance standard. The email states, in part,

I have been disheartened to [sic] what I learned and that is why I finally decided to email you because more and more things keep happening. I was told [WB#2] had been moved to another office. I remembered the last week ■ was here ■ seemed frightened and sad. I asked around about what had happened to ■ and I am left in

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<sup>39</sup> This provision was included in the February 2017 AFGM which added Section 4K provisions, related to Section 1561 and the EEO process, to the AFI36-2706.

disbelief. I found that there was a no contact order between [Former Chief of ALC/OB] and [REDACTED] that had been ordered by [Former OB Director]. [WB#2] has documented proof that [REDACTED] was sexually harassed and stalked directly from [Former Chief of ALC/OB] on several different occasions and now [REDACTED] was just moved to another organization because [Former Chief of ALC/OB] slammed a chair into [REDACTED] desk. I guess the no contact order left out 'no physical contact' people should know this behavior is inexcusable and [Former Chief of ALC/OB] is a GS-14 senior management level ... [Former Chief of ALC/OB] has created red dot incidents all over the office and no one cares. We should not have to feel fear when coming into work and while we are here.

The anonymous email was the first time Brig [Former Commander ALC #1] received information regarding WB#2 that specifically referenced sexual harassment. In an email dated October 7, 2016, [Former Vice Director ALC] contacted [Attorney #2] in the 75 ABW/JA office forwarding two emails – one of which was the anonymous email sent by WB#2. [Former Vice Director ALC] indicated that the emails were sent to [Former Commander ALC #1] “personally” and [REDACTED] requested [Attorney #2]’s “review and then advice on if [REDACTED] should answer and if so w/what verbiage.”

[Attorney #2] responded by email on October 7th to both emails. With regard to the anonymous email, [REDACTED] stated,

The “anonymous email raises issues of poor management (similar to the allegations against [REDACTED] Whistleblower 1 [REDACTED] and only mentions sexual harassment without any details. My first thought is that I think someone should talk to [WB#2] to see if [REDACTED] feels [REDACTED] has been sexually harassed. If so, 1) we need to get a few more details, 2) ensure [REDACTED] knows [REDACTED] can go to EO, 3) provide notification to AFSC/CC and initiated [sic] a CDI under 10 USC 1561. The investigation could also look into [Former Chief of ALC/OB]’ conduct.

[Attorney #2] further stated that, “I think [Former Commander ALC #1] should at least acknowledge the two emails and relay that [REDACTED] is looking into the allegations. I don’t think [REDACTED] needs to give details about what [REDACTED] is going to do, just that [REDACTED] is looking into the allegations.” [REDACTED] ended the email, “let me know if you would like to discuss more, or if you need my help with initiating any CDIs.”

On the advice of legal counsel, Brig [Former Commander ALC #1] responded to the anonymous email on October 7, 2016, stating only, “Thank you for the information. I am looking into the allegation.” [Former Vice Director ALC] later informed Brig [Former Commander ALC #1] that the anonymous allegations involved previously addressed/resolved incidents with [Former Chief of ALC/OB]. Leadership never provided the GCMCA notification of this sexual harassment allegation in accordance with 10 U.S.C. § 1561, nor did they initiate an investigation.

The IO questioned [REDACTED] EEO Director about any involvement the EO office may have had regarding the anonymous email to Brig [Former Commander ALC #1]. [REDACTED] EEO Director stated [REDACTED] was not aware that anyone in leadership, staff or the legal office notified the EO office of the anonymous complaint against [Former Chief of ALC/OB] alleging sexual harassment. [REDACTED] further stated that [REDACTED] was not

aware of the EO office playing any role in advising on this matter or being involved in any discussions with [Former Vice Director ALC] or [Former Commander ALC #1] regarding these emails.

On October 28, 2016, WB#2 and several other women (not [Former OB Director]) met with [Former Vice Director ALC] at a local restaurant, Runway Ruby's Restaurant, to discuss issues related to [Former Chief of ALC/OB], including sexual harassment. [Former Vice Director ALC] appeared "livid" and "frustrated" upon hearing of [Former Chief of ALC/OB]'s behavior and allegedly responded, "[WB#2], don't think I haven't been watching over this incident since it happened. I am taking action to correct this, but it will take a long time because [Former Chief of ALC/OB] has deep roots here, and things are very political." Neither [Former OB Director] nor Brig [Former Commander ALC #1] were made aware of this meeting. Despite assurances to address the misconduct, leadership took no further apparent action.

In November 2016, [Former Vice Director ALC] engaged with [Former OB Director] and began the coordination to move [Former Chief of ALC/OB] back to PZ, the organization [REDACTED] worked for prior to coming to OO-ALC/OBC. The move occurred in January 2017.

#### *Informal Complaint Processing*

In January 2017, after learning that [Former Chief of ALC/OB] may have sexually harassed at least one other woman and speaking with [AFSC IG]<sup>40</sup> from the IG's office about [REDACTED] right to file an EEO Complaint, WB #2 again contacted the EO office regarding filing a complaint. [REDACTED] testified:

And so it was the end of January, I believe, or mid-January, I contacted [EEO Director] again to file a complaint. And even then, that's when [REDACTED] was really pushing back, I felt. Like, no, you're way out of the 45-day window now, you can't file a complaint. You know, we've already rehashed this and it's done, it's dealt with. And then I called – I remember calling [AFSC IG] back. And I was really upset and I said, I'm trying to file a complaint and she's not letting me. And [AFSC IG] kind of just said, you have to stay strong. If you believe what you have is a valid complaint, you have every right to file. So then I remember, I think it was probably February then, I went back to [EEO Director] and said I'm filing a complaint. [REDACTED] didn't really push back.

In [REDACTED] testimony, WB#2 indicated [REDACTED] talked with [EEO Director] two to four times on the telephone before meeting with an EO Specialist. WB#2 indicated that [EEO Director]

was just being argumentative to me and just kept saying it's all the way in September now, you can't come to me now and say that you want to file the complaint now. We're already into January. [REDACTED] said we're way out of the 45-day window. And that's, I believe, the first time that [REDACTED] said that Legal and the [1561] rights had already been taken care of.

WB#2 described one of [REDACTED] telephone conversations with [EEO Director] as follows:

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<sup>40</sup> [AFSC IG] was the Air Force Sustainment Center (AFSC) Inspector General at Tinker AFB from June 2016 to August 2018. [REDACTED] had multiple discussions with WB#2 who filed with the IG office.

[EEO Director] said I was out of my 45 days, that [redacted] didn't think it was sexual harassment, that the organization had done what they had – were supposed to do. There was just excuse after excuse.”

WB#2 testified [redacted] called [EEO Director] back “and I argued with [redacted] that – I know AFSC was aware of it. And I said, I don't know if I have to make more people aware of it, but I will file a complaint with your office. And [redacted] [EEO Director] sent an email saying that an EO counselor will reach out to me to set up the appointment. And that did happen.”

WB#2, along with [redacted] representative [Personal Representative #1], met with [EO Specialist #4], EO Specialist. When asked by the IO “how do you think [EO Specialist #4] did to help you out,” WB#2 responded,

I don't know. I know [Personal Representative #1], my advocate, was there most of the time. [redacted] [[EO Specialist #4]] seemed kind of agitated and irritated. And I don't know if maybe [redacted] was put in – you know, up to do something or [redacted] just maybe didn't want to handle this case. I don't know. But I could tell every time I did – I went in there [redacted] did not seem like [redacted] wanted to help it go anywhere. I told [redacted] that I had brought it up to my leadership's attention because [redacted] had reminded that you always want to try and resolve at the lowest level possible. And I told [redacted] I tried with [Former OB Director], I tried with [Former Vice Director ALC], and I said I don't have really any leadership that I can go to, to handle this.

WB#2 testified that [EO Specialist #4] “just seemed really irritated and like [redacted] maybe didn't want to have to deal with the complaint.” WB#2 also indicated that at some point [EO Specialist #4] said “[redacted] was busy and working on PSCing” to Kadena “and that someone else would be taking over the complaint process.”

In [redacted] interview with the IO, [EO Specialist #4] testified that [redacted] assignment to the Hill AFB Equal Opportunity Office was [redacted] first duty station “from the schoolhouse” and that [redacted] was new to the EEO career field. [redacted] indicated that during [redacted] two years at Hill AFB [from 2015 to 2017], “the first year I shadowed a lot so I probably on my own just worked one, but shadow[ed] a couple, like four or so. By myself, I want to say the following year, maybe like four or five on my own. ... they started informal, but I want to say I had two formal [cases].”

[EO Specialist #5] testified that [EO Specialist #4] was “a relatively new specialist also, and [redacted] was right with the director the whole time. So I don't think there was any missteps on [redacted] part as far as [EO Specialist #4] goes. [redacted] was just doing kind of – [redacted] didn't have all the knowledge that [redacted] probably would have to have because [redacted] was relatively new to it. [redacted] was newer than I was.”

[EO Specialist #1], another EO Specialist had worked with [EO Specialist #4] and testified, “It wasn't the most pleasant experience with [redacted] and [EO Specialist #3], [redacted] reported to [EO Specialist #3] and [redacted] is a director now, but [redacted] has a very ‘my way or the highway’ personality.”

[EO Specialist #4] testified that [redacted] was warned about WB#2:

just be careful because of that [REDACTED] [WB#2] likes to – not make up things, but make the story a little different. And I think [REDACTED] did that with me also because [REDACTED] went and told one of [REDACTED] leaders or someone that I wasn't helping [REDACTED]. And I had everything in writing, so I was, like, okay. So each time [REDACTED] meets with one individuals [sic] [in our] office [REDACTED] would twist certain words into [REDACTED]. So we always kept writing everything right after [REDACTED] would leave because [sic] specifically just with this individual, [WB#2].

[EO Specialist #4] “forgot who told me in the office that someone called them and complained about me, and that [WB#2] said – and I don't know if [it] was [WB#2]'s leadership or [WB#2]'s something or IG or – I can't recall who or where it came from, but the message was that I have said this, and this, and that. And like, nope, I have this in writing, and this is exactly what happened here.”

[EO Specialist #4] was asked by the IO about what [REDACTED] said to WB#2 regarding [REDACTED] sexual harassment allegations prior to September 28, 2016 and why [REDACTED] didn't take the prior issues as well. [EO Specialist #4] testified,

So from, I think, from what I understood whenever we would take allegations, what was relayed to me is it has to be within the 45-day window. If it's outside, it's going to get dismissed. So they wouldn't even worry about that. I didn't really learn up until I think it was a case after [REDACTED] – I had a case by myself, and this individual had, oh, like 12 years ago allegations, and [Prior EO Director #1] told me that, no, they cannot go in there. But we put it as pattern behavior. Those got dismissed, and somehow even right before I left, the EEOC, I think reopened that case, like you need to take those back. So I was a little confused. I'm like, okay, I don't understand. But now I understand it's a pattern of behavior. I think at the time, if I said that, it was probably because of the 45-day window that it was explained to me.

[REDACTED] further testified,

With civilians, they have to contact us within 45 days. I always explain to them, even if it's past the 45 days, we – just bring it still to use because it's still in the informal. But there's a possibility that if it goes formal that it could be dismissed based on timeliness, is the possibility. That's kind of like our explanation of that...

On January 30, 2017, WB#2 lodged an informal EO complaint with [EEO Director] alleging 36 acts/claims of discrimination on the basis of sex (Female), Sexual harassment and a continuous pattern of hostile work environment.<sup>41</sup> According to the Informal EEO Counseling Report, prepared by [EO Specialist #4], WB#2's initial contact was January 30, 2017 and the date of [REDACTED] initial interview was February 14, 2017. As set forth in the Informal EEO Counseling Report, WB#2's claims included alleged discriminatory acts dated from April 12, 2016 through September 28, 2016, against [Former

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<sup>41</sup> According to WB#2's documentation, “on or about 1 Feb, [REDACTED] filled out the unrestricted documentation with SAPR. The SAPR office helped me file with SF [Security Forces] and OSI [Office of Special Investigations]. OSI said the unwanted hugs can count as sexual assault if a person showed they were getting turned on sexually, but in my case it didn't, even though the hugs were unwanted. I was unsure if [Former Chief of ALC/OB] became aroused because, I always hugged from farther away, and pulled away right away.

Chief of ALC/OB) (23 of the claims), [Former OB Office Manager]<sup>42</sup>, [Former OB Director] (9-10 of the claims) and [Former Vice Director ALC]. The basis of the alleged discrimination claims was “Sexual Harassment/continuing pattern of non-sexual harassment/hostile working environment/Rep[WB#2]al.”

The Informal Counseling Report further indicated the reason for the delayed contact beyond 45 days was “Leadership stated they will handle it and complainant believes it was not handled appropriately.” WB#2 testified that

there was confusion between instead of filing an informal complaint, maybe doing a commander investigation and – or a CDI. ... And I think that’s what me and [Personal Representative #1]’s concern was, if we’ve had – if we do a CDI, like who’s going to be the commander directing the investigation? Because at that time, me and [Personal Representative #1] were like we don’t want the complex handling any of it, you know. And I think [EO Specialist #4] said that it’s either [Former Vice Director ALC] or [Former Commander ALC #1], and it can’t go any higher than that. So, to me, I didn’t really feel that it would be a – worth doing a CDI, just because of how [Former OB Director] and [Former Vice Director ALC] had handled everything in the past.

The Informal Counseling Report outlined the following actions:

On 3 Feb 17, civilian agency employee [WB#2], GS-0343-09, [WB#2 Job Title], contacted the Equal Opportunity Office. EO Specialist [EO Specialist #2] provided [WB#2] with the Pre-Complaint intake form to fill out and return and the Pre Complaint information form to review before meeting with a specialist. On 7 Feb 17, [WB#2] provided EO Specialist [EO Specialist #2] [redacted] EO intake forms. [EO Specialist #2] provided the forms to EO Director, [EEO Director]. On 9 Feb 17, EO Director [EEO Director] assigned EO Specialist [EO Specialist #4] to [WB#2]’s case. On 10 Feb 17, EO Specialist [EO Specialist #4] emailed [WB#2] and requested [WB#2] to call [redacted] as soon as possible and set up an appointment for the initial interview. On 13 Feb 17, [WB#2] contacted EO Specialist [EO Specialist #4] to schedule [redacted] initial interview. Both EO Specialist [EO Specialist #4] and [WB#2] agreed to meet on 14 Feb 17. On 14 Feb 17, [WB#2] and EO Specialist [EO Specialist #4] met for [redacted] initial interview.

The Informal Counseling Report set out each of [WB#2]’s allegations and then generally summarized the actions as follows:

[WB#2] alleged [redacted] was sexually harassed by [redacted] first line supervisor,<sup>43</sup> [Former Chief of ALC/OB]. [WB#2] stated [redacted] brought [redacted] issues to management, [Former OB Director] who told [WB#2] [redacted] will take care of it. According to [WB#2], [Former OB

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<sup>42</sup> At the time of [redacted] interview on August 1, 2018, [redacted] Analyst was a GS-12 manpower analyst in the 309<sup>th</sup> Air Maintenance Group (AMXG). [redacted] moved to Hill AFB around 2003-2004 and initially worked as a Non-appropriated funds (NAF) employee at the Child Development Center. [redacted] was hired by [Former OB Director] as the office manager in OO-ALC/OB and worked for [Former OB Director] for 2 ½ years. [redacted] Analyst worked with WB#2 during part of this time period.

<sup>43</sup> [Former Chief of ALC/OB] was actually [WB#2]’s second line supervisor.

Director] stated [REDACTED] was conducting an investigation then decided to give [Former Chief of ALC/OB] a second chance and not conduct the investigation after all. [WB#2] stated [Former Chief of ALC/OB] would constantly ask [REDACTED] for hugs and [REDACTED] would feel pressured to do as [REDACTED] said. [WB#2] also stated [Former Chief of ALC/OB] made a comment in regards to [WB#2] being [REDACTED] eye candy at work. [WB#2] stated after [REDACTED] made management aware of the situation, [REDACTED] began to feel retaliated against when [Former Chief of ALC/OB] asked [WB#2] to give him access to [REDACTED] outlook calendar although [REDACTED] did not require it from anyone else.

[EO Specialist #4] also asked [WB#2] about [REDACTED] remedies from management. The Informal Counseling Report listed the remedies sought by WB#2 as follows: “1) to relieve [Former Chief of ALC/OB] from [REDACTED] duties. 2) To demote [Former OB Director] for not taking immediate action. 3) To have [Former Vice Director ALC] step down from [REDACTED] position as Vice Director of the OO-ALC.”

“[WB#2] stated [REDACTED] requested management to move [REDACTED] or [Former Chief of ALC/OB] and management decided to move [WB#2] to another section.” [EO Specialist #4] asked [WB#2] to “specify how management did not take any action and yet moved [REDACTED] upon request.” [WB#2] stated “[REDACTED] was moved however, [REDACTED] felt everything was brushed under the rug and no actions were taken against [Former Chief of ALC/OB] since management did not advise [REDACTED] of any corrective actions.” [EO Specialist #4] explained to [WB#2] “that management has certain confidentiality and cannot go around telling others what actions were taken.”

WB#2 testified that [EO Specialist #4]

said that [EEO Director] did not want [Former Vice Director ALC]’ and [Former OB Director]’ names being briefed [in the informal counseling report] because ... [the allegations] are briefed at higher level meetings. And I remember I argued... and [REDACTED] was like, well, maybe instead of management we can put senior management. And I said no, I want their names to stay in there along with senior management and validate each allegation.

WB#2 stated that [EEO Director] told [REDACTED] “pretty much the same thing that [EO Specialist #4] said ... [that [EEO Director] didn’t want management’s [names] in there because it [is] briefed at higher levels.”

In addition, WB#2 “was advised in writing of the rights and responsibilities contained in Appendix B of MD-110.” The Informal Counseling Report stated that during the initial interview, [EO Specialist #4] “provided [WB#2] [REDACTED] EEO rights IAW 29 C.F.R. 1614, EEOC Management Directive 110, ‘EEO Counselor’s Checklist;” addressed “the regulatory 45-day time requirement for contacting an EO Specialist to file a discrimination complaint and the possibility of dismissal if the complainant elected to file a formal complaint that did not meet the 45 day time requirement.” [EO Specialist #4] also “explained the EEO inquiry process, the Alternative Dispute Resolution Program, and the formal EEO process to [WB#2].” According to the Informal Counseling Report, “[WB#2] indicated [REDACTED] understood the EEO rights advisement that was provided to [REDACTED] and elected to participate in mediation.” [EO Specialist #4] “docketed [WB#2]’s informal EEO complaint, Agency Number 8L1M17010.”

WB#2 testified that [EO Specialist #4] thought that WB#2 had already received [REDACTED] 1561 rights.

And so, I know me and [Personal Representative #1] argued. [EO Specialist #4] said that, if I remember correctly, that I don't – I think the [1561] rights had already been taken care of with Legal in July. And [Personal Representative #1] was like, well, we don't even know what that means. What does that mean? And [REDACTED] said basically Legal had already taken action and taken care of the situation. And me and [Personal Representative #1] were like, well, maybe from a management perspective, but not as a[n] EO complaint...

According to WB#2, after much back and forth, [EO Specialist #4] finally went ahead and gave WB#2 [REDACTED] Section 1561 Notice of Rights. The Notice of Rights and Responsibilities provided to WB#2 addressed, among other things, options if the informal complaint included allegation(s) of sexual harassment.

If your allegation(s) are of sexual harassment, you may choose to file your complaint under Section 591 of the 1998 National Defense Authorization Act (NDAA), codified at 10 U.S.C. Section 1561, 29 C.F.R. Part 1614, or both simultaneously. Filing under Section 1561 will not serve to exhaust administrative remedies with respect to 29 C.F.R. Part 1614. Command decisions under 1561 are final, with no right of appeal to court, and compensatory damages are not available.

[WB#2] signed this form on February 14, 2017. On the same day, WB#2 also signed a document with the subject line "10 U.S.C. 1561 Rights." It stated,

I acknowledge I have been fully briefed on my 10 U.S.C. 1561 rights and I voluntarily accept to invoke these rights. I understand I am entitled to elect a Commander Directed Investigation (CDI) be conducted. I do request a CDI be conducted in conjunction with my EEO complaint #8L1M1710.

[WB#2]'s representative, [Personal Representative #1] also signed the 1561 Rights form.

