APPENDIX

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

No. 19-3305

Daniel L. Miles, on own behalf and on behalf of others as a class, Plaintiff-Appellant, vs. Kristine L. Svinicki, successor to Stephen G. Burns, successor to Allison M. McFarlane, successor to Gregory B. Jaczko, successor to Dale E. Klein, successor to Nils J. Diaz, Chairman, U.S. Nuclear Regulatory Commission, Defendant-Appellee.	Appeal from the United States District Court for the Northern District of Illinois No. 1:18-cv-04571 Charles R. Norgle, Sr., Judge.

April 29, 2020

Before

DIANE P. WOOD, Chief Judge

FRANK H. EASTERBROOK, Circuit Judge

AMY J. ST. EVE, Circuit Judge

ORDER

Plaintiff-Appellant filed a petition for rehearing and rehearing en banc on April 13, 2020. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all members of the original panel have voted to deny panel rehearing. The petition for rehearing en banc is therefore DENIED.

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

ORDER

February 28, 2020

Before

DIANE P. WOOD, Chief Judge

FRANK H. EASTERBROOK, Circuit Judge

AMY J. ST. EVE, Circuit Judge

No. 19-3305	DANIEL L. MILES, on own behalf and on behalf of others as a class, Plaintiff- Appellant KRISTINE L. SVINICKI, Chairwoman, Nuclear Regulatory Commission, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 1:18-cv-04571 Northern District of Illinois, Eastern Division District Judge Charles R. Norgle	

The following are before the court:

1. **UNITED STATES' MOTION FOR SUMMARY AFFIRMANCE OR TO RESET BRIEFING SCHEDULE,** filed on February 19, 2020, by counsel for the appellee.

2. **PLAINTIFF-APPELLANT'S RESPONSE TO DEFENDANT-APPELLEE'S MOTION FOR SUMMARY AFFIRMANCE OR TO RESET BRIEFING SCHEDULE,** filed on February 26, 2020, by the pro se appellant.

This court has carefully reviewed the final order of the district court, the record on appeal, and the motions papers. Based on this review, the court has determined that any issues which could be raised are insubstantial and that further briefing would not be helpful

to the court's consideration of the issues. See Taylor v. City of New Albany, 979 F.2d 87 (7th Cir. 1992); Mather v. Village ofMundelein, 869 F.2d 356, 357 (7th Cir. 1989) (per curiam) (court can decide case on motions papers and record where briefing would be not assist the court and no member of the panel desires briefing or argument). "Summary disposition is appropriate 'when the position of one party is so clearly correct as a matter of law that no substantial question regarding the outcome of the appeal exists.'" Williams v. Chrans, 42 F.3d 1137, 1139 (7th Cir. 1995), citing Joshua v. United States, 17 F.3d 378, 380 (Fed. Cir. 1994). The district court correctly held that Miles, as a nonlawyer, cannot represent other parties in a lawsuit. See Miles v. Klein, 250 F. App'x 739, 741 (7th Cir. 2007). Accordingly,

IT IS ORDERED that the appellee's motion is GRANTED, and the judgment of the district court is summarily AFFIRMED.

*As a note from Petitioner, the United States was not a party to the case before the District Court and the Seventh Circuit Court.

United States District Court
Northern District of Illinois
Eastern Division

Daniel L. Miles,
Plaintiff(s),
v.

Case Number: 18 C 4571

Judge CHARLES R. NORGLE

Kristine L Svinicki, et al.,
Defendant(s).

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)

and against defendant(s)

in the amount of $,

which includes pre-judgment interest.

does not include pre-judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment. Plaintiff(s) shall recover costs from defendant(s).

☐ in favor of defendant(s)

and against plaintiff(s)

Defendant(s) shall recover costs from plaintiff(s).

☒ other: this case is dismissed.

This action was (check one):

☐ **tried by a jury with Judge presiding, and the jury has rendered a verdict.**
☐ **tried by Judge without a jury and the above decision was reached.**
☐ **decided by Judge on a motion.**

Thomas G. Bruton, Clerk of Court

Date: 9/25/2019

s/ Eric Fulbright, Deputy Clerk

No. 19-3305

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DANIEL L. MILES, on own behalf and on behalf of others as a class,

Plaintiff-Appellant,

v.

KRISTINE L. SVINICKI, successor to STEPHEN G. BURNS, successor to ALLISON M. McFARLANE, successor to GREGORY B. JACZKO, successor to DALE E. KLEIN, successor to NILS J. DIAZ, Chairman, U.S. Nuclear Regulatory Commission,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
Case No. 1:18-CV-04571
The Honorable Judge Charles R. Norgle, Sr.

PLAINTIFF-APPELLANT'S PETITION FOR REHEARING EN BANC

Daniel L. Miles,
Plaintiff-Appellant, Class Agent
and Private Attorney General
17 North Taft Ave, Hillside, IL

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Statement Required By Fed. R. APP. P. 35

Pursuant to Federal Rule of Appellate Procedure 35(b), Plaintiff-Appellant Daniel L. Miles files this Petition for Rehearing En Banc of the three-judge panel's February 28, 2020 Decision in this case, which should be granted for the following reasons:

First, the three-judge panel's decision affirmed the District Court's judgement that had been made null and void by the Thirteenth Amendment, Fifth Amendment, and U.S. Supreme Court's decisions. The Thirteenth Amendment and Fifth Amendment refer to the Thirteenth and Fifth Amendments of the United States Constitution.

Second, the three-judge panel's decision unlawfully overruled the execution of the Thirteenth Amendment's ban on involuntary servitude and unlawfully overruled the Fifth Amendment's ban on deprivation of Thirteenth Amendment right to be free from involuntary servitude without due process of law. The Thirteenth Amendment and Fifth Amendment refer to the Thirteenth and Fifth Amendments of the United States Constitution.

Argument

A. Plaintiff-Appellant argues that the three-judge panel affirmed the District Court's judgement that had been made null and void by the Thirteenth Amendment, Fifth Amendment, and U.S. Supreme Court's decisions.

First and foremost, none of the cases cited by Judge Charles R. Norgle (hereinafter "Judge Norgle") in his orders entered on August 27, 2018 and June 17, 2019, involved a private attorney general plaintiff seeking class certification and an appointment of interim or class counsel pursuant to Fed. R. Civ. P. 23(g). Judge Norgle knew that to be true, and Plaintiff-Appellant knew that to be true, which explained the reason why Plaintiff-Appellant continued to seek class certification as a private attorney general plaintiff and not as a pro se plaintiff as falsely asserted by Judge Norgle in said orders. The orders contained distorted facts. Plaintiff-Appellant was aware that, based on 28 U.S.C. § 1654, a pro se plaintiff was not allowed to act on behalf of a class.

In the orders entered on August 27, 2018 and June 17, 2019, etc., Judge Norgle deliberately omitted to state or indicate that Plaintiff-Appellant brought the class action claim as an enforcement action as a private attorney general plaintiff seeking class certification and an appointment of interim or class counsel (or class attorney other than Plaintiff-Appellant) pursuant to Fed. R. Civ. P. 23(g). See Plaintiff-Appellant's original complaint filed July 2, 2018, and Plaintiff-Appellant's amended complaint filed October 1, 2018. Such omission by Judge Norgle made said orders deceptive.

In *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711 (7th Cir. 1969), the court stated that "in an action brought under Title VII [of the Civil Rights Act of 1964], the charging party and suing plaintiff acts as 'a private attorney general' who takes on the mantel of the sovereign. When ... the alleged discrimination has been practiced on the plaintiff because he ... is a member of a class which is allegedly discriminated against, the trial court bears a special responsibility in the 'public interest' to resolve the dispute by determining the facts regardless of the position of the individual plaintiff." *Bowe*, 416 F.2d at 715 (7th Cir. 1969) (emphasis added). The *Bowe* court further stated that "[a] suit for violation of Title VII is necessarily a class action as the evil sought to be ended is discrimination ...," and that such a suit "is indistinguishable ... from actions under Title II relating to discrimination in public accommodations" the purpose of which is "vindication of the public interest." *Bowe*, 416 F.2d at 719. *See Associated Indus. of N.Y. State, Inc. v. Ickes*, 134 F.2d 694, 704 (2d Cir. 1943) (Judge Frank wrote that "instead of designating the Attorney General, or some other public officer, to bring an action, Congress can constitutionally enact a statute conferring on any non-official persons, or on a designated group of non-official persons, authority to bring a suit ... even if the sole purpose is to vindicate the public interest. Such persons, so authorized, are, so to speak, Private Attorney Generals.").

Examples of federal statutes which authorize individuals to bring claims under the provisions as "private attorneys-general" include: 42 U.S.C. § 2000e-5(k) (Title VII of the Civil Rights Act of 1964) and 42 U.S.C. § 1988(b) (Civil Rights Attorneys' Fees Award Act of 1976), etc. *See Flast v. Cohen*, 392 U.S. 83, 120 (1968) (Harlan, J., dissenting) (noting that "[t]his and other federal courts have repeatedly held that individual litigants, acting as

private attorneys-general, may have standing as 'representatives of the public interest'" (quoting *Scripps-Howard Radio v. Commn.*, 316 U.S. 4, 14 (1942)); *see also United States v. Richardson*, 418 U.S. 166, 193 (1974) ("The Court has confirmed the power of Congress to open the federal courts to representatives of the public interest through specific statutory grants of standing."). Congress expressly recognized that a plaintiff who obtains relief in a civil rights lawsuit "does so not for himself alone, but also as a 'private attorney general,' vindicating a policy that Congress considered of the highest importance." *City of Riverside v. Rivera*, 477 U.S. 561, 575 (1986).

In this case, Plaintiff-Appellant is authorized by the United States Congress to act as a private attorney general for the enforcement of Title VII of the Civil Rights Act of 1964, as amended. Furthermore, the United States Supreme Court has recognized that the United States Congress intended to empower individuals to act as private attorneys general in enforcing the provisions of Title VII. *See Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1065 (2004); *N.Y. Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 63 (1980) (finding that "Congress has cast the Title VII plaintiff in the role of 'a private attorney general,' vindicating 'a policy of the highest priority'"); see also *EEOC v. Associated Dry Goods Corp.*, 449 U.S. 590, 602 (1981) (noting that "Congress considered the charging party a 'private attorney general,' whose role in enforcing the ban on discrimination is parallel to that of the Commission itself"). Indeed, the U.S. Equal Employment Opportunity Commission (EEOC) acts "to vindicate the public interest in the eradication of employment discrimination."

Plaintiff-Appellant, as a private attorney general, had no doubt that the class allegations set forth in the first cause of action (Count 1) of Plaintiff-Appellant's amended complaint filed October 1, [2018], were factual and meritorious, and that the requirements of Rule 23(a) and (b) of the Federal Rules of Civil Procedure were satisfied and thus warranted an appointment of interim or class counsel (or class attorney other than Plaintiff-Appellant) pursuant to Fed. R. Civ. P. 23(g).

Plaintiff-Appellant demonstrated in the written responses and motions filed in the District Court that the first section of the Thirteenth Amendment to the United States Constitution nullified Judge Norgle's orders entered on August 27, 2018, April 25, 2019, and

June 17, 2019, for having the effect of upholding Defendant-Appellee's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude. Likewise, the first section of the Thirteenth Amendment to the United States Constitution nullified Judge Norgle's final judgement entered on September 25, 2019, for having the effect of upholding Defendant-Appellee's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class. In addition, Plaintiff-Appellant believed that Judge Norgle's judgment was procured in violation of Thirteenth Amendment right to be free from involuntary servitude and Fifth Amendment right not to be deprived of Thirteenth Amendment right to be free from involuntary servitude without due process of law. Such violation constituted a jurisdictional defect and rendered Judge Norgle's judgment null and void. *In re Sawyer et al.*, 124 U.S. 200, 220 (1888), Justice Gray quoted from *Elliott v. Lessee of Piersol*, 26 U.S. (1 Pet.) 328 (1828), the following:

> "Where a court has jurisdiction, it has a right to decide any question which occurs in the cause, and whether its decision be correct or otherwise, its judgments, until reversed, are regarded as binding in every other court. But if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a remedy sought in opposition to them, even prior to a reversal."

Elliott v. Lessee of Piersol, 26 U.S. at 329. "[A]ll its proceedings in the exercise of the jurisdiction which it assumed are null and void." *In re Sawyer et al.*, 124 U.S. at 221.

B. Plaintiff-Appellant argues that the three-judge panel did not have the legal authority to overrule the execution of the Thirteenth Amendment's ban on involuntary servitude, nor did the three-judge panel have the legal authority to overrule the Fifth Amendment's ban on deprivation of Thirteenth Amendment right to be free from involuntary servitude without due process of law.

On December 31, 2019, Plaintiff-Appellant timely filed a brief in the office of the Clerk of the Court of Appeals for the Seventh Circuit and argued that:

1) the first section of the Thirteenth Amendment to the United States Constitution, by its own unaided force and effect, nullified Judge Norgle's arbitrary dismissal of

the case, and his arbitrary denial of class certification and dismissal of class action complaint, for having the effect of upholding Defendant's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class, including Plaintiff-Appellant as a member;

2) Defendant's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class, including Plaintiff-Appellant as a member, have deprived and continue to deprive said class members of their Thirteenth Amendment right to be free from involuntary servitude without due process of law under the Due Process Clause of the Fifth Amendment to the United States Constitution; and

3) the requirements of Rule 23(a) and (b) of the Federal Rules of Civil Procedure are satisfied as alleged in Count 1 of Plaintiff-Appellant's amended complaint filed October 1, 2018.

On January 27, 2020, Defendant-Appellee filed a motion for extension of time to file brief in the Court of Appeals for the Seventh Circuit. In said motion, Defendant-Appellee requested a five-week extension of time, from January 30, 2020 to March 5, 2020.

In an order dated January 27, 2020, the Seventh Circuit Court of Appeals granted Defendant-Appellee's motion for extension of time to file brief. Defendant-Appellee's brief was due March 5, 2020, and Plaintiff-Appellant's reply brief was due March 26, 2020.

On February 19, 2020, Defendant-Appellee filed a motion for summary affirmance or [to] reset briefing schedule.

In an order dated February 28, 2020, a three-judge panel of the Seventh Circuit Court of Appeals granted Defendant-Appellee's motion for summary affirmance and affirmed the judgement of the District Court.

Plaintiff-Appellant believed that Defendant-Appellee's motion for summary affirmance or [to] reset briefing schedule was nothing more than a motion for help, aid, or support. In other words, Defendant-Appellee's motion for summary affirmance or [to] reset

briefing schedule was nothing more than an invitation for a three-judge panel to cooperate with Defendant-Appellee. Based on their decision rendered on February 28, 2020, it was obvious that the three-judge panel accepted said invitation. The three-judge panel consisted of Chief Judge Diane P. Wood, Judge Frank H. Easterbrook, and Judge Amy J. St. Eve.

Plaintiff-Appellant has demonstrated in the foregoing paragraphs regarding the District Court that the first section of the Thirteenth Amendment to the United States Constitution nullified Judge Norgle's judgement for having the effect of upholding Defendant-Appellee's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class, including Plaintiff-Appellant as a member. As Plaintiff-Appellant has repeatedly stated in written responses, motions, and brief filed in the District Court and this Court, the first section of the Thirteenth Amendment "is self-executing" and nullifies immediately anything which is contrary to its mandate or directive. *Civil Rights Cases*, 109 U.S. 3, 20 (1883). Plaintiff-Appellant has also demonstrated in the foregoing paragraphs regarding the District Court that Judge Norgle's judgment was procured in violation of Thirteenth Amendment right to be free from involuntary servitude and Fifth Amendment right not to be deprived of Thirteenth Amendment right to be free from involuntary servitude without due process of law. Such violation constituted a jurisdictional defect and rendered Judge Norgle's judgment null and void. As the Supreme Court stated in *City of Mobile v. Bolden*, 446 U. S. 55, 76 (1980): "It is of course true that a law that impinges upon a fundamental right explicitly or implicitly secured by the Constitution is presumptively unconstitutional." See Plaintiff-Appellant's brief filed December 31, 2019, regarding the Thirteenth and Fifth Amendments of United States Constitution.

As indicated in the order dated February 28, 2020, Chief Judge Diane P. Wood, Judge Frank H. Easterbrook, and Judge Amy J. St. Eve's decision "affirmed" the judgement of the District Court. Such judgment had been made null and void by the Thirteenth Amendment, Fifth Amendment, and U.S. Supreme Court's decisions. In addition, the word "affirm" means "to ratify or confirm a former law or judgment." *Black's Law Dictionary*, 2nd Edition, 1910, p. 47. Without doubt, the decision of Chief Judge Diane P. Wood, Judge Frank H.

Easterbrook, and Judge Amy J. St. Eve sent a clear message to Defendant-Appellee that Defendant-Appellee's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black [male] class are ratified and confirmed.

The first section of the Thirteenth Amendment to the United States Constitution nullified Chief Judge Diane P. Wood, Judge Frank H. Easterbrook, and Judge Amy J. St. Eve's decision for having the effect of upholding Defendant-Appellee's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class.

"A law repugnant to the Constitution is void." *Marbury v. Madison*, 5 U.S. (2 Cranch) 137, 180 (1803).

As similarly asserted in paragraph 20 of Plaintiff-Appellant's amended complaint filed October 1, 2018, the term Defendant-Appellee identified in the above caption refers to a combination of persons united (or joined) as one in their official and individual capacity. Each member becomes or acts as the agent of every other member. "[T]he agreement was a tacit understanding, created by a long course of conduct and executed in the same way. Not the form or manner in which the understanding is made, but the fact of its existence and the further one of making it effective by overt conduct are the crucial matters." *Direct Sales Co. v. United States*, 319 U.S. 703, 714 (1943) (emphasizing "prolonged cooperation"). The act of one partner may be the act of all. *See United States v. Dalzotto*, 603 F.2d 642, 644 (7th Cir. 1979) (the agreement may be shown by "concert of action, all the parties working together understandingly with a single design for the accomplishment of a common purpose."). Plaintiff-Appellant believes that Chief Judge Diane P. Wood, Judge Frank H. Easterbrook, and Judge Amy J. St. Eve have become members of Defendant-Appellee.

Plaintiff-Appellant believes that, in regard to their decision rendered on February 28, 2020, Chief Judge Diane P. Wood, Judge Frank H. Easterbrook, and Judge Amy J. St. Eve did not have the legal authority to overrule the execution of the Thirteenth Amendment's ban on involuntary servitude, nor did the Judges have the legal authority to overrule the Fifth Amendment's ban on deprivation of Thirteenth Amendment right to be free from

involuntary servitude without due process of law. Indeed, Article VI of the Constitution makes the Constitution the "supreme Law of the Land." *See the Supremacy Clause*, Article VI, Clause 2 of the United States Constitution.

"Any judge [or officer of the government] who does not comply with his [or her] oath to the Constitution of the United States wars against that Constitution and engages in acts in violation of the supreme law of the land. The judge [or officer] is engaged in acts of treason." *Cooper v. Aaron,* 358 U.S. 1, 78 S. Ct. 1401 (1958).

> "No man [or woman] in this country is so high that he [or she] is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in our system of government, and every man [or woman] who, by accepting office participates in its functions, is only the more strongly bound to submit to that supremacy, and to observe the limitations it imposes on the exercise of the authority which it gives." *U.S. v. Lee,* 106 U.S. 196, 220 (1882).

Plaintiff-Appellant believes that this country is the United States of America, and not the Confederate States of America as one group of people clandestinely thinks it is. Based on its background history, the Confederate States of America believed in the right of one group of people to enslave another and to hold another in involuntary servitude.

Treason against the United States

"Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court." Article III, § 3 of the United States Constitution. *See Cramer v. United States*, 325 U.S. 1, 53-54 (1945).

1. "The expression 'levying war'... embraces not merely that act of formal or declared war, but any combination forcibly to prevent or oppose the execution or enforcement of a provision of the Constitution or of a public statute, if accompanied or followed by an act of forcible opposition in pursuance of such

combination. This in substance has been the interpretation given to these words by the English judges, and it has been uniformly and fully recognized and adopted in the courts of the United States." *Charge to Grand Jury*, (1851) 2 Wall. Jr. C. C. 134, 30 Fed. Cas. No. 18,276.

2. In *Charge to Grand Jury*, (1851) 2 Curt. 630, 30 Fed. Cas. No.18,269, Mr. Justice Curtis said: "That the words ' levying war,' include not only the act of making war for the purpose of entirely overturning the government, but also any combination forcibly to oppose the execution of any public law of the United States, if accompanied or followed by an act of forcible opposition to such law in pursuance of such combination. The following elements, therefore, constitute this offense: (1) A combination, or conspiracy, by which different individuals are united in one common purpose. (2) This purpose being to prevent the execution of some public law of the United States by force. (3) The actual use of force, by such combination, to prevent the execution of that law." Without doubt, the word "execution" is synonymous with the word "enforcement."

"Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be fined under this title or imprisoned not more than seven years, or both." 18 U.S.C. § 2382.

Pursuant to 18 U.S.C. § 2382, Plaintiff-Appellant hereby imparts his belief and knowledge of the commission of treason to Judges of the United States. The language of the class allegations set forth in the first cause of action (Count 1) of Plaintiff-Appellant's amended complaint filed October 1, 2018, demonstrates Defendant-Appellee's longstanding and ongoing pattern of engaging in the following overt acts of treason since January 19, 1975, to present:

1) The overt act of opposing by force the execution of the Thirteenth Amendment's ban on involuntary servitude:

- Thirteenth Amendment refers to the Thirteenth Amendment of the United States Constitution. The Thirteenth Amendment's first section bans slavery and involuntary servitude and "is self-executing." *Civil Rights Cases*, 109 U.S. 3, 20 (1883). "Slavery is [the] state of entire legal subjection of one person to the will of another, and freedom is the total absence of such subjection from a person." *Congressional Globe, 39th Cong.*, 1st Sess., p. 934 (1866). Although implied in the definition of slavery, involuntary servitude is "the condition of one who is compelled by force, coercion, or imprisonment, and against his will, to labor for [or to serve] another, whether he is paid or not." *Black's Law Dictionary*, 4th Edition, 1968, p. 961. Self-executing means, among others, "effective immediately without the need of intervening court action." *West's Encyclopedia of American Law*, 2nd Edition (2008).