WB#2's EO case file includes about 73 pages of documents under the heading "Complainant's Documents in Support of" and about 122 documents under the heading "Management's Documents in Support of." In the Management Documents, there is an email chain with emails between [EO Specialist #4], WB#2, [REDACTED] representative, [Personal Representative #1] (on some of the emails), dating from February 10 –March 8, 2017. [EEO Director] is copied on the entire chain. In the email dated February 15<sup>th</sup>, WB#2 stated that [REDACTED] "would like to still do the mediation, but I want to request to mediate with someone that is appointed by [Commander AFSC], or [REDACTED] office, and not someone from Hill AFB. [Former Commander ALC #1] and [Former Director of Contracting] are both aware of my (and the other's) issues and past complaints that were filed which ended with no resolve. I would like this issue to have a change to be resolved above them." WB#2 also asked "if there was a CDI, "would that take away from the IG also conducting an investigation? If so, I would like the IG to pursue the investigation and not do the CDI. Please advise."

[EO Specialist #4] responded on February 15<sup>th</sup>, stating, “I spoke to legal regarding the investigation under 1561 rights. Legal stated all notifications under 1561 rights were made in June 2016 and leadership took the appropriate action. If you still would like to request a CDI, you would need to contact your commander.” [EO Specialist #4] added, “As far as the mediation, it will most likely be [Former Vice Director ALC] to come to mediation if management agrees to come to the table.”

[Attorney #2] testified that

at the time, [EO Specialist #4] called a couple times asking about those types of issues [1561 notification and rights]. So what I recall our conversations were, [EO Specialist #4], I would have told [EO Specialist #4] that – well, I don’t know if I would have told ■ they actually did it, did the 1561 notifications because I wouldn’t have known. ... I at least would have said, yeah, you know, I’ve talked with [Former OB Director], a 1561 notification was done, they investigated it, they looked into it – because I got the sense that [WB#2] was upset because there was not a full blown investigation by some colonel or by the legal office or something like that, is what I recall. And so my responses back to [EO Specialist #4], well, is that, you know, the director, [Former OB Director] looked into it. ■ decided ■ had enough, so it wasn’t necessary to do this full investigation. Those are what I recall that those conversations were about.

■ reiterated, “my response to [EO Specialist #4] was that, well, I’ve been told that the notifications went up under 1561, that [Former OB Director] looked at all the information ■ had, decided not to do a full CDI or DDI and that ■ took action. I would have told [[EO Specialist #4]] what I knew.”

On February 16, 2017, [Personal Representative #1] emailed [EO Specialist #4], copying both WB#2 and ■ EEO Director [Personal Representative #1] stated, “[WB#2] never filed an EEO complaint in June 2016, so how were ■ 1561 rights complied with? ■ is not filing a complaint with ■ commander, ■ is filing a complaint with the EEO Office and wishes them to initiate a CDI concerning the Sexual Harassment that took place. Is that possible?” ■ adds, “I don’t think at this point a mediation with [Former Vice Director ALC] would accomplish anything. [WB#2] has already met with ■ Also, what ‘appropriate action’ was taken?”

On February 16<sup>th</sup>, [EO Specialist #4] responded as follows:

USC 1561 rights and EEO complaints are two separate processes. When ■ told leadership about the sexual harassment back in June, that is when notifications were made IAW USC 1561 rights. I never stated ■ filed an EEO complaint in June. Therefore, ■ can still file a complaint. The EO office does not conduct CDIs, they conduct clarifications and try to resolve issues at the lowest level. In regards to what action was taken I don’t have that information and it cannot be released either. Please refer to the attached USC 1561 rights for further clarification. Please advise if you have any questions or concerns.

On February 23, 2017, WB#2 emailed [EO Specialist #4] and stated the following:

This is a huge part of the issue, I told [Former OB Director] about the sexual harassment and stalking in April, and May, and June as noted in my documentation. [REDACTED] responded to it in a text (May 2016). [REDACTED] decided not to take action until June when another GS 14 that worked under [REDACTED] pressured [REDACTED] to take action against [Former Chief of ALC/OB]. That is failed leadership, to include forcing me to still work for [Former Chief of ALC/OB] after the fact. I worked for [Former OB Director] during the time I was sexually harassed, and stalked April-June 2016, and knowing this, [REDACTED] still pushed me to work under him for a promotion [REDACTED] offered me. Which, April-June 2016, I begged [REDACTED] not to move me under [Former Chief of ALC/OB], and put me in another organization that offered me the same promotion. [Former OB Director] stated [REDACTED] would "look into it" but regardless, "you still have to move to OBC and work for [Former Chief of ALC/OB]."

I would like to request an investigation, maybe not a CDI, but from a third party not here at Hill because the big picture (multiple victims) is not being looked at by senior leaders. Unfortunately, I think a CDI would yield the same results.

I will think about the mediation as I have spoke[n] to [Former Vice Director ALC] several times regarding this issue. The last time I spoke to [REDACTED] (Oct 2016) was with [ALC Program Manager], and a USAF Capt. that came forward and described [REDACTED] personal issues, plus two other women, previous to me that had gone through all of this in 2013. [Former Vice Director ALC] assured the Capt and I [REDACTED] was working this and things were "political" and would "take time." I feel this is buying leadership time, and putting more people at risk not correcting [Former Chief of ALC/OB]' behavior... However, the only thing that could change that would be if there is an investigation going on, that [Former Vice Director ALC] requested, so maybe it would be worthwhile to mediate with [REDACTED]

I do not know what to do, but I know letting this go is enabling the problematic behavior. I am at a loss and I understand there is a process, but this is a huge issue and I've spent countless hours over the past year to correct this issue. I think requesting help from outside of the military is now my only option.

[EO Specialist #4] responded on March 6, 2017 stating that [REDACTED] understands [WB#2] "might not want to do mediation at this point and that's okay." [EO Specialist #4] indicated that [REDACTED] "just need[s] to know if [WB#2] would like to participate in mediation or the clarification process (not an investigation). If you would like an investigation you would have to contact legal since our office cannot conduct investigations. Please advise how you would like to proceed."

[Personal Representative #1] responded to [EO Specialist #4]' email on March 6<sup>th</sup> asking the question, "But didn't you have [WB#2] sign a document that stated that [REDACTED] was requesting an investigation?" [EO Specialist #4] responded later that day,

During the initial interview I was under the impression [WB#2] never received 1561 rights therefore I had [REDACTED] sign the form just in case. Afterwards, I contacted legal and was told 1561 rights were done back in June 2016 along with an investigation. According to legal, there cannot be two investigations done for the same concerns/issues. Our office does not conduct investigations only fact finding or mediation. Please advise which you would like to proceed with. Thank you.

When asked about [EO Specialist #4]' statements in the March 6<sup>th</sup> email, [Attorney #2] stated,

My thoughts are that whatever I told [EO Specialist #4], maybe [REDACTED] misunderstood because what I would have told [REDACTED] was what I knew, which was [Former OB Director] doesn't give 1561 rights, so I would never have said that. ... But that [Former OB Director], it was my understanding [Former OB Director] did the notification process under 1561. I don't ever recall saying you can't do a second investigation. I think I recommended a second investigation back in October.

[Attorney #2] testified that "It's the EO office that [provides 1561 rights], according AFI 36-2706. [Former OB Director] would have, should have done the notification part of 1561 and the investigation part."

On March 7, 2017, [WB#2] emailed [EO Specialist #4].

Do you know if someone would have told me about my 1561 rights back in June 2016? In June 2016, [Former OB Director] said the JAG office was going to train a Col (or O-6 and above) to conduct an investigation and that I would hear something shortly after. I was never contacted by JAG or a Col or above. I did not hear anything until [Former OB Director] set up a meeting with me in July 2016. [Former OB Director] told me that [REDACTED] had spoken to legal and ended up changing [REDACTED] mind on conducting an investigation because [REDACTED] wanted to give [Former Chief of ALC/OB] another chance. I also would like to know why I was not contacted for the investigation if there was one, as well as the individuals and witnesses I had listed on my paperwork that I gave [Former OB Director]? How do I know if [REDACTED] gave all of my documentation to legal? If there was an investigation, I do not feel like my case was given a fair chance. An investigation would have unveiled that [Former Chief of ALC/OB] was a predator and had previously done this to other women, and that [Former OB Director] did not take the proper corrective actions ... [as documented in my paperwork].

I would like to not partake in a mediation because I have already spoken to [Former Vice Director ALC] about this issue several time[s]. I would only be open to a mediation if I can speak to a third party, above [Former Vice Director ALC]. Which, the last time I spoke to [Former Vice Director ALC] was October 2016, when [Capt] <sup>44</sup>and [ALC Program Manager] were present. [Former Vice Director ALC] stated that

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<sup>44</sup> [Captain] worked for [Former Chief of ALC/OB] on Hill AFB in or around 2013. [REDACTED] brought allegations against [Former Chief of ALC/OB] alleging [REDACTED] leadership style cultivated a hostile environment for females and that [REDACTED] actions

she'd look into [Capt]'s documentation, as well as the other women, and contact them and others to ensure [Former Chief of ALC/OB] was held accountable. I think the best way forward is to file the formal complaint.

[EO Specialist #4] emailed back on March 7<sup>th</sup> stating [REDACTED] understands [WB#2] has questions/concerns and suggests meeting in person to clarify the information. [WB#2] emailed [EO Specialist #4] on March 8<sup>th</sup> as follows:

I researched the informal and formal processes. I would like to proceed with the ADR process for the informal portion if I cannot proceed with the formal complaint. Please let me know if you would still like [Personal Representative #1] and me to meet with you tomorrow at 1430 and also what the next steps are. Again, I would like to request to meet with someone above [Former Vice Director ALC] for the ADR, but if that's not possible, I would like to meet with [Former Vice Director ALC]. Thank you.

[EO Specialist #4] responded on March 8<sup>th</sup> indicating they can proceed with the ADR process. On March 16, 2017, [WB#2] advised EO specialist [EO Specialist #6] [REDACTED] would like the EO office to conduct a limited inquiry instead of ADR.

#### *Limited Inquiry*

The Informal Counseling Report set out a lengthy summary of actions taken between February – early May 2017 by the EO Office (as well as WB#2) in its Limited Inquiry to resolve [WB #2]'s informal complaint:

- On February 15, 2017, [EO Specialist #4] “contacted [Attorney #2] at the legal office and asked if [REDACTED] had any pertinent information on the investigation [WB#2] requested in 2016. [Attorney #2] stated all notifications under 1561 rights were made in June of 2016. According to [Attorney #2], leadership handled the situation and took appropriate action.” [EO Specialist #4] sent [WB#2] an email and stated per legal the OOALC/OB leadership conducted an investigation in 2016 and if [REDACTED] would like a commander directed investigation (CDI) to be conducted, [REDACTED] would need to contact [REDACTED] commander.”
- On February 15, 2017, [EO Specialist #4] “notified chain of command [Complainant #1], Ms. [WB#3], [Former OB Director], [Former Vice Director ALC], and [Former Commander ALC #1] via email of an EEO Informal complaint that had been filed.”
- On February 16, 2017, [WB#2]'s representative, [Personal Representative #1], replied to [EO Specialist #4]'s previous email and stated “[WB#2] never filed an EO complaint in June 2016 and [REDACTED] 1561 rights were not complied with.. [Personal Representative #1] also stated [WB#2] will not be filing a complaint with [REDACTED] commander, only with the EO Office and wishes the EO office initiate a CDI concerning the Sexual Harassment that took place.” [EO Specialist #4] “responded to the email and explained to [Personal Representative #1]s [sic] the USC 1561 rights and the process of the EO office to conduct clarifications and not investigations.”

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avored males over females. A Director directed investigation (DDI) was conducted in 2013 which did not substantiate [REDACTED] allegations regarding [REDACTED] OPR (Officer Performance Review).

- On February 23, 2017, [WB#2] emailed [EO Specialist #4] and “stated [REDACTED] would like an investigation because the issue had not been brought to the attention of senior leaders.” [EO Specialist #4] “replied to [WB#2]’s email and reminded [REDACTED] the EO office cannot conduct investigations and only conducts clarifications.” [EO Specialist #4] “also requested [WB#2] to provide which route [REDACTED] would like to proceed with, ADR or the limited inquiry process.”
- On March 8, 2017, [WB#2] sent [EO Specialist #4] an email stating “[REDACTED] would like to proceed with ADR.” [EO Specialist #4] “requested [WB#2] to provide specific allegations in order to frame the claims and proceed with the ADR process.”
- On March 14, 2017, [WB#2] sent [EO Specialist #4] an email stating “[REDACTED] will be sending a draft of all of [REDACTED] allegations later that day. [WB#2] sent [REDACTED] draft claims and EO Specialist [EO Specialist #4] framed the claims.”
- On March 16, 2017, “[WB#2] came to the EO office to sign [REDACTED] claims and remedies. [WB#2] advised EO specialist [EO Specialist #6] [REDACTED] would like the EO office to conduct a limited inquiry instead of ADR.”
- On March 17, 2017, [EO Specialist #4] “contacted [WB#2] and requested [REDACTED] to clarify [REDACTED] remedies as soon as possible. [WB#2] stated [REDACTED] would provide them on Monday, 20 Mar 17.”
- On March 20, 2017, [EO Specialist #4] “sent management [WB#2]’s claims via email and stated [REDACTED] would provide [REDACTED] remedies as soon as [REDACTED] received clarification from [WB#2].”<sup>45</sup>
- On March 21, 2017, [WB#2] sent [EO Specialist #4] “an email with changes [REDACTED] made to [REDACTED] claims and remedies.” [EO Specialist #4] “replied to the email asking [WB#2] if [REDACTED] could stop by tomorrow to clarify the changes made and also sign for [REDACTED] claims and remedies. Later that day, [WB#2] came by the EO office, clarified [REDACTED] claims and remedies and stated [REDACTED] will take them home to review and return tomorrow.”
- On March 23, 2017, “[WB#2] came by the EO office and signed [REDACTED] updated claims and remedies.”
- On March 24, 2017, [EO Specialist #4] “provided the updated claims and remedies to [Former Vice Director ALC] and [Former OB Director] via email.”<sup>46</sup>
- On March 29, 2017, [EO Specialist #4] “sent [Witness #1]<sup>47</sup>, [Witness #2]<sup>48</sup>, [Former Chief of ALC/OB], [Former OB Director], and [Former Vice Director ALC] interview questions and requested they provide responses no later than 5 Apr 17.”<sup>49</sup>

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<sup>45</sup> The March 20<sup>th</sup> email from [EO Specialist #6] to [Former Commander ALC #1], [Former Vice Director ALC] and [Former OB Director] (with a copy to [EEO Director] also informed the recipients that WB#2 “has now elected the inquiry process and not ADR.”

<sup>46</sup>WB#2’s requested remedies were: 1) to relieve [Former Chief of ALC/OB], [WB#2’s second level supervisor] from [REDACTED] duties; 2) to demote [Former OB Director] for not taking immediate action; and 3) to have [Former Vice Director ALC] step down from [REDACTED] position.

<sup>47</sup> At the time of [REDACTED] interview, [Director, C-130] was a NH-04, Tier 2, working in the 309<sup>th</sup> AMXG in the 572<sup>nd</sup> Air Maintenance Squadron (AMXS). [REDACTED] title was Director, C-130.0. [REDACTED] started there in or about October 2017. Prior to that [REDACTED] served in the capacity of business officer as the chief over business development, strategy and depot activity in OB. [REDACTED] worked for [Former OB Director].

<sup>48</sup> At the time of [REDACTED] interview, [Witness #2] was a NH-03 Tier 2 (GS-13 equivalent). [REDACTED] worked in OO-ALC in OBP as the chief of Business Development and Partnerships for the depot. [REDACTED] has been in civil service since 2007. [REDACTED] has worked for both [Former OB Director] and [Director, C-130]

<sup>49</sup>[EO Specialist #4] identified both [Former Vice Director ALC] and [Former OB Director] as Responsible Management Officials. In the (separate) emails dated March 29<sup>th</sup> to [Former Vice Director ALC] and [Former OB Director], [EO

- On March 29, 2017, “the same day, [Former Chief of ALC/OB] provided the answers to [REDACTED] interview questions. According to [Former Chief of ALC/OB], [REDACTED] recalls sending [WB#2] instant messages and Facebook messages but did not recall making any of the verbal comments [WB#2] alleged. [Former Chief of ALC/OB] stated the context of [REDACTED] conversations were to make [WB#2] feel welcome and wanted in the organization since [REDACTED] had previously expressed to him personal issues going on at home.”
- On March 30, 2017, “[Director, C-130] provided [[EO Specialist #4]] with [REDACTED] answers to [REDACTED] interview questions. [Director, C-130] also expressed [REDACTED] was concerned about reprisal and felt [REDACTED] would most certainly be reprised against if leadership found out what [REDACTED] answered. [Director, C-130] stated leadership in the OOALC/OB is very toxic, corrupt, and self-interested. [Director, C-130] also stated, [Former OB Director] and [Analyst] created nicknames for individuals in the organization that degraded their characters. [Director, C-130] did not witness any specific comments made by [Former Chief of ALC/OB][;] however, [Director, C-130] recalled [WB#2] requesting him to help insulate [REDACTED] from [Former Chief of ALC/OB] to ensure [REDACTED] would be safe.”
- On April 4, 2017, “[WB#2] emailed [[EO Specialist #4]] and asked if [REDACTED] needed further information since [REDACTED] had not heard anything back. [WB#2] also requested a copy of [REDACTED] signed claims and remedies.” [EO Specialist #4] “provided [WB#2] with a copy of [REDACTED] claims and remedies and also stated [REDACTED] was in the process of conducting a limited inquiry and did not need further information.”
- On April 4, 2017, “the same day, [Former Vice Director ALC] provided the answers to [REDACTED] interview questions. [Former Vice Director ALC] stated [REDACTED] was not around [WB#2] on a regular basis to assess [REDACTED] behavior. [Former Vice Director ALC] stated that [WB#2] was always professional and polite when [REDACTED] was around [REDACTED]. [Former Vice Director ALC] also stated, [WB#2] asked [REDACTED] an extreme question about whether [REDACTED] should consider moving [REDACTED] daughter to a new school just in case [Former Chief of ALC/OB] tried anything. [Former Vice Director ALC] stated, at the time, [WB#2]’s supervision [sic], Ms. [WB#3] and [Supervisor], had expressed concern that [WB#2] may be having emotional issues and were providing support to [WB#2] as required. Additionally, [Former Vice Director ALC] stated [that after [WB#2] brought this to [REDACTED] attention], [REDACTED] contacted [Former Chief of ALC/OB]’s previous leadership in contracting and was advised [Former Chief of ALC/OB] had a pattern of such behavior over the years[;] however, nothing was documented in [REDACTED] records. The Complex’s action (oral admonishment and request that [REDACTED] be moved back to contracting) was the first documented action taken to address [REDACTED] behavior. Finally, [Former Vice Director ALC] stated [REDACTED] discussed [WB#2]’s concerns with [REDACTED] supervisor, [Former OB Director], and allowed [Former OB Director] to handle the situation. According to [Former Vice Director ALC], [Former OB Director] investigated and ultimately issued [Former Chief of ALC/OB] a counseling for conduct unbecoming a civilian leader.”
- On April 5, 2017, [EO Specialist #4] “sent a follow-up email to [Witness #2] and [Former OB Director] regarding the responses to the interview questions due on 5 Apr 17.”
- On April 5, 2017, “the same day, [Person #4] provided [[EO Specialist #4]] with the requested required documents. Later that day, [Witness #2] provided the answers to [REDACTED] interview questions.

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Specialist #4] stated, “You have been identified as a Responsible Management Official in an EO Complaint filed with my office.”

[Witness #2] stated [REDACTED] did not work near [WB#2] or [Former Chief of ALC/OB] and never heard any inappropriate comments nor did [REDACTED] hear management calling individual nicknames.”