2) The overt act of opposing by force the enforcement of Title VII's ban on discrimination on the basis of race and sex:
   - Title VII refers to Title VII of the Civil Rights Act of 1964, as amended. Members of the Black male class, including Plaintiff-Appellant as a member, are authorized by the United States Congress to act as private attorneys general for the enforcement of Title VII of the Civil Rights Act of 1964, as amended, on behalf of the general public (or public interest) and not just the class members, including Plaintiff-Appellant.
3) The overt act of adhering to involuntary servitude, rendering it aid and comfort by upholding it and keeping it alive and well:
   - Under the Thirteenth Amendment to the United States Constitution, slavery and involuntary servitude, except as a punishment for crime, are enemies of the United States of America.

Plaintiff-Appellant believes that only one of the said overt acts by Defendant-Appellee must be proved by two witnesses. "When an overt act is a single, continuous, composite act made of several circumstances and passing through several stages, it is not necessary that there be two witnesses to each circumstance in each stage; it is sufficient that two witnesses

are able to testify to the whole overt act." *Cf. United States v. Fricke,* D.C., 259 F. 673, 677 (1919); *United States v. Robinson,* 259 F. 685, 694 (1919).

"[A] witness is only he who can 'back up' the story of the party to whom he belongs. Treason requires two such witnesses to the overt act." *United States v. Robinson,* 259 F. 685, 691 (1919). Without doubt, members of the Black male class can back up Plaintiff-Appellant's said overt acts of treason being committed by Defendant-Appellee. However, the class members, including Plaintiff-Appellant, as witnesses are being prevented from giving testimony in federal court, in violation of 18 U.S.C. § 1512 (witness tampering).

The federal statute on treason, 18 U.S.C. § 2381, provides in part: "Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason ...."

Conspiracy to Oppress
18 U.S.C. § 241

§ 241 prohibits two or more people from conspiring to oppress, injure, threaten, or intimidate any person "in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States ...."

The language of the class allegations set forth in the first cause of action (Count 1) of Plaintiff-Appellant's amended complaint filed October 1, 2018, also demonstrates members of Defendant-Appellee conspiring to oppress members of the Black male class in the free exercise of their Thirteenth Amendment right to be free from involuntary servitude, in violation of 18 U.S.C. § 241. Plaintiff-Appellant is a member of such class, and said conspiracy to oppress has been ongoing since January 19, 1975, to present.

A conspiracy under § 241 does not require proof of an overt act. The conspiracy offense is "the agreement alone." *United States v. Colvin,* 353 F.3d 569, 576 (7th Cir. 2003) (en banc). A mere tacit understanding will suffice, and there need not be any written statement or even a speaking of words which expressly communicates agreement. As the Supreme Court has put it: "The agreement need not be shown to have been explicit. It can instead be inferred from the facts and circumstances of the case." *Iannelli v. United States,* 420 U.S. 770, 777 n. 10 (1975) (citing *Direct Sales Co. v. United States,* 319 U.S. 703, 711-713 (1943)).

A "concert of action, all the parties working together understandingly, with a single design for the accomplishment of a common purpose" is sufficient to show a conspiracy. *United States v. Varelli*, 407 F. 2d 735, 741 (7th Cir. 1969) (citing *Fowler v. United States*, 273 F. 15, 19 (9th Cir. 1921)).

Prolonged cooperation is "one type of evidence of an agreement that goes beyond what is implicit in any consensual undertaking." *United States v. Lechuga*, 994 F.2d 346, 350 (7th Cir. 1993) (citing *Direct Sales Co. v. United States*, 319 U.S. 703, 713 (1943) (emphasizing "prolonged cooperation")). *See United States v. Consol. Packaging Corp.*, 575 F.2d 117, 126 (7th Cir. 1978) ("Tacit understanding created and executed by a long course of conduct is enough to constitute agreement even without personal communication.").

"All of the conspirators need not be acquainted with each other. They may not have previously associated together. One defendant may know but one other member of the conspiracy. But if, knowing that others have combined to violate the law, a party knowingly co-operates to further the object of the conspiracy, he becomes a party thereto." *Allen v. United States*, 4 F.2d 688 (7th Cir. 1925). *See Martin v. United States*, 100 F.2d 490, 496 (10th Cir. 1938) ("It is not necessary that all of the parties be personally acquainted with each other. Neither is it requisite that one have direct contact with all others. It suffices if with knowledge that others have combined to violate the law, one knowingly co-operates in some affirmative manner to further the purpose of the conspiracy."). "A co-conspirator may become a member of a conspiracy without being in at its inception. He adopts the previous acts of his fellow conspirators when, with knowledge of the conspiracy's existence, he undertakes to further its design. A conspirator also need not know all of the conspirators or be aware of all the details of the conspiracy, so long as the evidence is sufficient to show knowing contribution to the furtherance of the conspiracy." *United States v. Lemm*, 680 F.2d 1193, 1204 (8th Cir. 1982), *cert. denied*, 459 U.S. 1110, 103 S. Ct. 739, 74 L. Ed. 2d 960 (1983). In essence, a person becomes a party to a continuing conspiracy by knowingly cooperating to further the object of the conspiracy. "One actor may drop out of the scene altogether, and another take his place, without the conspiracy terminating." *Allen v. United States*, 4 F.2d 688 (7th Cir. 1925).

The specific intent to deprive members of the Black male class of their Thirteenth Amendment right to be free from involuntary servitude can be inferred from Defendant-Appellee's action. The specific intent includes the intent to prevent members of the Black male class from exercising their Thirteenth Amendment right to be free from involuntary servitude.

"[C]ollective criminal agreement -- partnership in crime -- presents a greater potential threat to the public than individual delicts. Concerted action both increases the likelihood that the criminal object will be successfully attained and decreases the probability that the individuals involved will depart from their path of criminality .... Combination in crime makes more likely the commission of crimes unrelated to the original purpose for which the group was formed. In sum, the danger which a conspiracy generates is not confined to the substantive offense which is the immediate aim of the enterprise." *Iannelli v. United States*, 420 U.S. 770, 778 (1975) (citing *Callanan v. United States*, 364 U.S. 587, 593-594 (1961)).

Kidnapping into Involuntary Servitude
18 U.S.C. § 1583

§ 1583 is a federal kidnapping statute enacted to enforce the Thirteenth Amendment's guarantee of freedom from slavery and involuntary servitude. §1583 provides in part: "Whoever kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave."

Kidnapping means the unlawful taking and carrying away of a person by force and against his will. "It is the fact, not the distance, of forcible removal of the victim that constitutes kidnapping." 1 Am. Jur. 2d, Abduction and Kidnapping, § 18, p. 172.

The language of the class allegations set forth in the first cause of action (Count 1) of Plaintiff-Appellant's amended complaint filed October 1, 2018, also demonstrates Defendant-Appellee kidnapping or carrying away members of the Black male class by force and against their will from a state of freedom to a condition of involuntary servitude with intent to hold them in involuntary service, in violation of 18 U.S.C. § 1583. Plaintiff-Appellant is a member of said class, and said kidnapping into involuntary servitude has

been ongoing since January 19, 1975, to present. § 1583 also prohibits kidnapping of a federal employee such as Plaintiff-Appellant into involuntary servitude.

As stated in *United States v. Booker*, 655 F.2d 562 (4th Cir. 1981), "The distance the victims were transported is not material for a prosecution for kidnapping. *See, e. g., State v. Barbour*, 278 N.C. 449, 180 S.E.2d 115, 118 (1971). Neither does the federal statute at issue here require transportation of the victims across a state line, because it derives its authority from the [T]hirteenth [A]mendment, which prohibits slavery and practices incident to it to secure liberty throughout the country. The very purpose of § 1583 was to extend constitutional protection against kidnapping for the purpose of exacting involuntary servitude ...."

Kidnapping is a continuous offense which "commences when one is wrongfully deprived of freedom and continues until freedom is restored." *State v. Tucker*, 334 S.C. 1, 13, 512 S.E.2d 99, 105 (1999). *See United States v. Godinez*, 998 F.2d 471, 473 (7th Cir. 1993) (agreeing with defendant that "a kidnapping does not end until the victim is free; ... one kidnapping is a single crime, rather than, say, one crime per hour of detention. That kidnapping is a continuing offense also means that the statute of limitations runs from the release rather than the capture of the victim."). It is clear from the language of the class allegations set forth in the first cause of action (Count 1) of Plaintiff-Appellant's amended complaint filed October 1, 2018, that members of the Black male class, including Plaintiff-Appellant as a member, have not been released from being kidnapped into involuntary servitude.

Deprivation of Thirteenth Amendment Right
to be Free from Involuntary Servitude
18 U.S.C. § 242

§ 242 provides: "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States ...."

The language of the class allegations set forth in the first cause of action (Count 1) of Plaintiff-Appellant's amended complaint filed October 1, 2018, also demonstrates

Defendant-Appellee acting under the color of law or custom willfully subjecting members of the Black male class to the deprivation of their Thirteenth Amendment right to be free from involuntary servitude, in violation of 18 U.S.C. § 242. Plaintiff-Appellant is a member of said class, and said willful subjection of class members to the deprivation of their Thirteenth Amendment right has been ongoing since January 19, 1975, to present.

§ 242 requires proof of defendant's specific intent to deprive the victim(s) of a federal right. The specific intent requirement in civil rights cases ensures that the accused is aware that what he does is precisely that which the statute forbids. To prove defendant violated 18 U.S.C. § 242, the government must prove that defendant willfully deprived another of a constitutional right while acting under color of law. *See United States v. Williams*, 343 F.3d 423, 431-432 (5th Cir. 2003), *cert. denied*, 124 S. Ct. 966 (2003). "Willfulness," as defined within the context of 18 U.S.C. § 242, requires the jury to find that the defendant acted "in open defiance or in reckless disregard of a constitutional requirement which has been made specific and definite." *Screws v. United States*, 325 U.S. 91, 105 (1945).

As the Supreme Court stated in *Screws v. United States*, 325 U. S. 91, at 104, 105 (1945), a criminal case under 18 U.S.C. § 52 (now codified as 18 U.S.C. § 242):

> "For the specific intent required by the Act is the intent to deprive a person of a right which has been made specific either by the express terms of the Constitution or laws of the United States or by decisions interpreting them .... He who defies a decision interpreting the Constitution knows precisely what he is doing. If sane, he hardly may be heard to say that he knew not what he did. Of course, willful conduct cannot make definite that which is undefined. But willful violators of constitutional requirements, which have been defined, certainly are in no position to say that they had no adequate notice that they would be visited with punishment. When they act willfully in the sense in which we use the word, they act in open defiance or in reckless disregard of a constitutional requirement which has been made specific and definite. When they are convicted for so acting, they are not punished for violating an unknowable something."

The specific intent to deprive members of the Black male class of their Thirteenth Amendment right to be free from involuntary servitude can be inferred from Defendant-Appellee's action. The specific intent includes the intent to prevent members of the Black male class from exercising their Thirteenth Amendment right to be free from involuntary servitude.

The language of the class allegations set forth in the first cause of action (Count 1) of Plaintiff-Appellant's amended complaint filed October 1, 2018, also demonstrates Defendant-Appellee violating 18 U.S.C. § 1584 (knowingly and willfully holding in involuntary servitude), 18 U.S.C. § 1589, 18 U.S.C. § 1594(a) and/or (b), etc.