- On April 10, 2017, “[Former OB Director] requested an extension to respond to the interview questions by 14 Apr 17.”
- On April 14, 2017, “[Former OB Director] provided the answers to [REDACTED] interview questions. [Former OB Director] stated [WB#2] was a good worker but [REDACTED] behavior was erratic and [REDACTED] was moody on a regular basis. According to [Former OB Director], [WB#2] did not want [REDACTED] to intervene between [REDACTED] and [Former Chief of ALC/OB] and when given the choice to work under different supervision, [WB#2] decided to work for [Former Chief of ALC/OB]. [Former OB Director] stated [REDACTED] had never heard any comments made towards [WB#2] or nicknames given to [REDACTED]. [Former OB Director] also stated [WB#2] complained [REDACTED] felt threatened, but provided no physical evidence. According to [Former OB Director], [REDACTED] felt [WB#2] wanted to destroy [Former Chief of ALC/OB] as opposed to making the situation better and in an effort to address [WB#2]’s concerns, [Former OB Director] moved [WB#2] to the [REDACTED] away from [Former Chief of ALC/OB]. [Former OB Director] stated [REDACTED] felt [WB#2]’s paranoia was at work and towards men in general.”
- On April 17, 2017, [EO Specialist #4] “emailed [Former Vice Director ALC] and [Former Commander ALC #1] and asked if management was willing to meet any of [WB#2]’s requested remedies. [Former Vice Director ALC] and [Former Commander ALC #1] both agreed management would not be willing to meet [WB#2]’s requested remedies.”
- On April 18, 2017, [EO Specialist #4] “scheduled [WB#2]’s final interview appointment for 21 Apr 17.”
- On April 19, 2017, “[WB#2] requested [REDACTED] appointment be moved to 24 Apr 17.”
- On April 24, 2017, “[EO Specialist #4] and [WB#2] met for the final interview. [WB#2] was provided with [REDACTED] right to file formal [notice] and Air Force EEO counselor’s checklist explaining both traditional and CORE [Compressed, Orderly, Rapid, Equitable] Process.”
- On May 2, 2017, [WB#2] returned [REDACTED] DD Form 2655 to the EO office and filed formal.”

#### *WB#2 Interaction with IG*

According to IG Case Notes, [AFSC IG] spoke with WB#2 on or around March 3, 2017. According to the Case notes, [AFSC IG] had spoken with WB#2 “on multiple occasions on [REDACTED] sexual harassment [sic] allegations at Hill AFB in the OO-ALC.” [AFSC IG] indicated that WB#2 “has a lot of documentation and has visited the EO office and IG office there several times.”

I assured [REDACTED] that the EO office would take [REDACTED] complaint. [REDACTED] has not filed as of yet but wants to. [REDACTED] is afraid it will get back into [Former Vice Director ALC] hands and [WB#2] believes [Former Vice Director ALC] is part of the problem of not addressing and taking care of this issue. [WB#2] stated [REDACTED] met with [EO Specialist #4] in EO (the IO) and stated the IO did not see sexual harassment in [REDACTED] documentation. [WB#2] stated after a discussion with [EEO Director] that indeed [REDACTED] saw it and wanted the IO back on the case after [REDACTED] leave ended.

[AFSC IG] indicated [REDACTED] sent WB#2 a letter and “a reprisal avenue with DoD IG if [REDACTED] feels [REDACTED] case has crossed into the reprisal lanes.” [AFSC IG] stated [REDACTED] “consider[ed] this case closed for the IG lane at this time.”

#### *WB#2 Interaction with Legal Office*

On April 27, 2017, WB#2 emailed [EEO Director] stating “Below is the email. Can you please add this to my file? Thank you.” The email referenced by WB#2 is an email exchange between WB#2 and [Attorney #2], an attorney at the 75 ABW/JA on Hill AFB. According to [ALC Program Manager]’s testimony, [REDACTED] stated “I actually told [WB#2] to go talk to [Attorney #2], which is 75<sup>th</sup> JA.”

On March 14, 2017, WB#2 emailed 75 ABW/JA workflow, with the subject “FOUO\CDI.” [REDACTED] email stated as follows:

Last April 2016 (on or around 13 April), I informed my supervisor, [Former OB Director] of inappropriate behavior by one of [REDACTED] GS-14s. Previous to that, on or around March 2016, the GS-14 had offered me a promotion to work in [REDACTED] organization, and shortly after [REDACTED] started sexually harassing, and stalking me. [Former OB Director] stated several times that [REDACTED] would “look into it” and “take care of it.” [Former OB Director] knew I was scared as I begged [REDACTED] not to move me under the GS-14, and allow me to stay in my position with [REDACTED] being my supervisor, or place me in another organization under another GS-14 that also offered me a promotion.

To my knowledge, [Former OB Director] did not do anything until June 2016 (after [Former Vice Director ALC] heard about the issue). Another one of [Former OB Director]’ GS-14’s knew how scared I was and saw how [Former OB Director] failed to take action several times; the encounters progressively got worse. This GS-14 requested [Former OB Director] to do something several times throughout the month of May. The GS-14 even had to sit in my office with me because the other GS-14 that was sexually harassing and stalking me would not leave me alone. [Former OB Director] even walked out with me to the parking lot at COB twice in May 2016 because the GS-14 that was sexually harassing and stalking me kept trying to walk me to my car.

I have filed an IG complaint (originally it was sent to SAF-IG, but it was given to AFSC IG), and now am in the EO informal process here at Hill AFB. I do not have all of the facts of what [Former OB Director] exactly did to “take care of it,” but EO said there was a CDI conducted in June/July 2016. I am emailing your office because I have reason to believe that [Former OB Director] withheld documentation and critical information as I was not contacted last July 2016. [Former OB Director] said I would be contacted by a Col/(O-6) or above, and interviewed. No one contacted me or my witnesses. Later, [Former OB Director] contacted me and said [REDACTED] wanted to give this GS-14 another chance and didn’t care about [REDACTED] past, only [REDACTED] future.

Since, I have found other women who have gone through similar issues with the GS-14 that sexually harassed and stalked me, including an AF Captain. Please advise if anyone would like to discuss this further.

An attorney in the 75 ABW/JA office, [Attorney #2], responded to WB#2's email stating,

Thank you for sharing your concerns. I appreciate your willingness to step forward last year and now. Last summer our office was involved in addressing the incidents you have described. It appears that you have concerns that things were not properly handled. Hopefully, I can share some information that might help with those concerns.

To begin with, let me try to explain how allegations of sexual harassment are addressed. Anyone who feels that they have been subjected to sexual harassment can inform their leadership, can file an EO complaint, or seek assistance from other installation agencies. When leadership is informed they are required to review/evaluate the information provided and take appropriate action. In instances where the information provided is sufficient evidence to take administrative action, it is not necessary to investigate further.

In regards to your situation, it is my understanding that after reviewing the information you provided concerning the GS-14, and other information [REDACTED] had before [REDACTED] [Former OB Director] determined that there was enough information provided to take action. No information was needed.

Any action that a commander, director, or supervisor takes against an employee is generally protected by federal law from being disclosed to others not involved in taking the action. Typically, the most that can be disclosed is that appropriate action was taken.

I appreciate the information you have provided. If you feel there is any additional or new information that needs to be reviewed or addressed, please send it to me.

The email was placed in WB#2's EO file under "Management's Documents in Support of."

### ***Formal Complaint***

On May 2, 2017, WB#2 lodged a formal complaint of discrimination set forth on DD Form 2655 and five attached pages. The formal complaint alleged multiple instances of sexual harassment from [Former Chief of ALC/OB] and reprisal from [Former Chief of ALC/OB], [Former Vice Director ALC], and [Former OB Director]. Specifically, there were two overall claims: 1) "whether or not the complainant was allegedly discriminated against on the basis of sex (Female), Sexual Harassment, and a continuous pattern of hostile work environment when on or about" followed with a list of 23 specific claims; and 2) "whether or not complainant was allegedly discriminated against on the basis of Reprisal (Management notification of Sexual Harassment issues) and a continuous pattern of hostile work environment when on or about" followed with a list of 17 specific claims. Thirty-nine of the claims date from April 12, 2016 through October 28, 2016; one claim is dated April 27, 2017. [Former Vice Director ALC] was named in two (2) allegations under the second overall claim:

- 10 June 2016, the complainant felt leadership was protecting [Former Chief of ALC/OB] when management ([Former Vice Director ALC]) met with complainant and was glad the complainant did not inform [ALC Program Manager], (past Sexual Assault Response Director) about the situation.
- 28 October 2016, complainant met with management ([Former Vice Director ALC]) at Runway Ruby's on base with [Captain] to discuss more women who have filed complaints both internal in Contracting, and with MEO [Military Equal Opportunity] concerning [Former Chief of ALC/OB], and [REDACTED] sexual harassing, stalking, intimidating, and hostile behavior. [Former Vice Director ALC] stated that [REDACTED] would take action but it would take a long time because it was "political."

On May 8, 2017, **EEO Director** sent [WB#2] an "Acknowledgement of Receipt of Formal Discrimination Complaint" which indicated the complaint "was filed on 04/18/2017." In [REDACTED] acknowledgment memo, **EEO Director** stated in relevant part,

The complaint is being reviewed to determine whether it meets the requirements for processing under the provisions of EEOC regulations 29 C.F.R. Part 1614. In accordance with 29 C.F.R. Part 1614.106(e), you have the right to appeal the final action on, or dismissal of, a complaint, and the agency is required to complete an impartial and appropriate investigation of the complaint which is accepted for processing.

If the complaint is accepted for processing, an investigation of the complaint must be completed within 180 days of the filing of the complaint unless the parties agree in writing to extend the time period. You may amend your complaint at any time prior to the completion of the investigation to include issues or claims like or related to those raised in this complaint. Amendments must be filed in writing. If a complaint is amended, the investigation will be completed within the earlier of 180 days after the amendment or 360 days of this filing of the original complaint.

You may request a hearing from an Administrative Judge at any time 180 days from the date of the original complaint. If you wish to amend the complaint after you have requested a hearing, you may file a motion with the Administrative Judge.

During the counseling period, complainants are notified in writing of their rights and the time deadlines that must be met in the processing of the complaint. As the complaint is processed, you will be informed further of these rights and the deadlines for exercising them at each stage of the processing.

As the EO Director, it is **EEO Director** responsibility to conduct the acceptance/dismissal review of formal complaints. **EEO Director** testified that "I did do acceptance and dismissal on [REDACTED] [WB#2's] complaint." On May 17, 2017, **EEO Director** issued WB#2 a Notice of Partial Acceptance of WB#2's Formal EEO Complaint of Discrimination. In the Notice, **EEO Director** stated

On January 30, 2017, you initially contacted the 75<sup>th</sup> Air Base Wing Equal Opportunity (EO) Office at Hill AFB, UT to file an informal complaint of discrimination on the

basis of Sex (Sexual Harassment) and Reprisal (Management notification of sexual harassment). The assigned EO Specialist was unable to resolve your complaint based on the remedies you requested. You filed a formal complaint of discrimination on 2 May 2017. A copy of the EO Counselor's Report was mailed to you on 17 May 2017 through certified mail.

Of the 40 claims set out in the Notice (identical to the claims stated in WB#2's formal complaint), [EEO Director] accepted one and dismissed 39, stating,

3. Based on a complete review of the case file, it is determined framed claim 2(nn) should be accepted for investigation. The services of the Investigations and Resolution Division (IRD) should be requested to conduct a formal EEO investigation of these claims.

4. Based on a complete review of the formal EO complaint file, it has been determined that framed allegations [2a through 2mm listed individually] should not be accepted for investigation IAW 29 C.F.R. 1614.107(a)(2) because the complainant failed to contact the EO Office/EEO Specialist within 45 days of the alleged discriminatory event/action; therefore, these claims are considered to be untimely.<sup>50</sup>

[EEO Director] attached a document entitled "Rights Associated with the Acceptance and Dismissal of this Complaint" which set out complainant's EEO appeal rights. [EEO Director] testified that [redacted] acceptance/dismissal letter was coordinated with and reviewed by the legal office.

When asked about [EEO Director] and [redacted] dismissal of most of WB#2's claims, [EO Specialist #4] testified that [EEO Director] "was pretty new to that [EO Director], but I remember [redacted] was very big on the timeliness and certain things, like there's certain laws you have to follow when you're dismissing and accepting, and timeliness is one because it says within 45 days. So I don't know if they became like stuck on that with the 45 days, and seeing past that, that it's a pattern of behavior. So I'm guessing [redacted] probably didn't have the knowledge on that, and went on to the 45-day area and dismissed them because of that."

On May 17, 2017, [EEO Director] also sent a Request for an EEO Investigation/Mediation to IRD for WB#2's case. The Request stated,

The following claim meets the acceptance requirements identified in 29 C.F.R. 1614.107 and should be investigated:

Whether or not the complainant was allegedly discriminated against on the basis of Reprisal (Management notification of Sexual Harassment issues) and a continuous pattern of hostile work environment when on or about 27 April 2017, complainant

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<sup>50</sup> The records from WB#2's visits to the EO in July and September of 2016 were not made part of [redacted] EO counseling case file, started in early 2017, despite the fact that WB#2's 2016 contact visits with both [Prior EO Director #1] and [EEO Director] were discussed with the EO counselor and [EEO Director]. The EO office recorded EO Assistance visits on AF Form 1271, which are kept separately from the EO case file records. WB#2 obtained the records from [redacted] 2016 EO office visits with [Prior EO Director #1] and [EEO Director] -- apparently through the FOIA process. The records were redacted and the IO had to request the original documents from the EO office.

became aware that management ([Former OB Director]) failed to initiate an RPA to move [REDACTED] from OO-ALC/OB to OO-ALC/OBC in May/June 2016, and from OO-ALC/OBC to [REDACTED] in September 2016.

In [REDACTED] testimony, [EEO Director] stated that “the one claim that went up [to IRD for investigation] was not included in those initial claims in the informal process.” [REDACTED] further stated,

Yeah. When they fill out their 2655, they can kind of put whatever they want on there. Typically, we attach the same claims that were in the informal process, but they can add, and [REDACTED] [WB#2] just happened to add that one additional claim, which was timely, and met the requirements for acceptance, so that one went up.

[EEO Director] testified that [Former OB Director] was the RMO on the one claim accepted for investigation.

#### *WB#2 Conversations with [EEO Director]*

In an email to [ALC Program Manager]<sup>51</sup> dated May 29, 2017, WB #2 stated [REDACTED] was “going to meet [EEO Director] tomorrow (as [REDACTED] requested) and ask [REDACTED] some important questions about the findings, and why [REDACTED] pushed me away in Sept 2016 and again in Jan 2017.” In the email, WB#2 described [REDACTED] telephone discussion with [EEO Director] “on 24 May around 1315” when [REDACTED] “received a phone from [EEO Director] returning my call from earlier that day requesting information on how to file an appeal on the investigation and my allegations.” WB#2 described the conversation as follows:

[EEO Director] stated after the judge gave a final decision, that I could file an appeal and request an investigation on my other allegations, but only if I was not satisfied with the judge’s response from the one accepted allegation of retribution for an RPA never being conducted.

I asked [EEO Director] about the findings (informal counselor’s report) that I received in the mail from [REDACTED] office. [EEO Director] said [REDACTED] could not discuss the findings with me. I then requested that [REDACTED] share the findings with [Former Vice Director ALC], senior leaders, and the AFSC-IG. I said, “in the documentation, [Former Vice Director ALC] was honest. However, [Former Chief of ALC/OB], was not, and neither was [Former OB Director], and [REDACTED] lied on several of [REDACTED] responses and I can prove it. You need to tell [Former Vice Director ALC] and other senior leaders, they need to know. Protecting predators and then lying about it is not behavior of a senior leader. [EEO Director] stated, “[Former OB Director] hasn’t lied. How would you know that?” I said, “I have all of [Former OB Director] responses [REDACTED] provided to you, and like I said, I can disprove several with my documentation and if there was an investigation, they would find by the general populace that I am not moody, nor do I have paranoia at work or towards men in general. I actually get along really well with pretty much everyone, in all offices I’ve worked, and never had any paranoia issues until the situation with

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<sup>51</sup>In the email WB#2 also set out “what [REDACTED] plan[ned] to submit to [Former Vice Director ALC], Col Hammerstead, AFSC-IG, AFSC-EO, and AFMC-EO” and requesting [ALC Program Manager]’s thoughts.

[Former Chief of ALC/OB]. I had no support from leadership. An investigation would prove that.” EEO Director made a disgusted noise and said, “I just do not understand. How do you have that file? That is to remain in my office! Who gave that to you?” I said, “Well I have it, and what [Former OB Director] and [Former Chief of ALC/OB] has done needs to come out, so you must allow me to appeal all of my allegations so there can be an actual and fair investigation.” EEO Director stated, “[Former OB Director] did an investigation, and nothing was found to substantiate that you were stalked, sexually harassed, or really any of your claims.” I said, “So a biased, unfair, and unjust investigation was conducted, and even after [Former OB Director] lied, this so called investigation is going to stand? Especially when I have proof that I was sexually harassed? [Former OB Director] lied in [redacted] responses; [redacted] lied on an official government document. You need to share this with [Former Vice Director ALC] and other senior leaders. Do you not understand the significance in this? How many more people are going to have to suffer? I bet I’m not the only instance.” EEO Director stated, “You had 45 days, you fell short when you contacted my office in January 2017.” I stated, “No, I didn’t fall short, I reported that I was sexually harassed in July 2016 to [Prior EO Director #1] (EO director prior to EEO Director and then again with you to file for reprisal and retribution in September 2016, but you told me that you did not look at it as reprisal or retribution, remember? At that time I was in my window. You said I could only file on the chair incident alone, and that it wouldn’t hold any weight or go anywhere.” EEO Director responded, “I didn’t know you came here in July 2016, we have no record of that.” I said, “I do, and I have told you that several times, along with all of my allegations to prove I was sexually harassed.” [redacted] said, “So [Prior EO Director #1] gave you something? [redacted] wouldn’t have given you anything.” I stated, “No, my FOIA request gave me the documentation I needed, and it states I was there in July 2016, and [Prior EO Director #1] acknowledged the sexual comments in the report from your EO system.” EEO Director stated, “[Prior EO Director #1] doesn’t get to determine that. We are to remain neutral, and sorry, but again, there were no findings to conclude you were sexually harassed, or really anything your complaining about[.]” I stated, “Yes, yes there is, if you google ‘eye-candy’, it is sexual harassment, and the AF has a much stricter stance, so if google thinks an eye-candy comment is sexual harassment, I’m sure the AF does. Besides [Former Chief of ALC/OB] requesting for me to show him affection, and hugs, what’s that classified as? I have proof of that also when [redacted] asked me to come to [redacted] office 30-40 times for hugs.” EEO Director stated, “You can’t prove any of that, you don’t have that anywhere.” I stated, “I do, and you do also. I gave you all of my documentation that included messages between [Former Chief of ALC/OB] and myself. [Former Chief of ALC/OB] put in an IM, ‘I love you to death,’ and ‘And I look at you coming to my org as me gaining eye candy’ and even requested that I come to [redacted] office to give him hugs several times a day, 30-40 to be exact. You have all the required documentation, you are clearly not reading my documentation, or ignoring the fact I was sexually harassed.” EEO Director stated that those examples were not sexual harassment and I could not prove anything. I stated that it was, and that [redacted] had my documented proof. EEO Director stated, “You don’t get to determine what defines sexual harassment or determine what sexual harassment is. And [Former OB Director] punished [Former Chief of ALC/OB], you can’t go rehash all of this and what happened to [Former Chief of ALC/OB] is none of your business. What has been done is done.” I

stated, “A verbal counseling that did not go in [Former Chief of ALC/OB]’ record is not a commendable action in regards to sexual harassment, and stalking. This has affected at least FIVE women and their families, and no documented actions are in [REDACTED] file. How is that okay? And what about [Former OB Director] enabling all of this and also lying on an official document? What’s that? It’s not okay, you know it and I know it, the AF policy has a zero tolerance. Also, in the findings provided from EO, “[Former Vice Director ALC] stated [REDACTED] contacted [Former Chief of ALC/OB]’s previous leadership in contracting/PZ and was advised [Former Chief of ALC/OB] had a pattern of such behavior over the years, however, nothing was documented in [REDACTED] records.” You want to know why, it’s because this system is set up to fail, it’s failing the victims and promoting wrong doers, and senior leaders have allowed this behavior, and now you are not allowing me to move forward to try and hold people accountable for their wrong doings. [Former Chief of ALC/OB] was aggressive towards me. You know how difficult it was for me to push back and say no several times? It was either ruin my marriage or ruin my career while destroying my own character; do you think that’s fair? My marriage and doing the right thing will always come first even if I have a senior leader calling me crazy, freakshow, erratic to do so. Also, you told me [Former Chief of ALC/OB] was not in the EO system, and I told you [Capt] filed against him in 2013 through EO. This is not okay, and you need to tell [Former Vice Director ALC] that [Former OB Director]’ lied. Actually, I have everything, I’ll highlight all of the lies and send it to [Former Vice Director ALC] myself.” **EEO Director** stated, “You are not supposed to have that information, and I do not think you should share it with anyone, do not share that with anyone. I need to go to a retirement ceremony, it starts at 2, but we need to further discuss this.” I stated, “I’ll email you my cell phone number, I will be gone soon for the remainder of the day.”

WB#2 indicated that **EEO Director** called [REDACTED] cell phone at 1630 later that day and left a voice message requesting they discuss everything in person tomorrow, 25 May, or next week after Memorial Day.

On May 30, 2017, WB #2 met with **EEO Director** in [REDACTED] office and recorded the entire meeting which lasted an hour and 17 minutes. **EEO Director** was unaware<sup>52</sup> of the recording. There is no actual transcript of the recording as some of the discussion is inaudible, especially where WB#2 talked quickly in a low voice or the words were muffled due to feedback or other noise. That being said, much of the tape was audible and detailed notes (some of which may be verbatim), are set out below. The recording evidenced a meandering discussion about a number of issues as follows.

WB#2 stated that [REDACTED] “went over everything in the [informal counseling] report” and “wants to put in there” the July contact with [Prior EO Director #1] ([Prior EO Director #1]) and the September 2016 contact with **EEO Director**. WB#2 stated that **EEO Director** told [REDACTED] “in September you said you didn’t look at it as reprisal and could only file on the chair incident alone...ok. I disagree because the entirety of my whole complaint was within the 45 days. So I don’t know if there is any type of waiver or anything that can be done.”

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<sup>52</sup> Utah is a one-party consent state for recording purposes.

**EEO Director** responded, “There isn’t a waiver, the only person who can waive that is the judge; once it’s gone through us and then JA, I can’t go back and change it or add to it at this point because the 90 day period has passed.” WB#2 asked whether **EEO Director** could “change the dates in the counselor’s report.” ■ indicated that the dates “are not correct, it’s says January and I want them to see the entire scope.”

**EEO Director** stated, “This initial contact date” in the informal counseling report ‘would be the date you made contact, not with [Prior EO Director #1], but based on that new contact date.” The July 2016 contact with [Prior EO Director #1] “would have been for that particular event, but this is new.” WB#2 stated, “But it’s not a new contact because it’s all the same thing, sexual harassment and then the reprisal.” **EEO Director** explained, “But that’s the way we look at it; you contacted [Prior EO Director #1] and at that point you had 30 days to file a complaint. If you go past that 30 days, that’s it.” When challenged by WB#2 that “after 45 days no one can file a complaint even though law says you can’t discriminate, **EEO Director** responded, “that’s our criteria and that’s what’s in the law, you know, our guidelines that we follow; you have 45 days from the date of the event to make contact with the EO office and file.” **EEO Director** further stated, “when you came in with [Prior EO Director #1], you made that contact, up to that point you go back 45 days, so anything back from that 45 days.” WB#2 questioned the “contact and file requirement.” “Because when I went to the website, it said as long as you, you reported an incident to the EO within 45 days.”

WB#2 stated, “Then I came in September and I felt like I was pushed away. And I would have been in that window if I could have been able to file for the whole sexual harassment and retribution.” **EEO Director** indicated ■ was “just curious ... so you’re saying if you would have been able to’ but “you felt like you were pushed away?” WB#2 explained, “[Prior EO Director #1] said if anything more comes of it and you are not happy then come back and we’ll take the whole case from there. I came back in September and you said I could file on the chair thing alone.” **EEO Director** indicated that ■ couldn’t “speak for [Prior EO Director #1] but I just personally find it hard to believe that ■ would guarantee you that ■ would take everything going back, even outside the 45 days...well I guess if there was a current incident.”

WB#2 asked **EEO Director** about who got a copy of the Informal Counseling Report. **EEO Director** stated “the only people that are going to see it are you, then IRD, and AFCARO. It doesn’t go to management.”

WB#2 then (as well as in other parts of the discussion) talked to **EEO Director** about what was not true in the report. WB#2 stated that [Former OB Director] lied to ■ senior leaders, that’s not ok and ■ should be disciplined. **EEO Director** stated that ■ knows WB#2 “is not happy with the way [the situation] was addressed...,” to which WB#2 responded, “there should be an investigation into the whole thing – both [Former OB Director] and [Former Chief of ALC/OB].” **EEO Director** indicated ■ did not “have authority to say you have to do an investigation; that’s not our area. All I can look at is the claims you provided, which was several claims that were not timely.”

WB#2 indicated that ■ “looked up all the stuff [[Former Chief of ALC/OB]] did and EEOC does say it is sexual harassment and [Former OB Director] kept me in that environment.” **EEO Director** stated, “well, they disciplined him [[Former Chief of ALC/OB]].” During the conversation, **EEO Director** stated at least six times that disciplinary action was taken against [Former Chief of ALC/OB] and in a number of those instances, that the disciplinary action resolved the issue.

WB#2 stated, "I am scared and restless knowing that people are allowing this [sexual harassment by [Former Chief of ALC/OB]]. I don't know what I have to do." EEO Director responded, "you have a right to appeal them [the dismissed sexual harassment claims] but you can only appeal when the one [RPA] claim that was accepted ... – At the end of the formal process, IRD will look at that one claim through the whole process, do interviews for that one claim and then when that investigation is concluded, you have the right to ask to go to the agency for the final agency decision or you can say you want to go to the EEOC judge." WB#2 asked "if [redacted] can do that now." EEO Director stated, "it has a process – it has to go through that process... The IG's not going to address sexual harassment; they are going to say it's in the EO process. Unfortunately, it's not a quick process and that's what is frustrating."

WB#2 asked, "if they go back and change my RPA after IRD does its investigation, then I can't rebut it?" EEO Director stated, "so you have that one claim so they can say you have that remedy but you don't have to accept the remedy. So if they say they can remedy by making sure those RPAs are in and it's all legit and it's where it's supposed to be whatever and then you can say well, I am not going to accept it and then it goes to a judge and they say well, they offered to fix it and you refused ... I can't speak for everybody down the line but I know that it was addressed, there was disciplinary action taken. You shouldn't even know what the disciplinary action was because that violates [redacted] privacy too you know."

WB#2 responded that [redacted] "issue is how it was handled, I feel that [Former OB Director], [redacted] should get a disciplinary action also. [redacted] lied to [redacted] senior leaders and that's not ok either." EEO Director stated, "we don't make a determination on whether people are lying or telling the truth." WB#2 asked, "Even if it is black and white?" EEO Director responded, "I don't have the authority to make that determination to make sure someone is... we have no authority to take any action, the action is taken by leadership. Management works with JA, JA and labor tells them this is the range for disciplinary action, they determine well someone has certain already in their record disciplinary actions they go to the next level but if someone doesn't have any kind of disciplinary actions or history of discipline, typically they are not going to jump straight to kick the guy out."

WB#2 stated [redacted] would like to show that there is a pattern [of [Former Chief of ALC/OB] behavior] in the records. "[Former OB Director], [redacted] could have fixed this, I don't know why [redacted] didn't. [redacted] made it worse for both him [[Former Chief of ALC/OB]] and I." EEO Director replied, "I am sure it wasn't a decision [redacted] [[Former OB Director]] made solely on [redacted] own, most leadership would not do that. I am sure [redacted] consulted with labor and labor says ok, this is what you should do. ... I don't know what the discussion was with you and [Former OB Director]."

WB#2 answered, "[redacted] told me if you be quiet I will take care of your family, your career -- to me that was a threat." EEO Director ask if WB#2 had that "in writing." WB#2 replied, "Not that to the tee; [redacted] [[Former OB Director]] said it verbally to me. In an email [redacted] said to me I figure out you can handle this and we will take the steps necessary to make this a great working environment -- to me that was a veiled threat." WB#2 indicated [redacted] asked [Former OB Director] that [redacted] not work with [Former Chief of ALC/OB] and that [Former OB Director] told [redacted] [redacted] was not inclined to move WB#2. According to WB#2, [redacted] told [Former OB Director] [redacted] did not want to work for [Former Chief of ALC/OB] in April 2016 before [redacted] was moved; [Former OB Director] told [redacted] [redacted] would take care of it but did not do anything until July. At this point in the discussion, WB#2 starts reading text messages

from [Former OB Director] and discussing [Former OB Director] statements in the informal counseling report.

[EEO Director] cut in, saying, "At this point right now the only option is to appeal it at the end of the whole process because that's the EO process." WB#2 objected, "Even though the dates are wrong?" [EEO Director] replied, "this date is not going to change because this date when you initially came to the office the most recent time and you actually filed the complaint. That was the contact date. So they are not going to go back and say your initial contact was 6 July because it expired though."

WB#2 responded, "the civilian regulation says you just have 45 days to report the issue so when I came to you and [Prior EO Director #1] I feel like that is reporting it," to which [EEO Director] said, "right but you didn't file." WB#2 indicated that [redacted] would have filed in September if [redacted] could have filed for the whole thing. "The only reason I didn't file is because you said I could file only this incident [chair slamming] and you didn't think that would hold weight. So I feel that --" [EEO Director] interjected, "Well, those times [from Apr-May 16], you would have been out of the 45 days. So it would have been kind of the same --" WB#2 stated, "I think the last time that [redacted] had anything to me sexual harassment-wise was the 30<sup>th</sup> of May. And then the chair thing happened in September. So I think that would have been in the 45 day window." [EEO Director] responded, "You could have filed reprisal on the chair thing because you said it was reprisal, right?"

Later on in the conversation, WB#2 again asked "is there any way for the whole situation to be investigated?" WB#2 further stated, "it didn't make sense to me why [redacted] [[Former OB Director]] was forcing me to stay there after all and now that I know what the response is, it's like you have got to be kidding me. I don't know, I don't know how I can request that the whole thing be investigated." [EEO Director] stated that a judge can look the dismissed claims, determine that EO should have investigated them and can remand it back to the formal process. It would go back to the formal process where IRD would do an investigation of those claims. [EEO Director] also said that a judge could say the claims were untimely, disciplinary action was taken that resolves the issue, and there was no behavior after that. [EEO Director] stated, "I don't know that's where I think it might go. Bottom line is that this process as far as the EO process these are [dismissed claims] are set aside on hold" until we process the accepted claims.

Later in the meeting, WB#2 again raised the question of changing the contact date. "Can we go back and show that July was my initial contact and I was facing retribution all the way until April?" [EEO Director] again stated, "I can't go back and change. I know you made those contacts but you made a contact and chose not to file and you had 45 days from that contact, so every time you make contact, it starts that 45 day contact...you should have just filed that first time...but I don't even know if that first time you went was within that 45 days."

[EEO Director] and WB#2 also discussed the RPA claim. WB#2 stated that [Former OB Director] was supposed to be [redacted] supervisor (and presumably do the appraisal) but it was never changed in the system. [EEO Director] indicated that, "according to [Former OB Director], SMHP's responsibility to initiate the RPA to transfer you to them -- It wasn't [redacted] responsibility so [redacted] couldn't be retaliating against you because that wasn't [redacted] responsibility. It's not an adverse action to not accomplish an RPA." [EEO Director] also said, "I am not understanding here other than it wasn't [Former OB Director]

responsibility.” Much of this part of the recording is inaudible but **EEO Director** did leave the room at one point to look for an RPA from October 2016.

At some point WB#2 stated **█** felt [Former OB Director] “abused **█** power when **█** was telling me you don’t have anybody to talk to.” **EEO Director** talked about assault, indicating that’s not the EO office and that WB#2 “could have just [g]one to Security Forces.” WB#2 responded, “I did go to them.” **EEO Director** asked, “they didn’t do anything?” to which WB#2 replied, “they filed a report.” **EEO Director** also asked, “there was never a no contact order?” WB#2 stated, “There was. That was in June -- to me it’s common sense that if you have to give a no contact order that these people should not be in the same office together.” **EEO Director** stated, “sometimes they move people and sometimes they have them in the same area.... I can’t argue on that or have an opinion on that you know she’s the director, **█** has the authority ...” WB#2 interjected, “I told them I didn’t want to...” **EEO Director** again stated, “you could have filed for that event in September” to which WB#2 responded, “You said only the chair incident.”

**EEO Director** admitted that stating, “right, that’s accurate, you could have filed for the retaliation issue because you are saying **█** retaliated against you because you went to, it still would have gone through the same process and those claims would have been dismissed. The retaliation claim if it was current, if it was in the 45 days, it might have been accepted but still the sexual harassment thing because they weren’t timely they still would have ... I know the way it looks as far as due process or whatever, you claimed that you were uncomfortable and **█** behaved...we can’t say that you were sexually harassed; we don’t have the authority to say that, the only person who can say that is the judge, they are the only ones that can...”

WB#2 asked, “So when the judge gets everything, **█** will see the whole thing or just the one claim?” **EEO Director** responded, “They’ll see the entire because your appeal, at the end, they will pull all the appeal things together and say ok. I mean if you file the appeal, then they look at all the claims that were dismissed. It doesn’t happen very quickly though... I know this is really affecting... and so just be prepared for that... I mean it could be a couple of years it could be a year, could be two years.” WB#2 asked if **█** was at another assignment could **█** still pursue the matter. **EEO Director** responded, “Yes, it stays here [the claim] -- It stays in the process and we’ll still track it. You just have to make sure you update us with your address.”

**EEO Director** then asked WB#2, “on that one claim how do you want to have it addressed, just through the investigative process where the investigators they contact people related to that claim, whether it be labor, management, -- or mediation?” WB#2 responded, “I guess the first one, I don’t know whatever can be the quickest.” **EEO Director** stated,

The only thing with mediation, mediation is fast, it’s probably the fastest. Management can decide whether they want to send someone...inaudible ... My concern is that particular claim would be easily resolved. They would probably want to do a global settlement and then there is no appeal. With the investigator it might be the same thing, they would say this is really simple this could be resolved in a rapid way, management could get the RPA straightened out in whatever series you are supposed to be in, if they say they can do it then, it’s basically resolved at that point and typically do to resolve the whole complaint as a whole.

WB#2 stated that [REDACTED] incident will never be known and mentions “all five of us.” EEO Director responded, “You say there is 5 women?” WB#2 then talked about other incidents with other women of sexual harassment involving [Former Chief of ALC/OB], saying they tried to bring it forward and nothing really happened.

EEO Director again returns to the question of how to proceed, “I guess the bottom line what I need to know now is how you want to address this claim, investigation or mediation?” WB#2 responded, “Whatever is quicker.” EEO Director stated, “Probably mediation is the fastest but I am just concerned that, like I said, with mediation if they try to resolve ...” WB#2 again asked, “Can I get them to look at the whole case?” EEO Director replied, “They can do whatever they want in mediation but they typically look for resolution of the claim; what can they do to close that complaint, resolve that whole complaint... what could happen in the investigative process this could be a very simple claim this could be resolved very easily. I mean I think I could probably get it resolved before it even went to investigation you know I can talk with leadership and ...”

WB#2 indicated that “They [leadership] reached out to me and now [Former Vice Director ALC] knows more of what happened, I know before I wasn’t willing to meet with [REDACTED] just because...but now that she’s open to another side of the story and listening to my side of the story.” EEO Director stated, “you wouldn’t be able to bring up this other stuff in mediation.” WB#2 stated, “I don’t know maybe I can set up an appointment with [REDACTED] if [REDACTED] [[Former Vice Director ALC]] wants to.” EEO Director replied, “I can’t tell you you can’t go talk to [REDACTED] that’s your decision and it’s [REDACTED] decision whether to, and [REDACTED] might say well I don’t want to talk about stuff that’s in the process... [REDACTED] might say let it work through the EO process.” WB#2 indicated, “So I guess I’ll do the mediation thing.”

There was some discussion of WB#2 wanting [Former OB Director] to go to the JAG which [REDACTED] believed did not happen. EEO Director indicated, “I know in that email from [Attorney #2] [REDACTED] explains that as a director if [REDACTED] feels like [REDACTED] has enough information to make a decision [REDACTED] doesn’t have to do that [conduct an investigation] I know.” There is some mention of about a conflict of interest but the tape is not clear. EEO Director responded, “I can’t comment on that. That’s [REDACTED] right as the director, [REDACTED] has that authority.”

EEO Director responded to a question from WB#2 regarding whether [REDACTED] could appeal [REDACTED] case even if [REDACTED] was at another base. EEO Director stated, “I think you initially elected for the CORE process” to which WB#2 responded, “Only because I heard that process is quicker than the regular formal EO complaint process.”

EEO Director stated, “You have that mediation option in the traditional and that’s the first part of the CORE also. We can stay with your election for the core process -- the only difference is when you are done with mediation if there is no resolution, then it automatically goes in to what they call a fact-finding conference and they send another individual; if you go through the fact-finding, that individual, I don’t know what their title is that individual has the authority to settle it and then... let me read up on that because it’s something new in our office you are the first person who has elected the CORE process; it’s a brand new option so we are all still trying to learn it; let me read up on that, did [REDACTED] give you the documentation on that and everything it kind of explains; let me make sure you are getting accurate information so you can make that decision so you understand it completely.

WB#2 stated, "It was confusing, all the letters for my rights." EEO Director responded, "oh for the informal process, yeah it's a lot of information." WB#2 asks "if [REDACTED] can do it now" – presumably appeal [REDACTED] case. EEO Director stated, "You got to work it through the process EEOC if they haven't even seen, if has to go through IRD, AFCARO, if they don't see that it's gone through that process, they would just tell you, you have to wait for the adjudication of the accepted claim first...it explains that in the appeals letter in those last 2 or 3 pages.

WB#2 stated, "I still want to show this to [Former Vice Director ALC] today..." EEO Director replied, "I can't tell you what to do, I don't know if [REDACTED] will want to, if it's stuff related to the EO process; I think she'll say, that's EO."

WB#2 talked about a potential move for [REDACTED] and [REDACTED] husband. WB#2 returns to the EEO process. "I know there's a process but I don't think the 45 day thing is fair. If there is an illegal act it should always be an illegal act but I know there's things...people pop up out of the woodwork, you don't know." EEO Director responded, "I mean there has to be guidelines otherwise we would just be you taking whatever here and there. You'll see EEOC has very strict guidelines and the 45 days is very specific otherwise." WB#2 stated, "If I reported it within the 45 days, is that not enough. [Prior EO Director #1] did put that in there, that there was sexual undertones in the text messages 'I love you to death...' This and [Former OB Director] abused [REDACTED] authority by telling me to be quiet and not doing anything about it; I would hope those two incidents would allow it to get through."

EEO Director stated, "Well you will be able to appeal it and judge will look at all the information everything that's in the case file and then make a decision whether to remand it back; that just kind of like starts the process over again; now you have to look at all those claims that were dismissed and it goes back through that formal process again."

WB#2 talked about how [REDACTED] used to be in the military and it seems people get away with more in the civilian side – [REDACTED] gave an example of when [REDACTED] was deployed to Kuwait and a military member got kicked out for something minor. [REDACTED] wants the sexual harassment in [Former Chief of ALC/OB]' record. EEO Director asked where did you find out about the [Former Chief of ALC/OB]' "disciplinary action." WB#2 replied, "It was in the counselor's report that [REDACTED] got a verbal and that's fine but why did [REDACTED] still put me to work with him after the fact."

EEO Director then asked WB#2, "I thought you never worked for him [[Former Chief of ALC/OB]], I thought you never actually made the move under [Former Chief of ALC/OB]." WB#2 responded, "No, I did from June until September. [Former OB Director] said they were going to be doing an investigation and I called [REDACTED] leadership over there...they put him in supervisory position over other women that were sexually harassed. So I called over there and I talked to [inaudible]. I said, I don't know what's going on but why would you do this? [REDACTED] had already been in [REDACTED] chain of command twice [REDACTED] had already been sexually harassed by him twice, what's going on? [REDACTED] said it was a long story and that [REDACTED] can't discuss it the reasons why he'd been returned to duty. It gets even more worse, after [REDACTED] moved over there was someone else who complained and they said to [REDACTED] they were going to move [REDACTED] since [REDACTED] was the one who felt uncomfortable...[inaudible]."