Defendant-Appellee's potential class liability for damages along with said federal crimes being committed by Defendant-Appellee should shed some light on the reason why Judge Charles Norgle dismissed the "class allegations" in his order entered on April 25, 2019.

Although members of the Black male class, including Plaintiff-Appellant as a member, are victims of said conspiracy to oppress, deprivation of Thirteenth Amendment right to be free from involuntary servitude, and kidnapping into involuntary servitude, etc., the class members do not have the legal authority as a class of private attorneys general to prosecute Defendant-Appellee for committing these federal crimes, which are criminal offenses against the United States of America. Only the Attorney General of the U.S. Department of Justice is vested with the legal authority to prosecute federal crimes.

Conclusion

Plaintiff-Appellant respectfully requests that the full Court rehear this case en banc, and in the interest of fairness and justice, Plaintiff-Appellant requests of this Court that Chief Judge Diane P. Wood, Judge Frank H. Easterbrook, and Judge Amy J. St. Eve refrain from participation in the decision as to whether this petition is granted or not.

Plaintiff-Appellant respectfully urges this Court (1) to reverse the three-judge panel's decision, (2) to reverse Judge Norgle's arbitrary dismissal of the case, and his arbitrary denial of class certification and dismissal of the class action complaint (Count 1), (3) to certify the first cause of action (Count 1) of Plaintiff-Appellant's amended complaint

as a class action for an ongoing pattern or practice of retaliatory discrimination based on opposition to unlawful discriminatory hiring and promotion policies in violation of Title VII, a class action for an ongoing pattern or practice of race and sex discrimination in hiring and promotion policies in violation of Title VII, and/or a class action for declaratory and injunctive relief under 28 U.S.C. § 2201 and 28 U.S.C. § 2202 for violation of the first section of the Thirteenth Amendment and the Due Process Clause of Fifth Amendment of the United States Constitution, (4) to appoint Class Counsel (or class attorney other than Plaintiff-Appellant) pursuant to Fed. R. Civ. P 23(g) as requested in Plaintiff-Appellant's amended complaint, (5) to reinstate Counts 2, 3, and 4 of Plaintiff-Appellant's amended complaint, and (6) to assign a different District Judge to preside over the case. If feasible, Plaintiff-Appellant requests of this Court to retain jurisdiction over this case or controversy.

Respectfully submitted,

s/ Daniel L. Miles,
Plaintiff-Appellant, Class Agent
and Private Attorney General
17 North Taft Ave.
Hillside, IL 60162
Telephone: (708) 449-0379
E-mail: dlmiles@comcast.net

Dated: April 13, 2020

No. 19-3305

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DANIEL L. MILES, own behalf and on behalf of others as a class,

Plaintiff-Appellant,

v.

KRISTINE L. SVINICKI, successor to STEPHEN G. BURNS, successor to ALLISON M. McFARLANE, successor to GREGORY B. JACZKO, successor to DALE E. KLEIN, successor to NILS J. DIAZ, Chairman, U.S. Nuclear Regulatory Commission,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
Case No. 1:18-CV-04571
The Honorable Judge Charles R. Norgle, Sr.

PLAINTIFF-APPELLANT'S RESPONSE TO
DEFENDANT-APPELLEE'S MOTION FOR SUMMARY AFFIRMANCE
OR TO RESET BRIEFING SCHEDULE

Plaintiff-Appellant, Daniel L. Miles, hereby responds to Defendant-Appellee's Motion for Summary Affirmance or to Reset Briefing Schedule, filed February 19, 2020, as follows:

1. As stated in Plaintiff-Appellant's brief filed December 31, 2019, "de novo" is the standard of review for all issues presented in this appeal. Plaintiff-Appellant believes that when a court hears a case de novo, it is deciding the issues without reference to any legal conclusion or assumption made by the previous court to hear the case. In other words, an appellate court hearing a case de novo may refer to the lower court's record to determine the facts, but will rule on the evidence and matters of law without deferring to the lower court's decisions or findings. Without doubt, the term "de novo" means "anew" or "from the beginning." *Black's Law Dictionary* 435 (6th ed. 1990).

2. Plaintiff-Appellant as an employee has been stripped of his job title as an Information Technology Specialist, etc., but continues to remain in involuntary servitude or service as an involuntary servant as other class members. See paragraph 5 of Plaintiff-Appellant's amended complaint filed October 1, 2018. The term "service" is defined as "the being employed to serve another; duty or labor to be rendered by one person to another, the former being bound to submit his will to the direction and control of the latter. The act of serving; the labor performed or the duties required." *Black's Law Dictionary*, 4th Edition, p. 1533.

3. Plaintiff-Appellant's individual claims of discrimination under section 501 of the Rehabilitation Act of 1973 are not claims based on "failure to accommodate." See paragraphs 43 and 53 of Plaintiff-Appellant's amended complaint filed October 1, 2018.

4. Plaintiff-Appellant is authorized by the United States Congress to act as a private attorney general for the enforcement of Title VII of the Civil Rights Act of 1964 (Title VII), as amended. Furthermore, the United States Supreme Court has recognized that the United States Congress intended to empower individuals to act as private attorneys general in enforcing the provisions of Title VII. *See Rivera v. NIBCO, Inc*, 364 F.3d 1057, 1065 (2004); *N.Y. Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 63 (1980) (finding that "Congress has cast the Title VII plaintiff in the role of 'a private attorney general,' vindicating 'a policy of the highest priority' "); *see also EEOC v. Associated Dry Goods Corp.*, 449 U.S. 590, 602

(1981) (noting that "Congress considered the charging party a 'private attorney general,' whose role in enforcing the ban on discrimination is parallel to that of the Commission itself"). With regard to attorney fees, see 42 U.S.C. § 2000e-5(k), which is made applicable by 42 U.S.C. § 2000e-16(d).

a. Judge Jerome Frank coined the phrase "private attorney general" in 1943, to describe a person acting to "vindicate the public interest." *Associated Indus. v. Ickes*, 134 F.2d 694, 704 (2d Cir. 1943).

b. The private attorney general concept holds that a successful plaintiff is entitled to recovery of his legal expenses, including attorney fees, if he has advanced the policy inherent in public interest legislation on behalf of a significant class of persons. *See Dasher v. Housing Authority of City of Atlanta, Ga.*, D.C. Ga., 64 F.R.D. 720, 722.

c. The United States Congress codified the private attorney general principle into law with the enactment of Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. § 1988(b). It allows a federal court to award reasonable attorney fees to a prevailing party in certain civil rights cases such as those brought under 42 U.S.C. § 1981, 42 U.S.C. § 1981a, 42 U.S.C.§ 1985(3), 42 U.S.C. § 1986 and others. The Act was designed to create an enforcement mechanism for the nation's civil rights laws without creating an enforcement bureaucracy.

d. Article 3, Section 3 of the United States Constitution spells out what is considered treason in the United States: "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort." See 18 U.S. C. § 2381.

   i. "The expression 'levying war'... embraces not merely that act of formal or declared war, but any combination forcibly to prevent or oppose the execution or enforcement of a provision of the Constitution or of a public statute, if accompanied or followed by an act of forcible opposition in pursuance of such combination. This in substance has been the interpretation given to these words by the English judges, and it has been

uniformly and fully recognized and adopted in the courts of the United States." Charge to Grand Jury, (1851) 2 Wall. Jr. C. C. 134, 30 Fed. Cas. No. 18,276.

ii. In Charge to Grand Jury, (1851) 2 Curt. 630, 30 Fed. Cas. No.18,269, Mr. Justice Curtis said: "That the words ' levying war,' include not only the act of making war for the purpose of entirely overturning the government, but also any combination forcibly to oppose the execution of any public law of the United States, if accompanied or followed by an act of forcible opposition to such law in pursuance of such combination. The following elements, therefore, constitute this offense: (1) A combination, or conspiracy, by which different individuals are united in one common purpose. (2) This purpose being to prevent the execution of some public law of the United States by force. (3) The actual use of force, by such combination, to prevent the execution of that law."

5. Unlike Title VII's reliance on the Equal Employment Opportunity Commission (EEOC) and private attorneys general for its enforcement, the first section of the Thirteenth Amendment to the United States Constitution is self-executing and nullifies immediately anything which is contrary to its mandate or directive. The term "self-executing" means, among others, immediately effective without further action, legislation or legal steps, or other action being needed for enforcement. From the language of the class allegations set forth in the first cause of action (Count 1) of Plaintiff-Appellant's amended complaint filed October 1, 2018, it is clear that the ongoing class action complaint of race and sex discrimination demonstrates that Defendant-Appellee's ongoing discriminatory hiring and promotion policies have been unconstitutional under the Thirteenth Amendment to the United States Constitution since January 19, 1975, to present. Under Fed. R. Civ. P. 23(a), "one or more members of a class may sue or be sued as representative parties on behalf of all members." In this case, an appointment of interim or class counsel (or class attorney) is sought pursuant to Fed. R. Civ. P. 23(g).

WHEREFORE, Plaintiff-Appellant respectfully requests that this Court deny Defendant-Appellee's Motion for Summary Affirmance or to Reset Briefing Schedule. This Court has already granted leave to Defendant-Appellee to file a brief by March 5, 2020. It should not take Defendant-Appellee nearly three months to file a brief.

Dated: February 26, 2020

Plaintiff, Class Agent and
Private Attorney General,

s/ Daniel L. Miles
17 North Taft Ave
Hillside, IL 60162
(708) 466-8942
dlmiles@comcast.net

No. 19-3305

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DANIEL L. MILES, own behalf and on behalf of others as a class,

Plaintiff-Appellant,

v.

KRISTINE L. SVINICKI, successor to STEPHEN G. BURNS, successor to ALLISON M. McFARLANE, successor to GREGORY B. JACZKO, successor to DALE E. KLEIN, successor to NILS J. DIAZ, Chairman, U.S. Nuclear Regulatory Commission,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
Case No. 1:18-CV-04571
The Honorable Judge Charles R. Norgle, Sr.

BRIEF AND REQUIRED SHORT APPENDIX OF PLANTIFF-APPELLANT

Daniel L. Miles,
Plaintiff-Appellant, Class Agent
and Private Attorney General
17 North Taft Ave, Hillside, IL
60162, (708) 466-8942

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Jurisdictional Statement

The District Court had jurisdiction pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) *et seq.,* as amended, the Civil Rights Act of 1991, the first section of the Thirteenth Amendment to the United States Constitution, section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791, and pursuant to 28 U.S.C. § 1331, which conferred original jurisdiction on the District Court in a civil action arising under the Constitution or laws of the United States, 28 U.S.C. § 1343, 28 U.S.C. § 2201, and 28 U.S.C. § 2202, 42 U.S.C. § 1988, 42 U.S.C. § 1981, 42 U.S.C. § 1981a, 42 U.S.C. § 1985(3), 42 U.S.C. § 1986, 18 U.S.C. § 1593, 18 U.S.C. § 1594, 18 U.S.C. § 1595. Plaintiff brought ongoing class action complaint on his own behalf and on behalf of others as a class defined in Plaintiff's amended complaint filed October 1, 2018, and as a private attorney general on behalf of the general public. Venue was proper in this judicial district pursuant to 42 U.S.C. § 2000-5(f)(3) and 28 U.S. C. § 1391.

The United States Court of Appeals for the Seventh Circuit has jurisdiction over this appeal pursuant to 28 U.S.C. §1291 and 28 U.S.C. § 1294(1). Final Judgment was entered by the District Court on September 25, 2019, that disposed of all claims in the case. No motion to alter or amend judgment was filed. Notice of Appeal was timely filed with the District Court Clerk on November 20, 2019 (App. at A9). Under Federal Rules of Appellate Procedure 4(a)(1)(B), when the United States or a United States agency or a United States officer or employee sued in an official capacity or a current or former United States officer or employee sued in an individual capacity is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered. This appeal is therefore timely under 28 U.S.C. § 2107(b) and Federal Rules of Appellate Procedure 3(a)(1) and 4(a)(1)(B).

As similarly asserted in paragraph 20 of Plaintiff-Appellant's amended complaint (App. at A2) filed October 1, 2018, the term Defendant-Appellee identified in the above caption refers to a combination of persons united (or joined) as one in their official and individual capacity. Each member becomes or acts as the agent of every other member. "[T]he agreement was a tacit understanding, created by a long course of conduct and executed in the same way. Not the form or manner in which the understanding is made, but the fact of its existence and the further one of making it effective by overt conduct are the crucial

matters." *Direct Sales Co. v. United States*, 319 U.S. 703, 714 (1943) (emphasizing "prolonged cooperation"). The act of one partner may be the act of all.

Statement of Issues Presented for Review

1. Whether the first section of the Thirteenth Amendment to the United States Constitution, by its own unaided force and effect, nullified Judge Norgle's arbitrary dismissal of the case, and his arbitrary denial of class certification and dismissal of class action complaint (Count 1), for having the effect of upholding Defendant's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class, including Plaintiff-Appellant as a member?

2. Whether Defendant's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class, including Plaintiff-Appellant as a member, have deprived and continue to deprive said class members of their right to be free from involuntary servitude without due process of law under the Due Process Clause of the Fifth Amendment to the United States Constitution?

3. Whether the requirements of Rule 23(a) and (b) of the Federal Rules of Civil Procedure are satisfied as alleged in Count 1 of Plaintiff-Appellant's amended complaint filed October 1, 2018?

Statement of the Case

(The Underlying Proceedings in the District Court)

On July 2, 2018, Plaintiff filed a civil complaint consisting of four causes of action in the U.S. District Court for The Northern District of Illinois, Eastern Division. The case was assigned to Judge Charles R. Norgle, Sr. The first cause of action (Count 1) alleged a class claim of an ongoing pattern or practice of retaliatory discrimination based on opposition brought under Title VII of the Civil Rights Act of 1964, as amended. The class claim included not only an ongoing class action complaint of race and sex discrimination in hiring and promotion policies, but also an ongoing pattern or practice of involuntary servitude violating the first section of the Thirteenth Amendment to the United States Constitution and other

laws and depriving class members of their Thirteenth Amendment right to be free from involuntary servitude. The second cause of action (Count 2) alleged an individual claim of disability discrimination brought under section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791. The third cause of action (Count 3) alleged an individual claim of retaliatory disability discrimination based on opposition brought under section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791. The fourth cause of action (Count 4) alleged an individual claim of race and sex discrimination in the application of the NRC 10 C.F.R. 10 process brought under Title VII of the Civil Rights Act of 1962, as amended.

On July 17, 2018, Judge Norgle dismissed the first cause of action (Count 1) pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), denied Plaintiff's in forma pauperis application and financial affidavit, and denied Plaintiff's motion for attorney representation.

On July 26, 2018, Plaintiff filed a motion for leave to amend complaint.

On August 2, 2018, Judge Norgle denied Plaintiff's motion for leave to amend complaint since, according to the Judge, Plaintiff had neither paid the filing fee nor submitted an amended motion for leave to proceed in forma pauperis.

On August 8, 2018, Plaintiff filed a motion for reconsideration of denial of leave to amend complaint, including an amended motion for leave to proceed in forma pauperis and an application for appointment of counsel.

On August 16, 2018, Judge Norgle ordered "Defendants" to respond to Plaintiff's motion for reconsideration, and such response was due on or before August 31, 2018. Plaintiff's reply was due on or before September 7, 2018. Defendant did not respond to Plaintiff's motion for reconsideration.

On August 27, 2018, Judge Norgle issued an order that denied Plaintiff's amended in forma pauperis application and financial affidavit. Plaintiff's motion for reconsideration of denial of leave to amend complaint pursuant to Rule 15 of the Federal Rule of Civil Procedure was denied as moot. The order stated that Plaintiff must pay the requisite fee if he wished to pursue this case. Plaintiff's motion for attorney representation was also denied. As indicated in the order, Judge Norgle's reason for the denial of Plaintiff's amended in forma pauperis application and financial affidavit was because Plaintiff failed to answer question 4 of such application and affidavit. Strangely, Judge Norgle did not indicate in his

previous orders that Plaintiff had failed to answer question 4 of such application and affidavit. Nonetheless, Plaintiff believed that Judge Norgle gave an incorrect or misleading representation of Plaintiff's amended in forma pauperis application and financial affidavit in order to deny Plaintiff's motion for reconsideration of denial of leave to amend complaint. Plaintiff sought to file an amended complaint to clarify the allegations made, or to cure a defect, in the original complaint regarding the first cause of action (Count 1) dismissed by Judge Norgle. Plaintiff believed that, since the dismissal of the first cause of action (Count 1), Judge Norgle was vehemently opposed to Plaintiff filing the amended complaint and desired to compel Plaintiff to litigate only the alleged individual causes of action and not the alleged class cause of action (Count 1) against Defendant.

On September 11, 2018, Plaintiff paid the requisite filing fee after having received funds from the Nuclear Regulatory Commission for unused vacation time. Plaintiff then filed a motion for reconsideration of denial of leave to amend complaint (App. at A1).

On September 13, 2018, Judge Norgle entered an order that said, verbatim, in part: "the motion for reconsideration is taken under advisement. The court will issue an order." Rather than continue to wait for Judge Norgle to decide whether he would grant Plaintiff's motion for reconsideration of denial of leave to amend complaint, on September 24, 2018, Plaintiff requested the Clerk's Office to stamp date each summons and to issue the stamped summons and the complaint filed July 2, 2018, to Plaintiff to be served on Defendant. After having received notice that the stamped summons and the complaint filed July 2, 2018, were properly served on Defendant, on October 1, 2018, Plaintiff filed an amended complaint. Pursuant to Rule15 (a)(1)(A) of the Federal Rules of Civil Procedure, Plaintiff did not need permission nor consent prior to filing an amended complaint. On November 27, 2018, Defendant filed an answer to Plaintiff's amended complaint, and Plaintiff thereafter filed a response to Defendant's answer on December 19, 2018. Due to a partial shutdown of the federal government, proceedings in Judge Norgle's court did not resume until March 6, 2019. On March 6, 2019, Judge Norgle entered an order setting a status hearing for March 26, 2019.

On March 26, 2019, the scheduled status hearing was held without Plaintiff being present. Plaintiff was not present at the hearing due to his obligation to serve as a juror in

a criminal trial in a criminal court of Cook County on March 26, 2019. For that reason, Plaintiff requested of Judge Norgle to continue the hearing on another date. During or after the status hearing, Judge Norgle entered an order that said, verbatim: "Status hearing held on 3/26/2019. Status hearing is continued to 4/24/2019 at 10:00 a.m. Plaintiff shall appear."

On April 24, 2019, the scheduled status hearing was held with only Plaintiff being present and not Defendant's counsel of record. After saying good morning to each other, Judge Norgle started the hearing by asking Plaintiff whether he was represented by an attorney. Plaintiff responded "no" to the Judge's question. Speaking to Plaintiff in a raised tone of voice, Judge Norgle repeatedly asked whether Plaintiff was an attorney. Although feeling intimidated, Plaintiff responded to the Judge's question by stating "I'm a Private Attorney General." Judge Norgle also repeatedly asked Plaintiff, "What did defendant do to you?" Plaintiff responded to the Judge's question by referring the Judge to the allegations in Plaintiff's filed complaint. Sensing that Judge Norgle wanted to focus only on Plaintiff's individual allegation(s), Plaintiff reminded the Judge that Plaintiff filed a class action complaint. Judge Norgle responded to Plaintiff's statement by stating that one must be an attorney in order to file a class action complaint. Despite Judge Norgle's response to Plaintiff's statement, Plaintiff asked the Judge whether he would certify Plaintiff's class action complaint (pursuant to Fed. R. Civ. P. 23). Judge Norgle responded to Plaintiff's question with "no, class action complaint is dismissed." Plaintiff believed that the denial of class certification and dismissal of Plaintiff's class action complaint amounted to a decision by Judge Norgle. Judge Norgle did not inform Plaintiff that the requirements of Fed. R. Civ. P. 23 were not satisfied as alleged in the first cause of action (Count 1) of Plaintiff's amended complaint filed October 1, 2018. Nor did Judge Norgle state in his order dated April 24, 2019 or April 25, 2019, that the requirements of Fed. R. Civ. P. 23 were not satisfied as alleged in the first cause of action (Count 1) of Plaintiff's amended complaint filed October 1, 2018. In essence, Plaintiff believed that Judge Norgle arbitrarily denied class certification and dismissed class action complaint (Count 1) in order to exert pressure on Plaintiff to proceed with the individual causes of action and to refrain from proceeding with the class cause of action. See paragraph 9 of Plaintiff's amended complaint filed October 1, 2018, regarding 18 U.S.C. § 1589(c)(1). In addition, Plaintiff believed that 18 U.S.C § 1512 (witness

tampering statute) made it unlawful to prevent testimony of witnesses such as Plaintiff and potential class members. See paragraph 33 of Plaintiff's amended complaint filed October 1, 2018, regarding "testimonies from class members." Plaintiff had no doubt that 18 U.S.C § 1512 protected actual as well as potential witnesses in civil and criminal proceedings.

On June 7, 2019, Plaintiff filed a motion for recusal or disqualification of Judge Norgle for bias or partiality pursuant to 28 U. S. C. § 455 and Marshall v Jerrico Inc., 446 US 238, 242 (1980) (App. at A3). The filed motion was scheduled for a June 14, 2019 hearing before Judge Norgle.

On June 14, 2014, the scheduled hearing was held regarding Plaintiff's motion for recusal or disqualification of Judge Norgle. Judge Norgle did not rule on Plaintiff's motion but indicated that the motion was taken under advisement.

On June 17, 2019, Judge Norgle denied Plaintiff's motion for recusal or disqualification. Judge Norgle's Order denying Plaintiff's motion for recusal or disqualification was not entered until June 19, 2019.

Seizing upon the opportunity of Plaintiff being compelled to proceed as "pro se" in the case, Defendant filed, on August 9, 2019, a motion to compel responses to discovery (App. at A4). On August 12, 2019, Plaintiff filed a response to Defendant's motion to compel responses to discovery (App. at A5).

On August 15, 2019, Judge Norgle granted Defendant's motion to compel responses to discovery and scheduled a status hearing for September 25, 2019.