At the end of the meeting, EEO Director indicated, "I am just going to submit to IRD in the CORE process and the next thing that will happen is they are going to assign a mediator that will make

contact with us to set up a mediation and we will contact management for a representative so we will have some dates; the mediator will fly in; that will be the first step for the first part of the core process; I will do some reading up on the CORE process too and make sure the only thing that I am concerned about is they come out here and mediate and resolve that claim...I don't know where the appeal process falls into that...that fact-finding which is the second piece of the CORE process can make a decision and determine there's only one claim. Let me do some research." At the end, WB#2 picks up ■ bag and there is no further audible conversation.

On May 31, 2017, WB#2 emailed EEO Director about their meeting the day before. WB #2 reiterated ■ disagreement with EEO Director determination on which allegations were accepted and dismissed. ■ again went through the procedural history of ■ case, arguing that the allegations of sexual harassment and retaliation should be accepted and that ■ was discouraged from filing. ■ also attached to the email seven allegations that were not accepted and sent to IRD. WB#2's email stated as follows:

I wanted to touch base after we met yesterday. I still disagree on the dates of reporting and what allegations were accepted for investigation. I first reported sexual harassment, stalking, and sexual messages that [Former Chief of ALC/OB] had sent me to [Prior EO Director #1] on or around 6 July 2016 (attached). [Prior EO Director #1], [ALC Program Manager], and I discussed the stalking, sexual behavior, and the sexual messages that [Former Chief of ALC/OB] sent me. At that time [Former OB Director] was conducting (a dishonest and biased- determined by ■ responses in the Informal EEO Counselor's Report) investigation, and decided to force me to move from ■ office (OO-ALC/OB) for a "promotional move" to leave the 0343 series, and move to the 1101 series on a pot GS-11 to work for [Former Chief of ALC/OB] in OO-ALC/OBC) after ■ had sexually harassed and stalked me, and after I requested to move to OBM (several times), and also requested to forgo the offered promotion and series change (which never happened) because I did not want to work for [Former Chief of ALC/OB]. Former OB Director dishonesty is highlighted on both the attached email and again on the informal counselor's report (attached). Per AFI 36-2706, I was within the 45 day time limit as the last incident I had from [Former Chief of ALC/OB] for the sexual harassment, and stalking (occurred on or around 31 May 2016 was the last interaction for this reporting from [Former Chief of ALC/OB] for the sexual harassment portion). The end of the 45 days would have been on or around 25 July 2016. I was in my time limits when I reported to [Prior EO Director #1] on or around 6 July 2016. [Prior EO Director #1] stated that if I went through any type of reprisal, retribution, or retaliation to ensure to come back to the EO office and file on everything that had occurred. \*\*[Prior EO Director #1]'s comment (attached), "The EO Director informed [WB#2] that ■ never waives a future EEO right and that ■ has the right to file an EEO complaint whenever ■ feels ■ has been subjected to discrimination/reprisal." Most recent is this last April 2017. On or around 2 September 2016, [Former Chief of ALC/OB] slammed a chair into my desk partition; the chair came within inches of me. This time I met with you on or around 13 September 2016 (attached) and reported again the stalking, sexual behavior, and the sexual messages [Former Chief of ALC/OB] sent me previously, and also [Former OB Director] forcing me to work for him in a hostile work environment, and now for [Former Chief of ALC/OB] slamming a chair into my desk (retaliation, retribution, and reprisal). I requested to file for retribution, reprisal,

and retaliation and to include the sexual harassment, stalking. You stated that you would not tie in or include the sexual harassment and now retribution, retaliation, and reprisal, and said that I could only file the chair incident alone, and stated “filing a complaint on the chair being slammed into your desk alone would not hold weight or go anywhere.” I feel like you pushed me away with that statement which goes against §1614.105 Pre-complaint processing (g), highlighted below. Moreover, I should have been able to file the complaint on the entire issue of stalking, sexual harassment, sexual messages, hostile work environment, retribution, reprisal, and retaliation. On 13 September, I was still within the 45 date range. When you stated I could only file on the chair incident alone and not file for discrimination/reprisal, it was not right according to [Prior EO Director #1]’s initial statement on the attached. As stated in §1614.105 (1) I reported my issues timely, on or around 30 January, per AFI 36-2706 I contacted your office with my intent to file, and filed my informal complaint within the time limit. Moreover, my last allegation is dated in April 2017, meaning that I should still be able to file on the entirety of this complaint. I am requesting your assistance to fix the errors that have been submitted to the IDR/judge, and would like to again request the dates on the informal EEO Counselor’s Report be corrected, and all other files submitted. I know you stated I could not appeal what allegations were to be investigated because the information/package had already been sent off, but I would again like to request an update to the report that was sent to the IDR/judge (or the current step in the CORE process). I also want to ensure that the seven allegations that were not submitted from my formal complaint is given to the IDR judge and remain throughout the entire process. Missing allegations are attached.<sup>53</sup>

WB#2 then cited to provisions from AFI 36-2706 (¶¶ 4.2, & 4.5.1.4) and EEOC regulations (§1614.105(1) & (g)). █████ ended the e-mail stating, “I stated my intent on or around **30 January 2017 after the AFSC IG spoke to you about filing the EO complaint for sexual harassment, stalking, retribution, reprisal, and retaliation. I filed within the 30 day time limit.**” (Bold in original).

The IO asked WB #2 about █████ understanding of the 45 day rule and █████ stated: “To me, and even when I read it now, I’m not 100 percent sure, but the way I perceive it, I guess, is if you report something to EO within 45 days, you met the mark, I guess.”

[ALC Program Manager] testified that █████ was “talking to [WB#2] about all of this throughout all of this [during the February-March 2017 timeframe] the whole time, even now.” █████ stated █████ “actually told [WB#2] [to file a formal complaint.] I said, [WB#2] I would go formal if I were you.” [ALC Program Manager] testified that [WB#2] discussed █████ frustration with **EEO Director** when the EO did not accept █████ sexual harassment claims. “I just remember █████ [WB#2] was very frustrated with **EEO Director** because █████ just felt that **EEO Director** was trying, it’s like, I think █████ almost said that █████ felt like somebody above **EEO Director** is telling **EEO Director** to try to get [WB#2] to stop everything. ... I think █████ even told me this a couple of times that █████ felt **EEO Director** was not doing █████ job. █████ was not taking █████ allegations seriously.”

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<sup>53</sup> In █████ attachment to the email, WB#2 set out seven allegations that █████ asserted were missing. All seven are included in the list of 39 claims in the Notice of Partial Acceptance which were dismissed by **EEO Director**

[Witness #3]<sup>54</sup> also testified that WB#2 told █████ about the sexual harassment “and nobody did anything.” █████ stated,

I guess just from █████ side of it, but I kind of witnessed some things too. I know █████ turned things in. I know █████ left our office several times to go turn things in and I know there were several frustrating emails and things that █████ would get back and they would decline █████ They [EO] would decline to take █████ case. ...And there were a few different emails that █████ had wrote back and had me proofread and help █████ with: Does it sound okay? Am I saying what I want to say here? So I did read a few of █████ emails back to them and I read a few emails. So I had seen they kept pushing █████ off. ... There were a couple of reasons. They would tell █████ that timeline was too far. They would tell █████ that █████ didn't report it to the right people, that there was one time where they told █████ that █████ reported it to, I guess, █████ supervisor and they had taken care of it. They gave █████ a lot of excuses, in my opinion.

[Witness #3] identified the “they” as **EEO Director** and [EO Specialist #4] “that really gave █████ a hard time.” █████ also stated that WB#2 “met directly with [Former Vice Director ALC] in the building next to us, and nothing happened from that either.”

### *Settlement*

In early June 2017, [WB#2] requested a meeting with [Former Vice Director ALC] to discuss joint reassignment with █████ husband, a master sergeant in the Air Force, who was due to PCS upon █████ return home. WB#2 learned from [ALC Program Manager] that during a conversation that [ALC Program Manager] had with [Former Vice Director ALC], [Former Vice Director ALC] expressed concerns with engaging WB#2 in light of the pending EEO allegations and was reluctant to meet with WB#2 because of █████ concern that █████ had been named as a RMO in the EEO complaint.

WB#3 testified █████ spoke to WB#2 a few days before █████ met with [Former Vice Director ALC]. WB#3 stated that WB#2 told █████ and other co-workers that [Former Vice Director ALC] refused to meet with █████ about a reassignment to be with █████ husband and to move to a different location until WB#2 removed [Former Vice Director ALC]' name from █████ complaint. WB#3 told WB#2 that [Former Vice Director ALC] is “blackmailing you to take or remove █████ name.” WB#3 then stated [Witness #3] and [Witness #4]<sup>55</sup>, both 309 SMXG, spoke together with WB#2 and █████ informed them that “[Former Vice Director ALC] said that █████ would help us get an assignment but █████ wouldn't meet with me unless I took █████ and the General's names off my complaint.”

WB#3 testified that

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<sup>54</sup> [Witness #3] worked in contracts as the acquisition team lead in the 309<sup>th</sup> Software Maintenance Group (MXDSR) as a NH-03 (GS-13 equivalent). █████ has been a civil servant since 2009 and had always worked at Hill AFB. [Witness #3] testified that WB#2 worked for █████ when WB#2 moved to █████ in the fall of 2016.

<sup>55</sup>At the time of █████ interview, [Witness #4] was a GS-12 with the 309<sup>th</sup> Software Maintenance Group (SMXG) in the Acquisition Support Office. █████ has been a civilian with the Air Force for fifteen years.

[ALC Program Manager], I think did the dirty work for [Former Vice Director ALC]. And I think [REDACTED] was, and I don't know how else to say it, [REDACTED] did, [REDACTED] was trying to keep things and put it under the carpet and limit those discussions.

...

[ALC Program Manager] was making phone calls saying, [Former Vice Director ALC] is a good person, you know. You need to take Ms. Field's name off. And [Former Vice Director ALC] wouldn't do anything to hurt anybody. [Former Vice Director ALC] is this, you know, you need to take the General's and [Former Vice Director ALC]' name[s] off. ... [WB#2] told me of these conversations and [REDACTED] told me in front of [Witness #3] and [Witness #4], were both there.

...

So [Witness #4] can tell you to going-ons where [ALC Program Manager] kept calling [WB#2] and trying to get [REDACTED] to remove [Former Vice Director ALC]' name from the investigation. They wouldn't see [Former Vice Director ALC] would, told [WB#2] [REDACTED] couldn't see [REDACTED] as long as [REDACTED] name was in the investigation.

[Witness #3] stated that [REDACTED] heard this information from both WB#2 and [ALC Program Manager]. [REDACTED] testified:

I know when [REDACTED] [WB#2] told me that [REDACTED] didn't know what to do, I told [REDACTED] I wouldn't remove [REDACTED] [[Former Vice Director ALC]] name. [REDACTED] came and asked us what we thought, a couple of the girls in the office. We all thought [REDACTED] shouldn't, because we all knew that [REDACTED] had met with [Former Vice Director ALC] [at Runway Ruby's], and [Former Vice Director ALC] told all those girls that [REDACTED] was going to take care of it...So, I felt like it was -- wasn't fair to take [REDACTED] off of [REDACTED] complaint because [REDACTED] was very aware and [REDACTED] knew. And [WB#2] kind of felt like, well, maybe [REDACTED] didn't know everything because some of it didn't go directly to [REDACTED] And several of us reminded [REDACTED] [WB#2], you talked to [REDACTED] face-to-face at Runway Ruby's. We advised [REDACTED] we wouldn't do it...So I knew why [REDACTED] did and I knew that there were probably some unanswered things that [REDACTED] probably did want to talk to [Former Vice Director ALC] over. And so [REDACTED] decided to take [REDACTED] off. I do know that after [REDACTED] did that and [REDACTED] got the orders, I know [Former Vice Director ALC] had stopped in and seen [REDACTED] a few times.

[ALC Program Manager] testified,

I remember [WB#2] wanted me, or [REDACTED] either emailed or requested to meet with [Former Vice Director ALC]. And I remember [Former Vice Director ALC] was like, I've got to be careful. I don't think it's a good idea because of the fact that she's got this complaint against me now. And I don't want to cross, it was basically, I don't want to get myself in trouble by doing something that's not appropriate.

The IO asked [ALC Program Manager] whether [Former Vice Director ALC] asked [REDACTED] to talk with [WB#2] about it. [ALC Program Manager] responded,

█ [[Former Vice Director ALC]] didn't ask me. I think I just did it. But [Former Vice Director ALC] never – [WB#2] was, I think, under the impression that [Former Vice Director ALC] was basically ignoring everything, and that █ was only, that █ was basically listening to [Former OB Director]. And that wasn't true. I told [WB#2], I was like, no, [Former Vice Director ALC] is actually on your side, [WB#2]. █ just, █ can't just tell you that, though. █ can't just say, hey, I believe you. I believe the allegations. And then when I shared some information with [WB#2], █ was just like – and I forget exactly what all, what it entailed but I remember [WB#2] feeling a lot better about [Former Vice Director ALC], when I did tell █ [Former Vice Director ALC] wants to do something but basically █ hands are tied. ... then [WB#2] said, you know, [ALC Program Manager], I've thought a lot about this and I've decided to take [Former Vice Director ALC]' name out of it. And it was because of the fact that █ felt that [Former Vice Director ALC] wanted to do it, but was being told that █ couldn't do anything with it.

[ALC Program Manager] was asked by the IO if [Former Vice Director ALC] asked █ to speak with WB#2 about taking █ off the complaint and [ALC Program Manager] replied, "No, Gosh, no ... [Former Vice Director ALC] never, ever asked. █ never, █ would never do that." [ALC Program Manager] testified that it was █ perception that "somebody up the chain of command didn't want [Former Vice Director ALC] to take action against [Former Chief of ALC/OB]."

WB#2 testified that █ and WB#3

did go back and forth about removing [Former Vice Director ALC]. I told █ my explanation why, and █ was like, oh, that's total crap and you know it, you know, kind of thing. And I alleviated to – well I told █ that basically, when it comes down to it, as far as I know, the EO office is giving [Former Vice Director ALC] to me as the only person I can basically mediate with. So I said, with knowing that and not knowing what all [Former Vice Director ALC] knew, I said, that is what I'm basing off taking █ out of my complaint.

WB#2 also testified that "based off of what [ALC Program Manager] said, I did feel bad for having [Former Vice Director ALC] in my complaint. And I did ask to have █ removed from it."

WB#3 also testified:

WB#3. ... And many of us were victims of [Former Vice Director ALC] trying to keep things hidden and protect herself and the boss [Brig [Former Commander ALC #1]]. And I know, I know why █ did what █ did. █ had [ALC Program Manager] make phone calls and encourage [WB#2] to come to the table and remove █ name and the General's name, who were both very clearly on █ initial EEO complaint, and [Former Vice Director ALC]' herself, mediated [WB#2]'s complaint. You got to be kidding me...

IO. Do you see a problem with that?

WB#3. Yes, sir, there's no –

IO. Why?

WB#3. – integrity at all in the system. And it made me lose faith that we could do the right things, integrity first, service first and excellence in all do you. They break people of their pride and their hope, their dignity.

WB#3 stated that WB#2 met with [Former Vice Director ALC]. “I know what day it was. It was June 19<sup>th</sup>, that [WB#2] met with [Former Vice Director ALC]. It was the day before I was relieved.” WB#3 testified, “that's why [WB#2] was really upset. Is that nothing was happening and that they were taking care of [[Former Chief of ALC/OB]] – and one of the things [WB#2] was really upset about was [WB#2] had gone back to be supervising the girl that had a baby that [WB#2] had been harassing before, and [WB#2] was thinking about leaving government service.”

WB#3 testified that [WB#2] talked with [WB#2] at the time [WB#2] went to EEO in February 2017.

[WB#2] did. [WB#2] told me everything that [WB#2] was, when [WB#2] was doing things. I knew what, I knew what [WB#2] was doing. Yes, [WB#2] told me. And one thing that [WB#2] was hesitant about was that [WB#2] said [Former OB Director] had been very good to [WB#2] and that [WB#2] had even bought [WB#2] a Christmas gift at Christmas and that [WB#2] really cared about [WB#2] and [WB#2] was hurt, [WB#2] was hurt by the fact that [WB#2] [[Former OB Director]] didn't do anything. And I remember [WB#2] telling me that if [Former OB Director] felt that [WB#2] was forced to do things, that [WB#2] didn't want [Former OB Director] held accountable. And I distinctly remember that because I think that [WB#2] wrestled with that. And another thing you need to know is everybody's afraid of [Former Vice Director ALC] at that time. ...

When asked about how Brig [Former Commander ALC #1] handled [WB#2]'s allegations, WB#3 stated,

[Former Commander ALC #1] didn't do anything about anything. [WB#2] delegated everything to [Former Vice Director ALC]. [WB#2] trusted [WB#2] to do everything. [WB#2] just let it go. [WB#2] was the Commander, [WB#2] was our boss. [WB#2] was the one that was supposed to be protecting us. [WB#2] was supposed to make sure, there's some kind of check and balance, that things were done right. I'll never forgive him for what's he's done. That's how I feel about [Former Commander ALC #1]. There's a lack of leadership. He's a General Officer in our United States Air Force, and [WB#2] did nothing. That's how I feel about [Former Commander ALC #1].

**EEO Director** testified that WB#2 sent the email stating [REDACTED] wanted [Former Vice Director ALC]' name removed. [REDACTED] testified, "I don't know have any idea why [REDACTED] asked for [[Former Vice Director ALC]] to be removed." "But [REDACTED] [[Former Vice Director ALC]] wasn't named on the claim." According to **EEO Director** after [REDACTED] acceptance and dismissal determination, because the only remaining claim accepted did not include [Former Vice Director ALC] as an RMO, [Former Vice Director ALC] was no longer an RMO at that point. **EEO Director** testified that [REDACTED] had "no knowledge" of WB#2's request to meet with [Former Vice Director ALC] to discuss [REDACTED] reassignment because of [REDACTED] husband's active duty and return from deployment. [REDACTED] also indicated that [REDACTED] was not aware and had nothing to do with [Former Vice Director ALC]' reported refusal to meet with WB#2 unless WB#2 removed [Former Vice Director ALC]' name from the complaint.

On June 13, 2017 at 8:26 AM, [EO Specialist #2] emailed [Former OB Director] and [Former Vice Director ALC], providing "official notification that a civilian employee within your organization, [WB#2], has filed a formal EEO complaint of discrimination docket #8L1M17010, alleging that [REDACTED] was subjected to a continuous pattern of a hostile work environment based on reprisal." The email set out WB#2's "framed claims/issues that have been accepted are as follows:"

Whether or not the complainant was allegedly discriminated against on the basis of Reprisal (Management notification of Sexual Harassment issues) and a continuous pattern of hostile work environment when, on or about, 27 April 2017, complaint discovered there was never an RPA move done in the system, complicating things further as [REDACTED] appraisal and position was still with [Former OB Director]. There should have been an RPA move from [Former OB Director] to OBC (May/June 2016) and then again from OBC to [REDACTED] (September 2016). Complainant has not worked for management ([Former OB Director]) for 11 months, and has worked out of [REDACTED] old position description for almost a year. According to the Employee handbook, this is not allowed after 28 days.

[EO Specialist #2]'s email then informed [Former Vice Director ALC] and [Former OB Director] that [WB#2] has elected the "Compressed, Orderly, Rapid, Equitable (CORE) Process in lieu of the traditional process, that the first stage sets aside a separate 30-day period for mediation, and that a mediator has been assigned who "is requesting management's availability to attend mediation soon after the July 4<sup>th</sup> holiday." [EO Specialist #2] requested that [Former Vice Director ALC] and [Former OB Director] "let me know by COB 15 June 2016 what dates management would be available to attend mediation and who the management official that will (sic) that will attend."

At 10:23 AM on June 13, 2017, [Former Vice Director ALC] responded to [EO Specialist #2]'s email, including [Former OB Director] on the email. The text of the email, addressed to "[EO Specialist #2]," stated "I am available – I will be the management official. Vr [Former Vice Director ALC]."

On June 13, 2017 at 4:16 p.m., WB#2 emailed **EEO Director**<sup>56</sup> as well as [EO Specialist #2], [EO Specialist #4] and [EO Specialist #6] regarding [REDACTED] Formal Complaint. The email stated as follows:

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<sup>56</sup>On April 17, 2018, **EEO Director** forwarded WB#2's email to [Attorney #2] in the legal office stating, "this is the email I have where [WB#2] requested that [Former Vice Director ALC] be removed from [REDACTED] complaint."