On September 20, 2019, Defendant filed a second motion to compel responses to discovery (App. at A6). On September 23, 2019, Plaintiff filed a second response to Defendant's second motion to compel responses to discovery (App. at A7).

On September 25, 2019, during the scheduled status hearing, Judge Norgle dismissed case and stated so in the final judgment without making any of class determinations (numerosity, commonality, typicality, adequacy of representation, predominance of common issues, etc.) pursuant to Fed. R. Civ. P. 23 (App. at A8). This appeal followed.

Summary of Argument

The arguments raised by Plaintiff-Appellant herein address threshold issues. First, Plaintiff-Appellant argues that the first section of the Thirteenth Amendment to the Constitution of the United States, by its own force and effect, nullified Judge Norgle's arbitrary dismissal of the case, and his arbitrary denial of class certification and dismissal of class action complaint (Count 1), for having the effect of upholding Defendant's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class, including Plaintiff-Appellant as a member. Second, Plaintiff-Appellant argues that Defendant's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class, including Plaintiff-Appellant as a member, have deprived and continue to deprive said class members of their Thirteenth Amendment right to be free from involuntary servitude without due process of law under the Due Process Clause of the Fifth Amendment to the United States Constitution. Third, Plaintiff-Appellant argues that the requirements of Rule 23(a) and (b) of the Federal Rules of Civil Procedure are satisfied as alleged in Count 1 of Plaintiff-Appellant's amended complaint filed October 1, 2018.

Argument

C. Standard of Review

De novo is the standard of review for all issues presented in this appeal.

D. Plaintiff-Appellant argues that the first section of the Thirteenth Amendment to the United States Constitution, by its own unaided force and effect, nullified Judge Norgle's arbitrary dismissal of the case, and his arbitrary denial of class certification and dismissal of class action complaint, for having the effect of upholding Defendant's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class, including Plaintiff-Appellant as a member.

During a status hearing held on April 24, 2019, Plaintiff-Appellant asked Judge Norgle whether he would certify Plaintiff-Appellant's class action complaint (pursuant to

Fed. R. Civ. P. 23). Judge Norgle responded to Plaintiff-Appellant's question with "no, class action complaint is dismissed." The denial of class certification and dismissal of Plaintiff-Appellant's class action complaint amounted to a decision by Judge Norgle. See paragraphs 11, 12, 13, and 14 of Plaintiff-Appellant's motion for recusal or disqualification of Judge Norgle filed June 7, 2019 (App. at A3). As Plaintiff-Appellant repeatedly asserted, the first section of the Thirteenth Amendment to the United States Constitution nullified Judge Norgle's decision rendered on April 24, 2019, and implemented in an order entered on April 25, 2019, for having the effect of upholding Defendant's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class. As stated in the *Civil Rights Cases,* 109 U.S. 3, 20 (1883), the first section of the Thirteenth Amendment "is undoubtedly self-executing."

> Self-executing means, among others, "effective immediately without the need of intervening court action." *West's Encyclopedia of American Law,* 2nd Edition (2008).

The Thirteenth Amendment is "an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States" *Jones v. Alfred H. Mayer Co.,* 392 U.S. 409, 438 (1968). "By its own unaided force and effect," the Thirteenth Amendment "abolished slavery, and established universal freedom." *Jones*, 392 U.S. at 439 (quoting *Civil Rights Cases,* 109 U.S. at 20). "Slavery implies involuntary servitude," *Plessy v. Ferguson,* 163 U.S. 537, 542 (1896). *See Bailey v. State of Alabama,* 219 U.S. 219, 241 (1911) ("The plain intention [of the Thirteenth Amendment] was to abolish slavery of whatever name and form and all its badges and incidents; to render impossible any state of bondage; to make labor free, by prohibiting that control by which the personal service of one man is disposed of or coerced for another's benefit, which is the essence of involuntary servitude."). The "[Thirteenth Amendment] is ... a prohibition against the ... enforcement of any law inflicting ... involuntary servitude ...." *United States v. Cruikshank,* 25 F. Cas. 707, 711 (1 Woods, 308) (C.C.D. La. 1874) (No. 14,897). The Thirteenth Amendment restrains not only government actors, but also private individuals. *See Hodges v. United States,* 203 U.S. 1, 26 (1906) (the Thirteenth "Amendment became a part of the supreme law of the land, and, as such, binding upon all the states and all the people as well as upon every branch of

government, federal and state.").

E. Plaintiff-Appellant argues that Defendant's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class, including Plaintiff-Appellant as a member, have deprived and continue to deprive said class members of their Thirteenth Amendment right to be free from involuntary servitude without due process of law under the Due Process Clause of the Fifth Amendment to the United States Constitution.

The Due Process Clause of the Fifth Amendment to the United States Constitution provides in relevant part that "[n]o person shall ... be deprived of life, liberty or property, without due process of law." The Due Process Clause "is a restraint on the legislative as well as on the executive and judicial powers of the government ...." *Murray v. Land & Imp. Co.,* 59 U.S. 272, 276 (1856). The Due Process Clause "is intended to prevent government officials from abusing their power, or employing it as an instrument of oppression." *Cummings v. McIntire,* 271 F.3d 341, 346 (1st Cir. 2001); *County of Sacramento v. Lewis Collins,* 523 U.S. 833, 840 (1998); *DeShaney v. Winnebago County Dept. of Social Servs.,* 489 U. S. 189, 196 (1989). "Due process of law is process due according to the law of the land." *Walker v. Sauvinet,* 92 U.S. 90, 93 (1876). Due process of law "is not confined to judicial proceedings, but extends to every case which may deprive a citizen of life, liberty, or property, whether the proceeding be judicial, administrative, or executive in its nature." *Ulman v. Mayor, etc. of Baltimore,* 72 Md 587, 593, 20 A 141, 142 (1890), *aff'd,* 165 US 719 (1897). The "due process" guaranteed by the Fifth Amendment means that "there can be no proceeding against life, liberty, or property which may result in the deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights .... If any of these (general rules) are disregarded in the proceedings by which a person is condemned to the loss of life, liberty, or property, then the deprivation has not been by 'due process of law.'" *United States v. Masaaki Kuwabara,* 56 F. Supp. 716, 719 (N.D. Cal. 1944) (quoting *Hagar v. Reclamation District No. 108,* 111 U.S. 701, 708 (1884), *Hurtado v. California,* 110 U.S. 516 (1884)).

The procedural due process, which is a component of the Due Process Clause of the Fifth Amendment to the United States Constitution, requires government officials to follow fair procedures before depriving a person of life, liberty, or property. *See, e.g., Harley v. City*

of Jersey City, No. 16-5135, 2017 WL 2779466, at *20 (D.N.J. June 27, 2017); *Goss v. Lopez,* 419 U.S. 565 (1975). By requiring the government to follow appropriate procedures when its agents decide to "deprive any person of life, liberty, or property," the Due Process Clause promotes fairness in such decisions. *Daniels v. Williams,* 474 U.S. 327, 332 (1986). *See Matthews v. Eldridge,* 424 U.S. 319, 332 (1976) ("Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth ... Amendment."); *see also Carey v. Piphus,* 435 U.S. 247, 259 (1978) ("Procedural due process rules are meant to protect persons not from the deprivation, but from the "unjustified deprivation of life, liberty, or property.").

Plaintiff-Appellant has no doubt that there is "liberty interest to be free from involuntary servitude" within the meaning of the Due Process Clause of the Fifth Amendment to the United States Constitution. *See, e.g., Meyer v. Nebraska,* 262 U.S. 390, 399 (1923); *United States v. Kozminski,* 487 U.S. 931 (1988). A fundamental right or liberty interest is one that is "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Seegmiller v. Laverkin City,* 528 F.3d 762, 767 (10th Cir. 2008) (quoting *Chavez v. Martinez,* 538 U.S. 760, 775 (2003)). Indeed, the Thirteenth Amendment right to be free from involuntary servitude is a protected liberty interest under the Due Process Clause of the Fifth Amendment. Plaintiff-Appellant points out that the Declaratory Judgment Act, 28 U.S.C. § 2201, "expands the scope of available remedies" and permits persons "to seek a declaration of the constitutionality of the disputed government action." *Deveraux v. City of Chicago,* 14 F.3d 328, 330 (7th Cir.1994) (citing *Duke Power Co. v. Carolina Environmental Study Group, Inc.,* 438 U.S. 59, 71 n. 15 (1978)). If a party obtains a declaratory judgment, that "judgment can then be used as a predicate to further relief, including an injunction. 28 U.S.C. § 2202." *Powell v. McCormack,* 395 U.S. 486, 499 (1969). In this case, Plaintiff-Appellant seeks broad declaratory and injunctive relief for members of the Black male class and for Defendant's unconstitutional conduct.

From the language of the class allegations set forth in the first cause of action (Count 1) of Plaintiff's amended complaint filed October 1, 2018, it is clear that the deprivation of the Thirteenth Amendment right to be free from involuntary servitude results from

Defendant's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class, including Plaintiff-Appellant as a member. Needless to say, before the deprivation of the Thirteenth Amendment right to be free from involuntary servitude can occur, class member of the Black male class must have been "duly convicted" of a crime as required by the first section of the Thirteenth Amendment to the United States Constitution. *See Robertson v. Baldwin,* 165 U.S. 275, 292 (1897) (Harlan, J., dissenting) ("As to involuntary servitude, it may exist in the United States; but it can only exist lawfully as a punishment for crime of which the party shall have been duly convicted. Such is the plain reading of the constitution."). With respect to the deprivation, there has been no pre-deprivation written notice, hearing, or conviction for a crime (and, as a result of this, a denial of the right to procedural due process). As stated in *Abbott v. Latshaw,* 164 F.3d 141 (3d Cir. 1998), "[i]t is elementary that procedural due process is implicated only where someone has claimed that there has been a taking or deprivation of a legally protected liberty or property interest." *Abbott,* 164 F.3d at 146 (citing *Board of Regents v. Roth,* 408 U.S. 564, 569 (1972)).

The core elements of procedural due process are the right to notice and an opportunity for a hearing to challenge the validity of a deprivation of life, liberty, or property by the government. "Governmental deprivation ... must be accompanied by minimum procedural safeguards, including some form of notice and a hearing." *Arnett v. Kennedy,* 416 U.S. 134, 164 (1974). *See Fuentes v. Shevin,* 407 U.S. 67, 80 (1972) ("For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.'"); *see also Pugel v. Bd. of Tr. of Univ. of Ill.,* 378 F.3d 659, 662 (7th Cir. 2004) ("The hallmarks of procedural due process are notice and an opportunity to be heard."). At a minimum, the Due Process Clause of the Fifth Amendment to the United States Constitution requires that "deprivation of ... liberty ... by adjudication be preceded by notice

and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 313 (1949).

Plaintiff-Appellant believes that action denying "the process that is due" is invalid and unconstitutional and is equally applicable to Judge Norgle's arbitrary dismissal of the case.

F. Plaintiff-Appellant argues that the requirements of Rule 23(a) and (b) of the Federal Rules of Civil Procedure are satisfied as alleged in Count 1 of Plaintiff-Appellant's amended complaint filed October 1, 2018.