Sorry, I am not sure who to contact if [EO Specialist #4] has PCS'd already. Can [Former Vice Director ALC] please be removed from my formal complaint I submitted, and just keep [Former OB Director] and [Former Chief of ALC/OB]? I have the docket number if that helps? Please let me know. Thank you!

WB#2 testified that [REDACTED] had included [Former Vice Director ALC] in [REDACTED] formal complaint because “[Former Vice Director ALC] was aware – I didn’t know how aware of the situation [REDACTED] was, but I think that [REDACTED] had enough that I would hope, authority-wise, to do something or take action against, you know, [Former Chief of ALC/OB].” WB#2 explained,

And I think that when [Former Vice Director ALC] read through my information, that there was enough there for [REDACTED] to hopefully would have stepped in a lot sooner and actually done something. Or at least asked me, do you really want to work for [Former Chief of ALC/OB]? Because I found out from [ALC Program Manager] that [Former Vice Director ALC] had stated that [Former OB Director] told [Former Vice Director ALC] that I wanted to work for [Former Chief of ALC/OB]. And to me, that – I would think, as a senior leader, that that would be a red flag, especially since [Former Vice Director ALC] know about [REDACTED] history prior to him being there. I guess, -- I would have hoped that [REDACTED] would have reached out to me and said, you know [WB#2], do you really want to work for him? Or should we move you or – you know, come up with something else.

According to the IO, leading up to the mediation, WB#2 had expressed concern to [EEO Director] that [Former Vice Director ALC] was designated as management’s representative. During [REDACTED] interview, WB#2 testified:

IO. Okay. In the -- in your testimony dated 22 August '17 for the CDI [AFSC/CC]<sup>57</sup>, you stated that you told [EEO Director] it was not appropriate for [Former Vice Director ALC] to represent the government in mediation because [REDACTED] had been named in the complaint and was a conflict of interest.

WB#2. That I -- well –

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<sup>57</sup> On August 22, 2017, WB#2 was interviewed for a Commander Directed Investigation (CDI) into misconduct including abuse of authority, unprofessional relationships, improper inquiry techniques, fostering an environment of sexual harassment, and improper hiring practices. Based on [REDACTED] CDI testimony, WB#2 continued to have concerns on whether [Former Vice Director ALC] should have been the settlement authority for [REDACTED] EO formal mediation. The CDI investigating officer summarized WB#2’s testimony as follows:

[WB#2] stated [REDACTED] told the EEO Director, [EEO Director] [REDACTED] did not feel that was appropriate having mediation with [Former Vice Director ALC], as [Former Vice Director ALC] was listed in the complaint. [EEO Director] stated that [Former Vice Director ALC] was the only option to attend the mediation. [WB#2] stated [REDACTED] believed this could have been a conflict of interest since [Former Vice Director ALC] was listed in the complaint. [WB#2] stated, [REDACTED] later removed [Former Vice Director ALC] from the complaint due to [REDACTED] not having full knowledge of the entire situation. [WB#2] requested [EO] remove [Former Vice Director ALC] from [REDACTED] complaint on or around 13 June 17. [WB#2] stated [REDACTED] complaint later went to mediation and the [Former Vice Director ALC] was assigned to mediate.

IO. That it was a conflict. And **EEO Director** allegedly told [REDACTED] [Former Vice Director ALC] was the only option -- or told you that [Former Vice Director ALC] was the only option.

WB#2. Yeah. That's correct.

In [REDACTED] testimony on January 10, 2019, WB#2 explained what happened during mediation:

And I even said in front of the mediator [from the Air Force Personnel Center (AFPC)] that the [Former Vice Director ALC] was in my complaint and I didn't really want to mediate with [REDACTED] but I said if that's all I have to mediate with, then I will. But I said I would definitely take [Former Vice Director ALC] over [Former OB Director]. And both me and [Personal Representative #1] were blown away because I think it was the mediator that said that both [Former OB Director] and [Former Vice Director ALC] were sent that email requesting one of them come to the mediation.

The IO asked WB#2 "so it was your decision to remove [[Former Vice Director ALC]] from the complaint?" WB#2 responded, "That's correct." WB#2 went on to say that [REDACTED] had not discussed the removal of [Former Vice Director ALC] with **EEO Director** or anyone else in the EO office prior to submitting [REDACTED] email requesting to remove [Former Vice Director ALC].

**EEO Director** was asked for [REDACTED] responsibilities in determining if there might be a conflict of interest with an RMO serving as the settlement authority. **EEO Director** stated, "I'd have to go back and read that. I don't know what it specifically says. I'd be just trying to -- and [EO Specialist #5] is the ADR Program Manager." **EEO Director** also testified regarding any RMOs named in prior complaints serving as the settlement authorities. [REDACTED] stated:

I think it would depend on, maybe, what the remedies -- if they want that person fired, it probably wouldn't be appropriate, but if that person can move -- if they want to be moved and that person can make that happen, then it could be appropriate.

[REDACTED] further testified regarding choosing someone for mediation:

Because you want somebody to come to mediation that doesn't have, you know, any biases about a particular situation or whatever, so they -- you know, actually please say, well, I can't come because I don't know anything about it. That's typically a good candidate, if you come without, you know, having any kind of biases or whatever that might sway you one way or the other. But also, it's, I guess, good to have some knowledge so you can determine what decision to make.

During the IG Investigation, the IO asked [EO Specialist #5] if it was typical for someone named in the complaint to serve as the settlement authority. [EO Specialist #5] responded:

I would say no, but every ADR gets JA's concurrence, I send them the intake and what the case is, because it's still in the informal stages. In the formal stages they've got the whole case and they agree that it's suitable for ADR. And many times they'll come back and say if this person is the settlement authority then we don't concur. If this person is --

in other words it is they'll only tell me they will concur if there's a certain person that was in this, was the settlement authority.

When asked what ■ knew of WB#2's complaint, [EO Specialist #5] stated,

very little actually ... As the ADR manager I try to stay out of other cases because then I can become biased, like, on the case. And so I really do try to stay out except my own cases, and I don't mediate my own cases. So as the ADR manager I really try to keep myself unbiased and so I don't want to know much information." When asked if ■ was aware the [Former Vice Director ALC] had been removed as an RMO from WB#2's complaint, ■ stated, "I wasn't aware of that ... I didn't know that because I don't ... because then I don't get the whole thing ... The only thing that's supposed to be mediated is the accepted claims.

In regards to mediation, [EEO Director] discussed how legal is involved in reviewing the package before it goes to mediation:

Legal reviews who's coming, and they – because we have to send the intake doc[ument] to them for mediation and they determine if it's appropriate for mediation. And they would, you know, have a conversation with us about it if they didn't think that is was appropriate that management's – whoever management designated to be their representative at the ADR is not appropriate, then they would probably bring that to our attention.

[Attorney #1], the 75 ABW attorney that handled legal responsibilities with regard to the settlement testified ■ was unaware that [Former Vice Director ALC] had been an RMO in the complaint when ■ was advising ■ on the settlement. ■ testified that ■ received a call from [Former Vice Director ALC] or the EO office and they requested an immediate meeting in the EO conference room to discuss the ADR that was occurring with WB#2. ■ further stated ■ did not know the "particulars of the case [sic] I didn't know anything about [this case] really." [Attorney #1] indicated ■ was informed by [EO Specialist #5] the morning of the mediation that [Former Vice Director ALC] would be the settlement authority. When asked if it would cause him any concern that [Former Vice Director ALC] was initially named in the complaint and acted as settlement authority, [Attorney #1] stated, "That's actually not untypical. That's actually, normally the person who they want to come to the mediation ... except for the harasser ... But to the extent that if ■ had been the RMO and ■ came to the mediation, that wouldn't have been untypical. That would have been the normal practice." [Attorney #1] testified that another attorney, [Attorney #3], was assigned to WB#2's case and ■ or another attorney would have reviewed the acceptance/dismissal memo. [Attorney #1] could not recall if ■ reviewed the acceptance/dismissal memo.

When asked what would constitute a conflict of interest, [Attorney #1] stated,

So I've been doing EEO cases for about 15 years ... And in that 15 years, primarily the one thing that may cause me to not use a manager is if it is an allegation of harassment where the allegation is some serious allegations about the supervisor, for instance, sexual harassment. That would be an example where I would not want that manager to

be involved in the settlement negotiations and I would loop in someone else on that. Other than that, the primary issue for me is just making sure that whoever is involved in settlement has authority from whoever they need to get it from in order to settle.

[Attorney #2] testified that ■ was “not aware of any written delegation [delegating settlement authority from Brig [Former Commander ALC #1] to [Former Vice Director ALC]] or specific policy about that.” [Attorney #2] was also asked if ■ had any concerns with command decisions on settlement authorities in the past. ■ stated, “none that I’ve been involved in or that I’m aware of ... I think the concern was more the settlement amount [for WB#2] than [[Former Vice Director ALC]] serving as the settlement authority.” [Attorney #2] provided examples of conflicts of interest and stated “One might be that the person is named as an actual subject of the complaint or if it's used for a means of furthering an employee or anything that would cause the settlement officials, you know, to question someone's objectivity and ability to reach a fair resolution.” [Attorney #3] testified that [Former Vice Director ALC] serving as the settlement authority was a conflict of interest. ■ stated that [Former Vice Director ALC] “was, ■ overall she’s in a position where ■ should be aware of what’s going on and, I don’t, I don’t think that it’s going to give the complainant a sense that she’s being listened [to] impartially.” ■ indicated that ■ did not discuss WB#2’s case with EEO Director ■

In ■ interview, the IO provided [EO Operations Manager] with WB#2’s complaint scenario where [Former Vice Director ALC] was initially named in the complaint and served as the settlement authority. ■ testified

So one of the things I would ask, is the reason why – and this is during the informal stage as well. When a complainant names an individual as an RMO, responsible management official, the specialist should get clarification. Are you naming this individual because they took personal action against you or are you naming this individual because of the position that they hold ... if the RMO that they’re naming [is] mainly because of the position that they hold and not any personal actions that the RMO did against the complainant, well, that would be acceptable.

■ further testified,

So if there was three RMOs, and the one was, in the formal stage was no longer the RMO, but found out that ■ was only named an RMO because of ■ position and not because ■ took personal action against the complainant, well, then we still may want to utilize him as settlement authority. I mean, we can. But we also have to keep in mind the perception, you know. But it, basically it all depends ... because like I said, perception is everything, and if it appears to be a conflict of interest, because that’s something that we don’t want to jeopardize the integrity of our program. So, therefore, you always want to err on the side of caution. You know, so I could say, yeah, you know, we probably should not have used that individual. Mainly because initially ■ was named as an RMO, ■ had knowledge of it, it’s – and it, you know, so.

[EO Operations Manager] then testified,

it’s really hard for me to give you a definitive don’t use them/use them because, you know – and because of what could be the appearance of conflict of interest, you know.

So I just can't give you a –I mean, if it was – if the claim against that RMO, which is now the one that has settlement authority, if the claim was dismissed against them, I would probably want to know what did ■ what relation does ■ have with the claim that – what, in regards to the claim that settles, what relation did ■ have with that? Because if it looks like a conflict of interest, or the perception or whatever, you probably don't want to use him or ■

During Ms. Field's limited interview with SAF/IGS in the Section 1214 investigation, ■ testified that ■ was not advised by either the EO office or the legal office that ■ could not or should not be the settlement authority because [WB#2] had identified ■ as an RMO. "There was never any advice that I shouldn't do it. ... And if they had told me not to do it, I wouldn't have done it." [Former Vice Director ALC] stated ■ did not believe ■ had a conflict of interest and "if I'd have had a conflict of interest, there was no way I would've ever settled with [WB#2]." ■ also testified that "the EO office was happy to have me there because they just wanted [the complaint] gone."

Brig [Former Commander ALC #1] testified that ■ did not "expressly designate" [Former Vice Director ALC] to act as settlement authority; when asked by [Former Vice Director ALC] whether ■ wanted ■ to serve as the agency representative, ■ verbally approved. Brig [Former Commander ALC #1] stated "at the time I was unaware of who was named on the complaint, and I had full confidence ■ would negotiate reasonably." [Former Vice Director ALC] never provided Brig [Former Commander ALC #1] with details of the settlement result. ■ remained unaware of the settlement amount until interviewed during the investigation.

On June 15, 2017, [EO Specialist #2] forwarded the June 13, 2017 email chain set out above to [EO Specialist #5] informing him that "Management has agreed to mediation ... on the formal EO complaint filed by [WB#2], #8L1M17010T." [EO Specialist #2] further indicated that ■ was "still awaiting to hear from [WB#2] and ■ representative, [Personal Representative #1], as to when they will be available." [EO Specialist #2] attached the ADR intake document to ■ email.

WB#2's Core ADR mediation was scheduled in the morning of July 11, 2017. [Former Vice Director ALC] was present as the settlement authority for management. WB#2 was present with ■ representative, [Personal Representative #1] (but without legal representation). [Personnelist], 75 FSS/FSMC (Force Support Squadron/Civilian Personnel Office), was on stand-by from the Civilian Personnel Office, and [Attorney #1] was on stand-by from 75 ABW/JA.

The parties reached a global (no fault) settlement wherein WB#2 received a settlement payout of \$100,000, a year of "transitional Leave Without Pay (LWOP) upon ■ husband's PSC and within 30 calendar days, management will submit a Request for Personnel Action (RPA) for a GS-9/11 position as a competitive fill that would allow the complainant to apply competitively for said position."

During mediation, [Former Vice Director ALC] sought legal advice prior to agreeing to a settlement of \$100,000.00. [Attorney #1], a labor law attorney, testified that ■ got a phone call to come down and meet with [Former Vice Director ALC]. [Attorney #1] had no knowledge of the case prior to ■ discussion

with [Former Vice Director ALC]. [Attorney #1] advised [Former Vice Director ALC] that the settlement was excessive. ■ testified, "I know that I knew nothing of it until we were in that room and someone said we got this phone call and I ran down. And so, when I did, I did try to talk ■ [[Former Vice Director ALC]] back from the 100,000." The IO asked [Attorney #1], "So the amount of the settlement would seem to indicate that [Former Vice Director ALC] was concerned about substantive risk and liability?" ■ responded, "Yes and what ■ had articulated to me is ■ felt that [WB#2] had been done wrong. I did, I felt that it was high and that's why I tried to bring it down."

On July 11, 2017, [Attorney #1] and [Personnelist] coordinated on the settlement agreement and provided technical comments. WB#2, [Personal Representative #1] and [Former Vice Director ALC] signed the settlement agreement on July 11, 2017, and the case was closed.

**EEO Director** testified that IRD provided the mediator and that ■ was not involved in the settlement negotiations or the decision to settle. ■ did state that [EO Specialist #5] from the EO Office coordinated the review of the settlement with legal and the AFPC, and that the EO office typed up the settlement agreement. **EEO Director** also stated ■ was aware of the settlement and that ■ has not seen a larger settlement – "no, not in my experience." ■ stated ■ was aware that "legal had been in the office. They actually came to our office. They weren't in the mediation. ... I remember somebody from legal did come by the office to talk with [Former Vice Director ALC]." **EEO Director** further testified that ■ did not have any conversations with either [Former Vice Director ALC], Brig [Former Commander ALC #1], or the legal office regarding Air Force risk or liability leading to the large settlement or afterwards.

[Former OB Director] testified that ■ "learned that the case had been settled because [Former Vice Director ALC] told me so." According to [Former OB Director], [Former Vice Director ALC] stated:

A. ■ said, you don't have to worry about the [WB#2] case anymore because I settled it. And I said I wasn't sure that I was worried about it. And ■ said, well, you don't have to because I settled it. I said you settled it? And ■ said yes. And I said but you were named. I said are you sure you settled it? And ■ said yes. I said okay. So I was floored.

Q: Why?

A: Because you can't settle a case that you're named in. I mean -- ... That's an ethical conflict, right?...I was really naïve to that. I felt betrayed, to be honest with you. And I did not understand how you could settle a case and be named. And I subsequently learned, and [WB#3] was my source, that [ALC Program Manager] was meeting with [WB #2] trying to get [Former Vice Director ALC]' name off the case so that ■ could settle it, and that the part of the remedies were for me to be removed and demoted, for [Former Chief of ALC/OB] to be terminated, and those kinds of things.

On October 15, 2017, WB#2 and ■ husband moved to Virginia.

**WB#3**

WB#3 worked as an NH-04 (GS-15 equivalent) in the Aerospace Sustainment Directorate at the OO-ALC. On July 19, 2017, WB#3, along with [Personal Representative #2]<sup>58</sup> visited the EO office to discuss filing a complaint against [REDACTED] leadership for discrimination on the basis of sex, religion (non-Latter Day Saint/Mormon), a hostile work environment and reprisal (for having reported a sexual assault, sexual harassment, contract fraud, and supporting another individual [WB#2] who filed an EEO complaint). [EEO Director] [EO Superintendent] and [EO Specialist #2] were present for the meeting. WB#3 testified regarding [REDACTED] perception of that meeting:

[EEO Director] was very rude to me. I mean, almost like [EEO Director] like dismissive, you know. And I don't know if you've got a complaint...[Personal Representative #2] and I went in, and we didn't see one of the regular people, [EEO Director] saw me and [REDACTED] took me back into a room. And I told [REDACTED] that I wanted to file an EEO complaint and I asked [REDACTED] exactly how all that worked. And then when I started explaining it all to [REDACTED] [REDACTED] really tried to discourage me. [REDACTED] said I really didn't have a good EEO complaint, that -- when we got into some of the details, [REDACTED] said that it really didn't fall under the purview, that I should just -- [REDACTED] didn't think I should file a complaint...I mean, I don't think that [REDACTED] gave me all the details like how it's really supposed to work. I went in and got the regulation myself and started digging into all that. But [REDACTED] did send me an email with the appropriate forms and things like that, but [REDACTED] was discouraging.

[Personal Representative #2] testified:

I've known Lori [EEO Director] a long time. I used to work in Personnel and EEO. And I wanted to trust [REDACTED] but the answers that kept coming out were very corporate. It was almost like discouraging the -- discouraging WB#3 from filing, like, making it, well, that wouldn't really work, this wouldn't really work or, you know, that's -- you know, you have to take that up with someone else sort of thing. And we were trying to understand what we could and couldn't do...it seemed as though [REDACTED] was making it as difficult as possible ... As complicated as possible.

[EEO Director] testified in regards to [REDACTED] and [EO Specialist #2]'s interactions with WB#3 during that meeting as well as others:

[EEO Director] [WB#3] was a very difficult complainant...[REDACTED] was -- [EO Specialist #2], it was a very difficult time for [REDACTED] working that complaint.

IO: Why is that?

EO [EEO Director] Because [REDACTED] was -- I am trying to think of the term. [REDACTED] was very -- [REDACTED] was just very mean to [EO Specialist #2]. [REDACTED] even came to me and accused [REDACTED] of not, you know, doing certain things correctly, or -- I'm trying to think specifically what it was. [REDACTED] questioned me about -- because of [REDACTED] research and what all that [REDACTED] had done, [REDACTED] was basically trying to control the process, and I had to remind [REDACTED] that this is

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<sup>58</sup> [Personal Representative #2] is a GS-13 who works for [Former Commander ALC #2] as a workforce strategic planner in the Depot Transformation Office (also under the OO-ALC). [REDACTED] has served in that role for eight years.

our process. I know you're a high-level individual, but we manage this process, and you need to treat my specialist professional appropriate.

IO: Sure.

EO Director: What was a very difficult time for [EO Specialist #2] through that process with [REDACTED]

IO: Was [REDACTED] is – [EO Specialist #2] knowledgeable of the correct forms to complete or did you have to remind [REDACTED] you need to do this form, that form?

EO Director: Never. She's very good about – and she's very meticulous about documentation and all that. [EO Specialist #2], I would say, my best specialist as far as the case file and documentation and counselor's reports. She's very specific, almost too specific sometimes, because [REDACTED] reports can be very long. But [REDACTED] is – [REDACTED] documents everything. But I remember several times [REDACTED] called me in to – had called me in to sit in the room with [REDACTED] and [WB#3], because [WB#3] was very – just [REDACTED] wasn't very nice to [REDACTED]

[EO Specialist #2] had similar things to say in regards to [REDACTED] interactions with WB#3. [REDACTED] testified:

IO: All right. So when you sit down with [EEO Director] and [REDACTED] [WB#3], right, how did that go?