1. The District Court entered the final judgment without making any of class determinations (numerosity, commonality, typicality, adequacy of representation, predominance of common issues, etc.) pursuant to Fed. R. Civ. P. 23.

Fed. R. Civ. P. 23(c)(1)(A) provides, in relevant part: When a person sues...as a representative of a class, the court must...determine by order whether to certify the action as a class action. As the Supreme Court stated in the case of General Telephone Co. v. Falcon, 457 U.S. 147, 161 (1982): "Class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff's cause of action." "Sometimes the issues are plain enough from the pleadings to determine whether the interests of the absent parties are fairly encompassed within the named plaintiff's claim..." In supplement to this, the Supreme Court stated in the case of Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 178 (1974) (quoting Miller v. Mackey International, 452 F.2d 424, 427 (CA5 1971)): "In determining the propriety of a class action, the question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met."

2. The requirements of Rule 23(a) and (b) of the Federal Rules of Civil Procedure have been satisfied.

Fed. R. Civ. P. 23(a) sets out the prerequisites to a class action. Rule 23(a) states: "One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the

class, and (4) the representative parties will fairly and adequately protect the interests of the class."

The plaintiff has the burden of proving that a case is appropriately a class action and meets all the requirements of Rule 23. *Valentino v. Howlett,* 528 F.2d 975, 978 (7th Cir. 1976). These requirements effectively "limit the class claims to those fairly encompassed by the named plaintiff's claims." *General Tel. Co. of the Northwest v. EEOC,* 446 U.S. 318, 330 (1980); *see also General Tel. Co. of Southwest v. Falcon,* 457 U.S. 147, 156 (1982). "Failure to meet any one of the requirements of Rule 23 precludes certification of a class." *Valentino,* 528 F.2d at 978. Once these requirements are satisfied, the plaintiff must also satisfy one of the subsections of Rule 23(b). *See General Tel. Co. of Southwest v. Falcon,* 457 U.S. 147, 156 (1982); *Retired Chicago Police Ass'n v. City of Chicago,* 7 F.3d 584, 596 (7th Cir. 1993).

1. Rule 23(a)(1) – Numerosity

"The numerosity requirement requires examination of the specific facts of each case and imposes no absolute limitations." *General Tel. Co. of the Northwest v. EEOC,* 446 U.S. 318, 330 (1980). Plaintiffs seeking class certification are not required to specify the exact number of persons in the class, *Vergara v. Hampton,* 581 F.2d 1281, 1284 (7th Cir. 1978), but must provide some facts to substantiate the claim that the number of persons is too numerous to be joined to the action, *Valentino v. Howlett,* 528 F.2d 975, 978 (7th Cir. 1976). Although the exact number of class members is not specified in Plaintiff-Appellant's class action complaint, facts are provided. "Courts are not infrequently called upon to proceed with causes in which the number of those interested in the litigation is so great as to make difficult or impossible the joinder of all because some are not within the jurisdiction or because their whereabouts is unknown or where if all were made parties to the suit its continued abatement by the death of some would prevent or unduly delay a decree. In such cases where the interests of those not joined are of the same class as the interests of those who are, and where it is considered that the latter fairly represent the former in the

prosecution of the litigation of the issues in which all have a common interest, the court will proceed to a decree." *Hansberry v. Lee,* 311 U.S. 32, 41-42 (1940).

2. Rule 23(a)(2) – Commonality

The commonality requirement requires "questions of law or fact common to the class." As the Seventh Circuit explained: "The fact that there is some factual variation among the class grievances will not defeat a class action. A common nucleus of operative fact is usually enough to satisfy the commonality requirement of Rule 23(a)(2)." *Rosario v. Livaditis,* 963 F.2d 1013, 1017-18 (7th Cir. 1992). Commonality does not require that all questions of fact or law be identical. *Johns v. DeLeonardis,* 145 F.R.D. 480, 482 (N.D. Ill. 1992). Rather, the commonality requirement is satisfied as long as "the class claims arise out of the same legal or remedial theory." *Johns,* 145 F.R.D at 483. As one court noted, "[c]ommonality is not a demanding requirement: It calls only for the existence of at least one issue of fact or law common to all class members." *Meiresonne v. Marriot Corp.,* 124 F.R.D. 619, 622 (N.D. Ill. 1989); *see also Wagner v. NutraSweet Co.,* 170 F.R.D. 448, 450 (N.D. Ill. 1997) (must show at least one question is common to the class). Plaintiff-Appellant has shown common questions pertaining to the class.

3. Rule 23(a)(3) – Typicality

The typicality requirement requires that claims of Plaintiff are typical of the claims of the class members. "Typicality under Rule 23(a)(3) should be determined with reference to the company's actions, not with respect to particularized defenses it might have against certain class members." *Wagner v. Nutrasweet Company,* 95 F.2d 527, 534 (7th Cir. 1996). As the Seventh Circuit held, "[t]he question of typicality in Rule 23(a)(3) is closely related to the preceding question of commonality .... [A] plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his ... claims are based on the same legal theory." *Rosario v. Livaditis,* 963 F.2d at 1018. As with commonality, "[t]he typicality requirement may be satisfied even if there are factual distinctions between the claims of the named plaintiffs and those of other class members." *De La Fuente v. Stokely-Van Camp, Inc.,* 713 F.2d 225, 232 (7th Cir. 1983). "Instead, we look to the defendant's conduct and the plaintiff's legal theory to satisfy Rule

23(a)(3)." *Rosario,* 963 F.2d at 1018; *Wagner v. Nutrasweet Co.,* 95 F.3d 527, 534 (7th Cir. 1996). Plaintiff-Appellant has shown that the claims of Plaintiff-Appellant and the class members arise out of common facts and similar legal and remedial theories.

4. Rule 23(a)(4) - Adequacy of Representation

The adequacy-of-representation requirement requires that the class representatives "will fairly and adequately protect the interests of the class." To satisfy the adequacy requirement, Plaintiffs must have common interests with the class members, and must vigorously prosecute the interests of the class through qualified counsel. Cf. *Sosna v. Iowa,* 419 U.S. 393 (1975); *accord Susman v. Lincoln American Corp.,* 561 F.2d 86, 90 (7th Cir. 1977). "A representative must be part of the class and possess the same interest and suffer the same injury as the class members." *E.g., East Tex. Motor Freight System, Inc.* v. *Rodriguez,* 431 U.S. 395, 403 (1977).

In the case of *General Tel. Co. of Southwest* v. *Falcon,* 457 U.S. 147, 157-158, n. 13, the Supreme Court noted: "The commonality and typicality requirements of Rule 23(a) tend to merge. Both serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence. Those requirements therefore also tend to merge with the adequacy-of-representation requirement ...." *See Keele* v. *Wexler,* 149 F.3d 589, 594 (7th Cir. 1998).

Indeed, Plaintiff-Appellant, as a class member and a class agent and a private attorney general, will "fairly and adequately protect the interests of the class," and Plaintiff-Appellant and members of the class share a common interest (with no conflict) and suffer the same injury, thus meeting with requirement of Rule 23(a)(4). In addition, an appointment of interim or class counsel is sought pursuant to Fed. R. Civ. P. 23(g).

5. Rule 23(b)(2) - Injunctive and Declaratory Relief

Fed. R. Civ. P. 23(b)(2) requires that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." To

satisfy this requirement, Plaintiff-Appellant alleges, among others, that Defendant-Appellee's system of decision-making has resulted in retaliatory discrimination against the class and Plaintiff-Appellant, and that Defendant-Appellee's system of decision-making has resulted in a disparate treatment of, and has resulted in a disparate impact on, the class and Plaintiff-Appellant as a whole. In addition, Plaintiff-Appellant seeks declaratory relief that Defendant-Appellee's pattern or practice and/or ongoing discriminatory policies violate federal law and injunctive relief designed to end and remedy the effect of the Defendant-Appellee's pattern or practice and/or ongoing discriminatory policies. Such relief by its nature is applicable to the class as a whole and satisfies Rule 23(b)(2)'s requirement that declaratory and injunctive relief be appropriate.

6. Rule 23(b)(3) – Predominance and Superiority

Fed. R. Civ. P. 23(b)(3) requires "that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods" for the fair and efficient of adjudication of the controversy. To satisfy this requirement, Plaintiff-Appellant alleges that class certification is also appropriate in this case because, as set forth in more detail in the amended class action complaint (Count 1), common questions predominate over those affecting class members individually, and that a class action is superior to other available methods of resolving this controversy. The alternative to class treatment is certainly numerous individual suits. Such a multiplicity of actions would defeat the economies of scale inherent in the class action procedure and result in substantial waste of judicial resources. Thus, from the viewpoint of public policy, transactional costs and judicial economy, multiple litigations would be manifestly inferior to a class action, thereby satisfying Fed. R. Civ. P. 23(b)(3).

In addition, due to the forty-five-day time limit being imposed by 29 C.F.R. § 1614.105 (a)(1) for allegations of discrimination and thus small recoveries of damages, "the plaintiff's claim may be so small, or the plaintiff so unfamiliar with the law, that he would not file suit individually...." *Phillips Petroleum Co. v. Shutts,* 472 U.S. 797, 813 (1985). "The aggregation of individual claims in the context of a classwide suit is an evolutionary response to the

existence of injuries unremedied by the regulatory action of government. Where it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages, aggrieved persons may be without any effective redress unless they may employ the class-action device. That there is a potential for misuse of the class-action mechanism is obvious. Its benefits to class members are often nominal and symbolic, with persons other than class members becoming the chief beneficiaries. But the remedy for abuses does not lie in denying the relief sought here, but with re-examination of Rule 23 as to untoward consequences." *Deposit Guaranty Nat. Bank v. Roper,* 445 U.S. 326, 339 (1980).

7. The Liability and Damages Phases

Given that Plaintiff-Appellant seeks certification of the case as a class action pursuant to Fed. R. Civ. 23(b)(2) and/or 23(b)(3), In *Lemon v. International Union of Operating Engineers, Local No.* 139, 216 F.3d 577 (7th Cir. 2000) (quoting *Jefferson v. Ingersoll International, Inc.,* 195 F.3d 894 (7th Cir. 1999)) the Seventh Circuit discussed three options for the trial court to choose from in handling the liability and damages phases of the case:

1) The first option is certifying the class under Rule 23(b)(3) for all proceedings. In this category of lawsuit, the class members may seek either predominantly legal or equitable remedies, but each member must share common questions of law or fact with the rest of the class, therefore making class-wide adjudication of the common questions efficient compared to repetitive individual litigation of the same questions. In contrast to Rule 23(b)(2), however, certification under Rule 23(b)(3) entails mandatory personal notice and opportunity to opt out for all class members, thereby satisfying the due process concerns in Ortiz. *See* Fed. R. Civ. P. 23(c)(2); *see also Jefferson,* 195 F.3d at 898.

2) The second option is divided certification. The district court could certify a Rule 23(b)(2) class for the portion of the case addressing equitable relief and a Rule 23(b)(3) class for the portion of the case addressing damages. This avoids the due process problems of certifying the entire case under Rule 23(b)(2) by introducing the Rule

23(b)(3) protections of personal notice and opportunity to opt out for the damages claims. Since the Civil Rights Act of 1991 entitles the parties to a jury trial on claims of intentional discrimination, *see* 42 U.S.C. § 1981a, a district court that proceeds with divided certification must adjudicate the damages claims first before a jury to preserve the Seventh Amendment right to a jury trial, even if adjudication of these claims decides the equitable claims as well.