[EO Specialist #2]: [EEO Director] explained the process to [REDACTED]. [REDACTED] was very respectful. And when [REDACTED] wouldn't take direction, [REDACTED] went to [Chief, AFMC EO] (Chief, AFMC Equal Opportunity) and [EO Operations Manager]. And then we processed [REDACTED] complaint like we were supposed to.

IO: Did [EEO Director] make any comments because [REDACTED] went higher on the chain?

[EO Specialist #2]: No.

IO: Did [EEO Director] come across as rude to the complainant during that meeting?

[EO Specialist #2]: No.

IO: Did you perceive -- no rudeness or --

[EO Specialist #2]: Only on the part of Ms. [WB#3]... [REDACTED] was very intimidating. [REDACTED] constantly told us that [REDACTED] was a former command chief.<sup>59</sup> [REDACTED] always told us [REDACTED] knew

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<sup>59</sup> Per AFI 36-2618, *Enlisted Force Structure*, para 6.1.2., "Command Chief Master Sergeant (CCM). The CCM is the senior enlisted leader in a wing, NAF, MAJCOM, DRU, FOA, or other similar organization. The CCM is responsible for advising commanders and staff on mission effectiveness, professional development, military readiness, training, utilization, health, morale, and welfare of the command's enlisted Airmen and takes action to address shortfalls or challenges."

General Pawlikowski [the prior AFMC Commander]...So [REDACTED] was very intimidating. I know one day [REDACTED] told me I shouldn't have taken my RDO.

IO: What's RDO?

[EO Specialist #2]: My regular day off.

IO: Okay.

[EO Specialist #2]: I work a five four nine schedule. I have every other Friday off. I was off one Friday, and [REDACTED] wasn't happy with that.

The EEO Counselor's report from that meeting stated:

On 19 July 2017, a civil service non-bargaining unit employee, [WB#3] assigned to the [REDACTED] as a [REDACTED], NH-0301-04, walked in the EO office requesting to speak with the EO Director to file a complaint. [REDACTED] was accompanied by [Personal Representative #2]. EO Director Grimes met with both [WB#3] and [Personal Representative #2].

Part of the confusion and potential conflict between the EO office and WB#3 was that WB#3 wanted to skip the informal claim process and just file a formal claim right away, which is not the process outlined in the C.F.R. or AFI for civilians. [EO Specialist #2] testified regarding this confusion:

IO: So apparently in September of '17 you had your initial interview with [WB#3]. I think [EO Superintendent] was also present. And you had stated that [WB#3] wanted to skip the -- straight to the formal process. Do you recall why?

[EO Specialist #2]: I don't think [REDACTED] ever gave a reason why [REDACTED] wanted to go straight to the formal. The only thing I can, in my opinion, was that [REDACTED] was used to the military process. Because in the military process they can either elect to file informal or formal.

IO: Okay.

[EO Specialist #2]: Whereas in the civilian process they have to go through the informal before going through the formal. So that's the only thing I can think of is [REDACTED] got the processes mixed up.

[EEO Director] also testified that WB#3 "was very forceful, aggressive person and tried to dominate the whole process. And that was difficult for [EO Specialist #2], I know." [REDACTED] further stated:

And it was very difficult time, again, for [EO Specialist #2], because [REDACTED] tried to frame them and [WB#3] kept wanting to do [REDACTED] own thing, and would frame the claim -- I mean, just write the claims and not properly, not in the appropriate format. And I know

that went back and forth and back and forth with [EO Specialist #2]. And I typically, kind of leave that at that stage, but when it's getting closer to the acceptance and dismissal stage -- those claims have to be in specific format. And they can't be pages long. Like, one claim can't be a huge paragraph of a ton of background information. It has to be concise, contain specific -- only containing the specific requirements that are required for a claim...in [WB#3]'s case, if I recall correctly, it was going on for a very long period of time just trying to get the claims established.

[EO Superintendent] testified to attending the initial meeting with WB#3 and [EO Specialist #2]. [EO Superintendent] stated that it was "a very emotionally charged conversation and long. I remember it being night time by the time we left the office ... [WB#3] made [EO Specialist #2] feel like [REDACTED] doesn't know [REDACTED] job ... but, [EO Specialist #2] was 'very calm' ... [REDACTED] [had] been doing it for 30 years so nothing phases [REDACTED] [EO Specialist #2] testified that during the meeting, "[EEO Director explained the process to [WB#3]. [EEO Director] was very respectful."

During one of [REDACTED] meetings with [EO Specialist #2], WB#3 was concerned about who would be notified of [REDACTED] claims. [REDACTED] describes the conversation during [REDACTED] testimony:

[EO Specialist #2] said that -- I said I don't want these to go -- I want to make sure they're going to go up, you know, a couple levels, that the only thing that's going to be shared with my leadership would be that there is a complaint, some sort of complaint, and then they could tell just what the category of complaint. That's what it was supposed to be. I read it and I even showed it to [REDACTED] in the regulation.

And [REDACTED] said, no, we're required to send this to your immediate supervisor and to your chain of command. And I said, that's not right; you're not supposed to do that. And [REDACTED] said, well, that's our requirement. And I said, well, I'm not comfortable giving you all this because I don't want it -- I'm already dealing with retribution and retaliation. If you give them all of this, they're going to have all the evidence that I have, they're going to know everything about what is going on, and it seems to me if I want to report anonymously that's not very anonymous. I mean, that's just telling the whole world exactly what happened... I was really scared. I went to them for help and then all that was was another threat. I was terrified even to submit my EEO complaint. That's how I felt. I remember walking out of there just shaking, I was so scared. But they were supposed to be the people that you could go to when there's a problem --

WB#3 Testified further on the issue of notifying [REDACTED] command:

WB#3: I didn't want them given my documentation.

IO: Okay.

WB#3: There's a difference. I even read the regulation to them where it said they shall only be told of the type of complaint it was. I read it to them. But they said it had to go -- the whole thing had to go to my leadership, and that's why I went back and I emailed [Chief, AFMC EO] at AFMC. I went -- [REDACTED] gave me the person's name at AFPC. And

so I went to them and asked them. And at first [Chief, AFMC EO] came back and said, you're right, that's appropriate; they should not be sending that forward. And then I get an email from the whole group of them. There's a whole long email trail. I'm sure you've seen it.

IO: Um-hum.

WB#3: And it was at first, okay, we won't do this, we will do this. I mean, they -- [EO Specialist #2] sent me back a note -- an email saying we absolutely are going to send it to your chain of command and that's our policy, that's the way we do it. And I was like, well, that's not right; you shouldn't do stuff like that. You put people in jeopardy when you do stuff. So, first of all, they discourage you from bringing your complaint in, then they scare you to death. And I know that my leadership had a copy of that. I know they did, before they should have ever -- they should've never seen all those documents. And that's how I feel about it, and it was wrong.

IO: Well, typically during the informal EEO process they will notify your chain of command that a complaint's been filed, and then at some point during that process when you -- after you allege your claims, they will send that information over and ask if your chain of command would like to go through the ADR.

WB#3: Yeah, but it was my chain of command that my complaint was against.

IO: It was against [Former Commander ALC #1] --

WB#3: Yes.

IO: -- [Former Vice Director ALC]?

WB#3: Yes...So you don't do that in that case. That's inappropriate. My complaint was against them. It should have gone up to AFSC, [Commander AFSC] 's office, at least one level above my boss. And, yes, it was against them; that's who it was... So here's the EEO office that's supposed to support you when you do things like that, and all they've done was discourage me and then basically threatened me with additional retaliation and retribution [by saying they are going to notify command]. That's how I felt. And it was very discouraging, like nobody in the whole world was going to help you no matter what.

The EO Counselor's report describes a meeting on September 14, 2017, where WB#3 expressed concerns about notifying command:

On 14 September 2017, [EO Specialist #2] and [WB#3] met as scheduled. EO Specialist [EO Superintendent] was also in attendance. [WB#3] read through a written statement had prepared detailing all of issues. [WB#3] refused to sign any paperwork until had some answers to questions of whether could bypass the informal process and file formal and who in management the EO office would notify.

█ did not want [Supervisor], █ first level supervisor, [Former Vice Director ALC], █ second level supervisor even though [WB#3] claims [Former Vice Director ALC] is not in █ chain of command, and [Former Commander ALC #1], previous third level supervisor and Commander of the Complex, to be notified of █ filed EO complaint. [EO Specialist #2] stated █ would speak with EO Director Grimes about [WB#3]'s concerns and then would contact [WB#3] to schedule another appointment.

On September 19, 2017, WB#3 emailed [EO Specialist #2] and **EEO Director** asking if [EO Specialist #2] had met with **EEO Director** "to find out how █ informal EO complaint would be processed and if senior leadership had to be notified."

On September 20, 2017, [EO Specialist #2] emailed WB#3, explaining that █ did have to file █ EO complaint through the informal process first and that senior leadership would be notified. █ requested WB#3 set up an appointment to sign the paperwork to start the informal process.

The EO Counselor's report discusses further interaction with WB#3:

On 21 September 2017, [WB#3] contacted [EO Specialist #2] via telephone requesting an appointment with both █ and EO Director Grimes to discuss █ case. █ stated that █ has been doing some research. █ said that since it has been over 30 days since █ dropped off █ paperwork/written statement, █ would like to bypass the informal process and file a formal EO complaint. [EO Specialist #2] explained that EO Director Grimes already had a scheduled appointment that afternoon and an appointment probably would not be able to be scheduled until the following week since Friday, 22 September 2017, was [EO Specialist #2]'s regularly scheduled day off. [WB#3] stated that █ had a meeting that afternoon and would call after █ meeting to see if EO Director Grimes would be free. On 22 September 2017, [WB#3] sent a calendar invite via email scheduling a meeting for Monday, 25 September 2017, at 1400. On 25 September 2017, [EO Specialist #2] accepted [WB#3]'s calendar invite. [EO Specialist #2] and EO Director Grimes met with [WB#3] as scheduled. [Personal Representative #2] was also in attendance after [WB#3] designated █ as a personal representative and signed paperwork to that effect. [WB#3] stated that █ had contacted [AF/A1Q Program Manager], AF/A1Q (EO); [EO Operations Manager] from AFPC, and [Former AF/A1], with █ concerns and said that █ had been told █ could file formal since 30 days had passed since █ had dropped off █ intake paperwork and statement and that management did not need to be notified. After much discussion, [WB#3] did sign all the official documents to initiate the informal complaint and received a copy of all documents. [WB#3] refused to decide how █ wanted to process █ informal EO complaint (i.e. limited informal inquiry or Alternative Dispute Resolution) until █ had some answers to █ questions of whether management would be notified of █ complaint and refused to leave any paperwork detailing █ issues in more detail because █ didn't want the EO office to release any of █ paperwork to senior leadership.

In an email to WB#3 on September 26, 2017, **EEO Director** states, "I also clarified the question about proper notification. It is appropriate to notify management officials in an EEO complaint even if they

are named in allegations brought forward by the complainant. The number of levels of management is not specifically identified. At Hill our practice is to notify three levels.” [Chief, AFMC EO] also explained the notification in an email to WB#3 on September 27, 2017:

Remember, there are two forms of processing the EO complaint in the “informal” process. One is ADR and the other is traditional informal processing where the EO Office will attempt to move forward with attaining resolution. If the elected option of the complainant -- if traditional is elected, the EO office will need to talk to the Responsible Management Official to ensure they are looking at both sides of the allegation. Again, the EO office is neutral and only functions as stewards of the process. So **EEO Director** is correct in saying that it is “appropriate.”

According to notes in the EO file, on September 28, 2017, [EO Specialist #2] met with WB#3 and explained to ■■■ that a decision had been made to notify only [Former Commander ALC #2], Ogden Air Logistics Complex Commander, and [Commander AFSC], Air Force Sustainment Center Commander, of ■■■ complaint. However, no one suggested or offered the possibility of remaining anonymous at the informal stage of the complaint, as allowed by the AFI.

On October 5, 2017, WB#3 met with [EO Specialist #2] and lodged an informal EEO complaint alleging 43 claims of discrimination on the basis of sex (female), religion (non-Latter Day Saint/Mormon), reprisal (for having reported a sexual assault, sexual harassment, contract fraud, and supporting another individual who filed an EEO complaint), and subjected to a continuing pattern of non-sexual harassment and a hostile work environment. On October 18, 2017, WB#3 submitted claims and remedies. On November 29, 2017, after failing to reach an agreement during alternate dispute resolution (ADR), WB#3 filed a formal complaint. On February 12, 2018, **EEO Director** sent the case to IRD for investigation and mailed WB#3 a Notice of Partial Acceptance of Formal EEO Complaint of Discrimination.

WB#3 testified regarding the experience ■■■ had in drafting ■■■ claims and the interaction ■■■ had with both [EO Specialist #2] and **EEO Director**

■■■ [[EO Specialist #2]] was just always really short and ■■■ was just not -- ■■■ would be very matter of fact. The thing that I really -- probably the worst thing is when I was trying to frame my allegations and I asked for help during that. They're supposed to help you through that. I didn't get a lot of help there, so I did them myself and I spent hours of my own time getting those all prepped.

And then when -- after I got them back, you couldn't -- it was like a half a page of my -- it was like 18 pages that became like half a page of documentation. It was the most ridiculous thing I'd ever seen. And I was like, well, what is this? Oh, well, we reframed your allegations. And I go, to one page; this is it? You know, and it was horrible.

And then when I went back in and I redid them myself, once again, all that. And it's just repeat, repeat, repeat. A lot of work to redo everything and do it the way -- and I followed the instructions ■■■ gave me. I'm very meticulous about administrative details. I did exactly what they told me to do. And then they narrow it down to one -- it was not even a whole page; it was like 18 pages I gave them.

And so I go, what happened to my allegations? And I guess that was the biggest thing that made me really upset with [EO Specialist #2]. And [redacted] goes, oh, that's the way we do it. No, it isn't. You don't take something I wrote and completely change it. The same meaning wasn't even in it. There was no way to look at that and identify what had really even happened...

And [EEO Director] rewrites my allegations. [redacted] removes a bunch of them. I go, who did that? Why did you change them? Well, this is the right wording for all that; this is what I have to do. And I go, okay, but you changed the meaning of a lot of those things and you took out a lot of those things...

In all the things that they were doing, I just wanted somebody to help me, and I got nothing but discouragement. And then they kept changing my documentation and nobody was helping me. So that's how I felt, it was very discouraging... I wanted to be protected. They didn't give me that.

[EEO Director] did substantially modify the claims from what WB#3 had submitted. WB#3 submitted 43 claims on 12 pages and [EEO Director] modified those to 42 claims on four pages. One modification involved putting the claims in chronological order. WB#3's submission contained claims from all different time frames in no particular order. [EEO Director] modifications put them in chronological order starting from the most recent. A second modification included removing the discrimination statement from all claims and placing it at the beginning. The statement "whether the complainant was allegedly discriminated against on the basis of sex (female), religion (non-Latter Day Saint/Mormon), reprisal (for having reported a sexual assault, sexual harassment, contract fraud, and supporting another individual who filed an EEO complaint), and subjected to a continuing pattern of non-sexual harassment and a hostile work environment when:" was placed at the beginning of the notice letter and each claim became a sub-bullet under it. Another modification that [EEO Director] made was to combine two claims into one and that is why the notice of partial acceptance letter contains one less claim. The final way in which [EEO Director] modified the claims was to remove the background factual information. As an example, the chart below contains two claims and how they were modified.

Claims as submitted by WB#3	Claims as modified
Whether the complainant was allegedly discriminated against on the basis of sex (female), religion (non-Latter Day Saint/Mormon), reprisal/retaliation (for having reported a sexual assault, sexual harassment, contract fraud, and supporting another individual who filed an EEO complaint), and subjected to a continuing pattern of non-sexual harassment and a hostile work environment when, on or about 20 June 2017, management [names of four different individuals] removed the complainant from	[discrimination statement in first paragraph] On or about 20 June 2017, management [the four names] re-assigned and demoted the complainant from [redacted] position as [redacted] [redacted], and assigned [redacted] as the [redacted] [redacted], given a temporary office, with no support, authority, or responsibility commensurate with an NH-04.

<p>       ■ position as ■        ■ where ■ had tremendous responsibility and supervisory responsibility for over 280 personnel and assigned ■ as the ■ with no explanation, no existing position, no position description, no clear guidance on what the complainant is supposed to do, and no supervisory responsibility which the complainant feels ■ has been humiliated and isolated.     </p>	
<p>       Whether the complainant was allegedly discriminated against on the basis of sex (female), religion (non-Latter Day Saint/Mormon), reprisal/retaliation (for having reported a sexual assault, sexual harassment, contract fraud, and supporting another individual who filed an EEO complaint), and subjected to a continuing pattern of non-sexual harassment and a hostile work environment when, on or about March 2017 – 20 June 2017, management [name], did not provide mid-point appraisal assessment in accordance with the AFSC AcqDemo requirements to the complainant. The complainant has never been told why ■ was removed and was not given the opportunity to improve per the AFI. The complainant did [not] receive ■ mid-term appraisal until almost a month and a half after ■ had been removed from ■ position. The Supervisor Mid-Point Review should have been given to ■ back in the March/April timeframe as required. It wasn't given to ■ as a way to provide ■ the opportunity to correct any problems or work toward improvement. Important to note that [supervisor] documented in ■ Mid-Point Review in the Communication area focus areas – “to reiterate our conversation (9 June 2017) “work softer not harder” – the complainant is confident that ■ doesn't tell ■ male supervisors to “work softer” – ■ actual comment was made on or about 14     </p>	<p>       [discrimination statement in first paragraph]        On or about March 2017 – 20 June 2017, management [name], did not provide mid-point assessment to the complainant in accordance with the AFSC AcqDemo requirements.     </p>

<p>June 2017 with [co-worker] in the room and ■ said “I was too intense and that I should lead “softer.” The complainant believes ■ attempt to provide a Mid-Point Review after ■ removal, ■ filing a complaint for retribution and retaliation with the OSC, ■ going to EEO, with the intent to file an EEO complaint, and ■ filing an IG Complaint where an IO was scheduled to start a CDI at the direction of [commander]. The complainant believes it is an additional retaliation and retribution. The complainant should have been given this feedback with the intent of improving ■ contribution and performance. [WB#3 continues this claim with further information for another 12 sentences]</p>	
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As part of the investigation, the IO asked [Chief, AFMC EO], Chief, AFMC Equal Opportunity, via email whether **EEO Director** had overstepped in reducing WB#3’s claims. [Chief, AFMC EO] responded:

[WB#3]’s original allegations were very extensive and contained a great deal of persuasive verbiage that can be conveyed to the investigator during the investigation. During the EO complaint, **EEO Director** appeared to streamline the complaint to the necessary information above. I concur with **EEO Director** actions in streamlining these complaints as ■ submitted. In each allegation, **EEO Director** demonstrated [WB#3] was a member of a protected group; and ■ was adversely affected in ■ employment because of this protected group. ■ would have then had the opportunity to show the investigator; by evidence, that ■ was treated differently than similarly situated employees not in the complainant’s protected group to the investigator.

On June 1, 2018, WB#3 settled the claims with a Global Settlement Agreement and the complaint was closed.

**Other EO Complainants with Relevant Information**

*EEO Complainant [Complainant #1]<sup>60</sup>*

[Complainant #1] worked as Program Management Support at 309 SMXG. On November 28, 2018, ■ met with **EEO Director** for advice on whether to file a complaint regarding an abrupt position reassignment. ■ indicated that **EEO Director** did not say anything to discourage ■ from filing a

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<sup>60</sup> [Complainant #1] is an NH-03 who works in program management support at the 309 SMXG.

complaint but merely told [REDACTED] [REDACTED] options, file an administrative grievance or an EO complaint. [REDACTED] testified:

I only met with [EEO Director] for about an hour. [REDACTED] didn't discourage or anything. It's – [REDACTED] just, like I said, gave me the option. But like I said, I saw how long, you know, the process is and even the -- you know, the situation that you have to go through. So I'm sure I pretty much discouraging myself as I'm listening through all this and reading through all of it.

[Complainant #1] also testified that [REDACTED] was overwhelmed by the process. [REDACTED] stated, “Like I said, the process itself – I mean, you read the law and the regs and all the AFIs. It's like I should be a lawyer if I want to try to even pursue it, you know. You do one part and you're wondering if you're violating another part. So I was very leery when it comes to the law.” [Complainant #1] also stated that [REDACTED] wasn't sure whether it would be an EO complaint or an administrative grievance and [REDACTED] just wanted things to calm down rather than file a complaint.

[Complainant #1] elected not to return to the EEO to file a complaint.

***EO Complainant [Former OB Director]<sup>61</sup>***

[Former OB Director], NH-04 (GS-15 equivalent), was the Director of the 581<sup>st</sup> Missile Maintenance Squadron. [REDACTED] was also WB#2's supervisor. On August 18, 2017, [Former OB Director] met with [EO Specialist #2] to initiate an EO complaint. [REDACTED] had been reassigned and felt the new position was a downgrade. [EO Specialist #2] provided [REDACTED] with an explanation of the process and some paperwork to review. On September 26, 2017, [Former OB Director] met with [EEO Director] and provided necessary documentation to file an informal complaint. The complaint alleged three allegations of discrimination based on age, sex, reprisal and subject to a continuous pattern of non-sexual harassment. The complainant chose ADR but it came to an impasse so on January 2, 2018, the complainant lodged a formal complaint. After the informal process, [EO Specialist #2] worked the formal process. On January 16, 2018, [EEO Director] sent the complainant a Notice of Full Acceptance of Formal EEO Complaint of Discrimination and sent the case to IRD for investigation. The investigation took place from June 28 to July 18, 2018 but on August 16, 2018 before the investigation was completed, [Former OB Director] signed a Notice of Decision to Suspend Agreement and withdrew the EO complaint. As part of a pre-decisional global settlement agreement, [REDACTED] agreed to withdraw [REDACTED] EO complaint in exchange for having a 10-day suspension downgraded to a two-day suspension.

[Former OB Director] testified that [REDACTED] was not discouraged by [EEO Director] or [EO Specialist #2] from filing a complaint. [REDACTED] indicated that [EEO Director] was helpful in one interaction and just “doing [REDACTED] job” in another. [Former OB Director] mentioned a discussion about the framing of [REDACTED] allegations and some wording that [REDACTED] didn't agree with but [REDACTED] also indicated that they worked it out to [REDACTED] satisfaction. [REDACTED] testified that [EEO Director] and [EO Specialist #2] both gave [REDACTED] correct information verbally and in writing. In regards to [REDACTED] EEO experience, [REDACTED] stated “I was disheartened but it had nothing to do with [EO Specialist #2] or [EEO Director] or the way that they interacted. I was

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<sup>61</sup> [Former OB Director] is an NH-04 and has worked for the government since 1991. Hill AFB is [REDACTED] fifth base and [REDACTED] has worked there since 1999.

discouraged by my own leadership and that they thought this was the best avenue rather than actually trying to find a root cause problem or solve an issue.”

***EO Complainant [Complainant #2]<sup>62</sup>***

[Complainant #2] worked as Lead Logistics Management Specialist in the 748<sup>th</sup> Supply Chain Management Group, which falls under the 448<sup>th</sup> Supply Chain Management Wing. On August 25, 2017, [Complainant #2] met with [EO Specialist #1] to discuss lodging an EEO complaint. They had another meeting on November 3, 2017 to formalize and file an informal complaint alleging discrimination on the basis of sex and sexual harassment. [Complainant #2] alleged that [redacted] had been denied the opportunity to interview for a competitive promotion based on [redacted] sex (see exact claims in chart below). [Complainant #2] requested the ADR process but there was no resolution of [redacted] claim during that phase. On December 14, 2017, the complainant lodged a formal EEO complaint and on January 19, 2018, **EEO Director** sent the complainant a Final Agency Decision dismissing all [redacted] claims on the basis that they were not timely (not within the 45-day time limit). On February 15, 2018, the complainant appealed the dismissal to the EEOC Director, Office of Federal Operations (OFO). OFO dismissed [Complainant #2]’s claims because [redacted] had signed an agreement not to apply for a supervisory position as part of a settlement claim against him for wrongdoing as a supervisor in [redacted] previous position. The competitive position [redacted] was seeking prior to filing the EO complaint involved supervisory responsibilities.

Claims Submitted by [Complainant #2] – December 14, 2017 (bolded language removed by <b>EEO Director</b> )	Claims as Modified in Dismissal Letter – January 19, 2018
<p>a. Whether the complainant was allegedly discriminated against on the basis of Sex (male), non-sexual harassment when, on or about September 2015, [Former Vice Director ALC], Vice Director, OO-ALC/DV elected to non-interview the complainant for OO-ALC/OM [Director of Staff] GS-15 competitive promotion within the Maintenance Complex <b>and the complainant was informed on 17 July 2017, 7 August 2017, and 23 August 2017 [supervisor] stated to two co-workers “that it will be a cold day in hell before [Complainant #2] receives another GS-15 interview in [redacted] organization.”</b></p>	<p>a. Whether the complainant was allegedly discriminated against on the basis of Sex (male) and subjected to non-sexual harassment when, on or about September 2015, [Former Vice Director ALC], Vice Director, OO-ALC/DV elected to non-interview the complainant for OO-ALC/OM (Director of Staff) GS-15 competitive promotion within the Maintenance Complex.</p>
<p>b. Whether the complainant was allegedly discriminated against on the basis of Sex (male), non-sexual harassment when, on or</p>	<p>b. Whether the complainant was allegedly discriminated against on the basis of Sex (male) and subjected to non-sexual</p>

<sup>62</sup> [Complainant #2] is an NH-03 working in the 748th Supply Chain Management Group. [redacted] has worked as a civil servant at Hill AFB for 31 years.

<p>about September 2015, [Former Vice Director ALC], Vice Director, OO-ALC/DV elected to non-interview the complainant for OO-ALC/OB [Chief of Business Operations] GS-15 competitive promotion within the Maintenance Complex <b>and the complainant was informed on 17 July 2017, 7 August 2017, and 23 August 2017 [Former Vice Director ALC] stated to two co-workers “that it will be a cold day in hell before [Complainant #2] receives another GS-15 interview in [redacted] organization.”</b></p>	<p>harassment when, on or about September 2015, [Former Vice Director ALC], Vice Director, OO-ALC/DV elected to non-interview the complainant for OO-ALC/OB (Chief of Business Operations) GS-15 competitive promotion within the Maintenance Complex.</p>
<p>c. Whether the complainant was allegedly discriminated against on the basis of Sex (male), non-sexual harassment and sexual harassment on or about July/August 2015 by [Former Vice Director ALC], Vice Director, OO-ALC/DV <b>when the complainant was told on or about September 2017, [Former Vice Director ALC] mimicked grabbing/situating [redacted] crotch to unspecified co-workers within and outside the organization while stating [redacted] would not interview/promote the complainant due to him grabbing [redacted] crotch.</b></p>	<p>c. Whether the complainant was allegedly discriminated against on the basis of Sex (male), sexual harassment and subjected to non-sexual harassment when, on or about July/August 2015 by [Former Vice Director ALC], Vice Director, OO-ALC/DV mimicked grabbing/situating [redacted] crotch.</p>
<p>d. Whether the complainant was allegedly discriminated against on the basis of Sex (male), non-sexual harassment and sexual harassment, <b>when the complainant discovered on or about September 2017, [Former Vice Director ALC], Vice Director, OO-ALC/DV inappropriately discussed [redacted] personal concerns related to [Complainant #2] with personnel outside [redacted] chain of command on or about April/May 2014.</b></p>	<p>d. Whether the complainant was allegedly discriminated against on the basis of Sex (male), sexual harassment and subjected to non-sexual harassment when, on or about April/May 2014, [Former Vice Director ALC], Vice Director, OO-ALC/DV inappropriately discussed [redacted] personal concerns related to [Complainant #2] with personnel outside [redacted] chain of command.</p>
<p>e. Whether the complainant was allegedly discriminated against on the basis of Sex (male), non-sexual harassment when, <b>the complainant discovered on 17 July 2017, [Former Vice Director ALC], Vice Director, OO-ALC/DV manipulated witnesses on or about September 2015 during the course of a Commander Directed Investigation (CDI) initiated by [Former Vice Director ALC]</b></p>	<p>e. Whether the complainant was allegedly discriminated against on the basis of Sex (male) and subjected to non-sexual harassment when, on or about September 2015, [Former Vice Director ALC], Vice Director, OO-ALC/DV manipulated witnesses during the course of a Commander Directed Investigation (CDI).</p>

<b>directed at [Complainant #2] that resulted in adverse discipline.</b>	
f. Whether the complainant was allegedly discriminated against on the basis of Sex (male), non-sexual harassment when, the complainant discovered on or about July 2017, [Former Vice Director ALC], Vice Director, OO-ALC/DV demonstrated disparate treatment towards complainant as compared to other senior leaders whose actions were far more severe than [Complainant #2]’s proven actions.	f. Whether the complainant was allegedly discriminated against on the basis of Sex (male), non-sexual harassment when, the complainant discovered on or about July 2017, [Former Vice Director ALC], Vice Director, OO-ALC/DV demonstrated disparate treatment towards complainant as compared to other senior leaders whose actions were far more severe than [Complainant #2]’s proven actions.

[Complainant #2]’s attorney addressed the discrepancies in [REDACTED] appeal of that dismissal. [REDACTED] stated:

Please note that [Complainant #2]’s aforementioned EEO formal complaints all indicate dates of discovery and dates of discriminatory actions. The earliest date that [Complainant #2] became aware of alleged EEO discriminatory practices was 17 July 2017...[Complainant #2] initiated contact with an OO-ALC/EO EEO representative on 25 August 2017. This initial contact occurred within 39 days of discovery, well within the Air Force Instruction (AFI) 36-2706 *Equal Opportunity Program, Military and Civilian* mandate of 45 days.

**EEO Director** testified regarding the changes [REDACTED] made to [Complainant #2]’s complaint in [REDACTED] dismissal letter. The IO asked [REDACTED] why [REDACTED] removed the language regarding the date the complainant discovered the information. [REDACTED] replied: “because it’s just background information.” The testimony continued as follows:

IO: I think what’s highlighted in yellow [the language EO Director removed], though, would have made those claims timely. I think that was [REDACTED] issue.

**EEO Director** No.

IO: And why wouldn’t they have?

**EEO Director** I know there was – we had a lot of conversation and thought about all this, and you know, to recall all that we discussed and how we came to that decision, I –

IO: So it looks like –

**EEO Director** So [REDACTED] was saying that some co-workers – let’s see – this was just hearsay, if you will, that he’s saying that co-workers said on these dates that [Vice Director] made these comments. But it’s not the event that actually happened, you know, the fact that [REDACTED] didn’t interview him, you know, this is just kind of background information

saying that somebody – ■ had some people that came to him and said that they had heard, you know, some third-party information, ■ make this comment. And that's why ■ didn't interview him. But that doesn't make the claim timely, the fact that people made these comments back on these dates. Same thing with this one. This is ■ letter? This is [Complainant #8]'s letter?

IO: I believe so.

**EEO Director** You know, I'd have to see the exact – the original – I mean the claims that actually went up. It was all under the same – because the dates – when we look at the claims as far as determining the harm, the harm was the fact that ■ wasn't selected. You know, this background information wouldn't have made a difference as far as the timeliness of the claim, because he's just saying, when ■ – on this date, whatever the date, on or about September the 15<sup>th</sup>, when ■ didn't interview him, that that's the reason – that's the way we look at it. What was the harm and the date the harm occurred, which was September 2015, on or about September 2015.

The IO continued to question the EO Director along the same lines receiving similar explanations. The EO Director terminated questioning on the subject by stating, “so that's all I have to say on that.”

[Complainant #2] had minimal in-person contact with **EEO Director** ■ mainly interacted with [EO Specialist #1] and had only positive things to say about ■ experience working with [EO Specialist #1]. ■ testified that [EO Specialist #1] “did ■ job well” and that ■ was very helpful in providing information on how to frame ■ allegations. [Complainant #2] testified, “I have the highest respect for [EO Specialist #1] and I even thanked him for ■ help, even after the case was dismissed.”

Despite ■ stated respect for [EO Specialist #1], [Complainant #2] did not trust the EO office or **EEO Director** [Complainant #2] testified “The [EO] office, I don't feel is fully independent, and they should be. They -- it's not about winning or losing, it really is not. It's about fact finding, and then there's other courses that have to occur after that. It wasn't independent.” Further, [Complainant #2] testified:

There is no checks and balances, no independence at all... Do I have any confidence in the EEO process, the checks and balance with legal and DP? Absolutely not. I'd recommend never to anybody to go down through this process. And what's bad is, if I get back into leadership, when someone else goes through a process, I have to encourage them to go down this road because that's their right. And I got to fake -- I couldn't look someone in the eye and tell them this. I couldn't. Not until the check and balances are restored. Not until the independence of the [EO] office is restored.

[EO Specialist #1] testified [Complainant #2] “had a great distrust for **EEO Director** and one of the ways ■ could control the process was by withholding the claims and information from me, therefore, there was no ability for the director to access and see anything.” When asked why there was a distrust, [EO Specialist #1] testified:

Distrust for **EEO Director** in being biased. Certain leaders expressed at the time they were well aware that **EEO Director** was not – ■ looked in the cases; ■ violated the

confidentiality of them and would share information, and they – [Complainant #2] and I believe at least two, a couple others [Complainants] expressed -- again, let me back up a little bit. As an EO specialist you're working with management on these complaints. As we talked about earlier, that's who you contact and sometimes it's a third [supervisory] level. With that said, you get a sense of how EO specialists work and operate. So I just left it alone because what I was hearing was in their [EO Complainants'] interaction with EEO Director they had formulated who had credibility, who was nonbiased and who wasn't.

Per [Complainant #2]'s testimony, “there are no secrets in the EEO office ...” [Complainant #2] stated “as a supervisor, I've been contacted by the EO office in the past saying, hey, we have these types of things, and they ... divulge way too much. It's an independent office that's there to document the findings, it's not to communicate them to everybody.” [Complainant #2] further testified that WB#3 approached [Complainant #2] and stated “[WB#3] didn't feel that there was the anonymity in the EEO office. █ ... asked some pointed questions, according to █ that who are you going to release this information to? And obviously guarded, that it wouldn't get into the accused hands.” This comment was made in reference to WB#3's concerns over who in leadership would be notified of █ EEO complaint.

### *Contractor [Contractor]<sup>63</sup>*

On two separate occasions in March 2018, [Contractor] called the EO Office at Hill and spoke with EEO Director █ was told █ couldn't file a complaint because the EO office “didn't have jurisdiction for federal contractors.” On May 8, 2018, [Contractor] emailed the EAF/A1Q Program Manager at SAF Manpower & Reserve Affairs, Equal Employment Opportunity & Military Equal Opportunity (SAF/MRQ), [AF/A1Q Program Manager], to inquire about why █ couldn't file a complaint. On May 16, 2018, [AF/A1Q Program Manager] emailed [EO Operations Manager] and informed █ of the issue and requested “a copy of the analysis (*Ma* Factors<sup>64</sup>) where you determined the contractor was not considered an employee of the agency.” [EO Operations Manager] forwarded that email to EEO Director requesting the *Ma* factors as soon as possible. EEO Director responded:

This issue has been very complicated. The individual who contacted our office was [Contractor]. █ story about the issues were changing and involving and we were trying to assist █ in getting to the proper agency to address █ concerns. [Contractor] was working with the SARC office and addressing █ concerns as sexual assault. When I spoke with █ I explained to █ that sexual assault was not in our purview. From what I understood there was also an OSI investigation in progress. When I spoke with our legal office to try to get some clarification they indicated that due to █ status as a contractor █ did not retain the rights to file in our process.

[EO Operations Manager] advised EEO Director that unless the legal office had conducted the *Ma* factors, █ was to allow the contractor to file a complaint. █ gave EEO Director guidance to determine

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<sup>63</sup> [Contractor] was not interviewed as part of the investigation.

<sup>64</sup> Per the EEOC website (<https://www.eeoc.gov/federal/reports/dismissals.cfm>), “Thus, a federal Agency will qualify as a joint employer of an individual if it has the requisite means and manner of control over the individual's work under the MA criteria, whether or not the individual is on the federal payroll. [Citations omitted].”

the contractor's status, i.e., whether the contractor was an employee of the agency.<sup>65</sup> EEO Director then sent [Contractor] a complaint intake document so that [redacted] could file.

## APPENDIX B

### WITNESSES INTERVIEWED (Alphabetical Order)

[EO Specialist #5]  
[EO Specialist #3]  
Brig [Former Commander ALC #1]  
[EO Specialist #1]  
[redacted] Analyst  
[Former Chief of ALC/OB]  
[Witness #4]  
[redacted] Witness not in report  
[redacted] Witness not in report  
[Witness #2]  
[Former Vice Director ALC]  
[redacted] Witness not in report  
[EO Superintendent]  
[Complainant #4]  
[Personal Representative #1]  
[redacted] EEO Director  
[redacted] Witness not in report  
[redacted] Whistleblower 1  
[AFSC IG]  
[EO Specialist #2]  
[Personnelist]  
[Witness #1]  
[Complainant #1]  
[Attorney #1]  
[EO Specialist #4]  
[Complainant #5]  
[Witness #3]  
[Former OB Director]  
[redacted] Witness not in report  
[Personal Representative #2]  
[Attorney #3]  
[Complainant #6]  
[ALC Program Manager]

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<sup>65</sup> Per AFI 36-2706, Chap 4, para 4.3., "AF employees, former employees and applicants for employment who meet the criteria outlined in 29 C.F.R. Part 1614 may file civilian EO complaints ... In exceptional cases, however, the EEOC has determined that an individual classified as a contingent employee or independent contractor may be considered an Agency employee under the protection of Federal EEO regulations if the Agency exerts substantial direction and control over the contingent employee/contractor's activities."

[Attorney #2]  
[Complainant #7]  
WB#2  
WB#3  
[Complainant #2]  
[EO Operations Manager]

## ABBREVIATIONS USED

ABW	Air Base Wing
ADR	Alternative Dispute Resolution
AF/A1	Air Force Personnel Headquarters
AF/A1Q	Air Force Equal Opportunity Policy Office
AFCARO	Air Force Civilian Appellate Review Office
AFGM	Air Force Guidance Memorandum
AFI	Air Force Instruction
AFMC	Air Force Material Command
AFNWC	Air Force Nuclear Weapons Center
AFPC	Air Force Personnel Center
AFSC	Air Force Sustainment Center
AJ	Administrative Judge
ALC	Air Logistics Complex
AMSO	Acquisition Management Support Office
AMXG	Air Maintenance Group
ANG	Air National Guard
CDI	Commander Directed Investigation
CORE	Compressed, Orderly, Rapid, Equitable
DDI	Director Directed Investigation
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
EO	Equal Opportunity

ERS	Employment Resource Section
FAD	Final Agency Decision
FOIA	Freedom of Information Act
FOUO	For Official Use Only
FSS/FSMC (or CPO)	Force Support Squadron/Civilian Personnel Section
GC	General Counsel
GCMCA	General Court-Martial Convening Authority
HAF	Headquarters Air Force
HWE	Hostile Work Environment
IAW	In Accordance With
IG	Inspector General
IMs	Instant Messages
IO	Investigating Officer
IRD	DoD Investigations and Resolutions Directorate
MAJCOM	Major Command
MD	Management Directive
MEO	Military Equal Opportunity
MFR	Memorandum for Record
MMG	Missile Maintenance Group
MMS	Missile Maintenance Squadron
MR	Manpower and Reserve Affairs
MXSG	Maintenance Support Group
NDAA	National Defense Authorization Act
OB	Business Operations
OBC	Business Operations Contracting
OFO	Office of Federal Operations
OO-ALC	Ogden Air Logistics Complex
OPR	Officer Performance Review
PCS	Permanent Change of Station
PRD	Position Requirements Description
RDO	Regular Day Off

RMO	Responsible Management Official
ROI	Report of Investigation
RPA	Request for Personnel Action
SAF	Secretary of the Air Force
SAF/IG	Secretary of the Air Force Inspector General
SAF/MR	Air Force Manpower and Reserve Affairs
SARC	Sexual Assault Response Coordinator
SJA	Staff Judge Advocate
SME	Subject Matter Expert
SMXG	Software Maintenance Group
SOMG	Supply Chain Management Group
USAF	United States Air Force
WB	Whistle Blower