3) The third option discussed in Jefferson is that the district court might certify the class under Rule 23(b)(2) for both monetary and equitable remedies but exercise its plenary authority under Rules 23(d)(2) and 23(d)(5) to provide all class members with personal notice and opportunity to opt out, as though the class was certified under Rule 23(b)(3). In fact, a district court handled a class certified under Rule 23(b)(2) much this way in Williams. We affirmed and held that the district court provided opportunities to object that "were tantamount to the protections envisioned by Fed. R. Civ. P. 23(c)(2) [for classes certified under subsection (b)(3)]." *Williams v. Burlington Northern, Inc.*, 832 F.2d 100, 104 (7th Cir. 1987).

Conclusion

Plaintiff-Appellant hereby urges this Court (1) to reverse Judge Norgle's arbitrary dismissal of the case, and his arbitrary denial of class certification and dismissal of the class action complaint (Count 1), (2) to certify the first cause of action (Count 1) of Plaintiff-Appellant's amended complaint as a class action for an ongoing pattern or practice of retaliatory discrimination based on opposition to unlawful discriminatory hiring and promotion policies in violation of Title VII, a class action for an ongoing pattern or practice of race and sex discrimination in hiring and promotion policies in violation of Title VII, and/or a class action for declaratory and injunctive relief under 28 U.S.C. § 2201 and 28 U.S.C. § 2202 for violation of the first section of the Thirteenth Amendment and the Due Process Clause of Fifth Amendment of the United States Constitution, (3) to appoint Class Counsel pursuant to Fed. R. Civ. P. 23(g) as requested in Plaintiff-Appellant's amended complaint, (4) to reinstate Counts 2, 3, and 4 of Plaintiff-Appellant's amended complaint, and (5) to assign a different District Judge to preside over the case. If feasible, Plaintiff-Appellant requests of this Court to retain jurisdiction over this case or controversy.

Respectfully submitted,

s/ Daniel L. Miles,
Plaintiff-Appellant, Class Agent
and Private Attorney General
17 North Taft Ave.
Hillside, IL 60162
Telephone: (708) 449-0379
E-mail: dlmiles@comcast.net

Dated: December 31, 2019

United States District Court
Northern District of Illinois
Eastern Division

Daniel L. Miles,
Plaintiff,

Case Number: 18 C 4571

v.

Honorable Charles R. Norgle Sr.

Kristine L Svinicki, et al.,
Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, April 24, 2019:

MINUTE entry before the Honorable Charles R. Norgle: Status hearing held on 4/24/2019. Plaintiffs class allegations are dismissed. Mailed notice (ewf,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rule s of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Daniel L. Miles, on own behalf and on behalf of others, Plaintiff(s),	**Civil Action** **Civil No.:** 1:18-cv-04571
vs.	**Judge:** Charles R. Norgle, Sr.
Kristine L. Svinicki, successor to Stephen G. Burns, successor to Allison M. Mcfarlane, successor to Gregory B. Jaczko, successor to Dale E. Klein, Chairman, Defendant(s).	

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Preliminary Statement

1. This is a class action complaint brought under Title VII of the Civil Rights Act of 1964, as amended (also hereinafter, "Title VII"), for an ongoing pattern or practice of retaliatory discrimination based on opposition. The ongoing class action complaint of race and sex discrimination filed in federal court on August 11, 2006, (civil no. 06C 4351), is central to the understanding of not only the class action complaint of an ongoing pattern or practice of retaliatory discrimination based on opposition, but also the class action complaint of an ongoing pattern or practice of involuntary servitude violating section 1 of the Thirteenth Amendment to the United States Constitution (also hereinafter, "Thirteenth Amendment"). This is also an individual complaint of disability discrimination, and an individual complaint of retaliatory disability discrimination based on opposition, brought under section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791. This is in addition an individual complaint brought under Title VII of the Civil Rights Act of 1962, as amended, for race and sex discrimination in the application of the NRC 10 C.F.R. 10 process.

Jurisdiction and Venue

2. The jurisdiction of this Court is invoked pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) et seq., as amended, the Civil Rights Act of 1991, the first section of the Thirteenth Amendment to the United States Constitution, section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791, and pursuant to 28 U.S.C. § 1331, which confers original jurisdiction upon this Court in a civil action arising under the Constitution or laws of the United States, 28 U.S.C. §§ 1343, 2201, and 2202, 42 U.S.C. § 1988, 42 U.S.C. § 1981, 42 U.S.C. § 1981a, 42 U.S.C. § 1985(3), 42 U S.C. § 1986, 18 U.S.C. § 1593, 18 U.S.C. 1594, 18 U.S.C. § 1595. Plaintiff brings ongoing class action complaint on his own behalf and on behalf of others as a class defined herein, and as a private attorney general on behalf of the general public. Venus is proper in this judicial district pursuant to 42 U.S.C. § 2000-5(f)(3) and 28 U.S.C. § 1391.

Introduction

3. Carrying on in the same way as alleged in the ongoing class action complaint of race and sex discrimination filed by Plaintiff on August 11, 2006, in federal court approximately 12 years ago (civil no. 06C 4351), Region 3 of the U.S. Nuclear Regulatory Commission, located in Lisle, IL 60532, has been carrying out part of its operations, for an estimated time period of 43 years and counting, with a middle finger thrown up at Title VII of the Civil Rights Act of 1964, as amended, and section 1 of the Thirteenth Amendment to the United States Constitution and other laws. The statements set forth in paragraphs 21 through 26 should paint a clear picture in one's mind as to what has been part of Region 3's operations. The U.S. Nuclear Regulatory Commission and its Region 3 office were initially opened for business on or about January 19, 1975.

4. Plaintiff, Daniel L. Miles, has been employed by Region 3 of the U.S. Nuclear Regulatory Commission since January 27, 2002. Prior to being hired by Region 3, Plaintiff had worked there as a federal contractor for approximately three years. Plaintiff has exhausted his administrative remedies and fulfilled all conditions precedent to filing this suit and have received on May 14, 2018, the right to file a civil action in federal court.

Statement of Facts

Twelve Years and Counting Since
Plaintiff's Initial EEO Complaint on or about
December 15, 2005

5. On or about December 15, 2005, Plaintiff initiated Defendant's EEO counseling on a class action complaint, alleging, among others, that a pattern or practice of race and sex discrimination and ongoing discriminatory hiring and promotion policies have resulted in a disparate treatment of, and have resulted in a disparate impact on, Black males, including Plaintiff, and stating that Plaintiff, as a class agent, is representing current and former Black male employees and applicants for employment (including applicants who would have applied but for the discrimination) at Region 3 of the U.S. Nuclear Regulatory Commission (also hereinafter, "Agency") who had or have been, or are being adversely affected by Defendant's pattern or practice of discrimination and/or ongoing discriminatory hiring and promotion policies that denied or are denying them employment opportunities on the basis of their race and sex (this identifies the Black male class, including Plaintiff as a member). From January 19, 1975, to present is the relevant time period of the alleged class discrimination and involuntary servitude, and November 4, 2005, is the date that it was conveyed to Plaintiff that his sought-after promotion was denied. During the relevant time period of discrimination, Plaintiff has been subjected to the discrimination, as alleged, since Plaintiff's initial hire as a Federal employee on January 27, 2002. Plaintiff's claims of discrimination were not resolved with Defendant in counseling. As a result, Defendant's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class continued. See paragraphs 24 through 26 below. The involuntary servitude or service consists in each class member being compelled by force to involuntarily submit to and comply with the prescribed course of action by Defendant for the benefit of another, and there have been no reasonable means of escape and no choice except to remain in the involuntary service. As such, and without doubt, members of the Black male class, including Plaintiff, are being held in compelled submission and compliance, and are being deprived of their Thirteenth Amendment right to be free from involuntary servitude. With respect to the involuntary servitude, Plaintiff has long believed the following:

a) The Thirteenth Amendment provides that "[n]either slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." Amendment XIII to the United States Constitution.

b) Slavery and involuntary servitude, except as a punishment for crime, are enemies of the United States of America.

c) The Thirteenth Amendment to the United States Constitution abolished involuntary servitude. *See Plessy v. Ferguson*, 163 U.S. 537, 542 (1896). Without doubt, synonyms of abolish include annul, ban, forbid, invalidate, nullify, prohibit, outlaw, repeal, and void.

d) The Thirteenth Amendment prohibits for all time ... involuntary servitude, except as punishment for crime, within the United States. *See Civil Rights Cases*, 109 U S. 3, 20 (1883); *Wicks v. Southern Pacific Co.*, 231 F. 2d 130 (9th Cir. 1956), *cert. denied, Wicks v. Brotherhood of Maintenance*, 351 U.S. 946 (1956).

e) The Thirteenth "Amendment ... is undoubtedly self-executing, without any ancillary legislation, so far as its terms are applicable to any existing state of circumstances. By its own unaided force and effect, it abolished slavery and established universal freedom." *See Civil Rights Cases*, 109 U.S. 3, 20 (1883); *see Plessy v. Ferguson*, 163 U.S. 537, 542 (1896) ("Slavery implies involuntary servitude").

f) The Thirteenth "Amendment became a part of the supreme law of the land, and, as such, binding upon all the states and all the people as well as upon every branch of government, federal and state." *See Hodges v. United States*, 203 U.S. 1, 26 (1906).

g) The "[Thirteenth Amendment] is ... a prohibition against the ... enforcement of any law inflicting ... involuntary servitude." *See United States v. Cruikshank*, 25 F. Cas. 707, 711 (1 Woods, 308) (C.C.D. La.1874) (No. 14,897).

h) The Thirteenth "[A]mendment denounces a status or condition, irrespective of the manner or authority by which it is created." *See Clyatt v. United States*, 197 U.S. 207, 216 (1905).

i) Involuntary servitude denotes, among others, "the condition of one who is compelled by force, coercion, or imprisonment, and against his will, to labor for [or to serve] another, whether he is paid or not." *See Black's Law Dictionary*, 4th Edition, p. 961.

j) A condition of enforced compulsory service of one to another is a form of involuntary servitude within the meaning of the Thirteenth Amendment. *See Hodges v. United States*, 203 U. S. 1 (1906); *United States v. Booker*, 655 F.2d 562, 564 (4th Cir.1981) ("The [A]mendment ... [was] intended to eradicate ... all forms of compulsory, involuntary service"); *Corrigan v. Buckley*, 271 U.S. 323, 330 (1926).

k) The term "service" is defined as "the being employed to serve another; duty or labor to be rendered by one person to another, the former being bound to submit his will to the direction and control of the latter. The act of serving; the labor performed or the duties required." *Black's Law Dictionary*, 4th Edition, p. 1 533.

l) The Thirteenth Amendment to the United States Constitution nullifies immediately anything which is contrary to its mandate or directive.

m) Title VII of the Civil Rights Act of 1964, as amended, embodies the principles of the Thirteenth Amendment. *See Abner v. Kansas City Southern Railroad Co.*, 513 F.3d 154 (5th Cir. 2008).

6. On or about February 3, 2006, Plaintiff filed a formal, ongoing class action complaint of race and sex discrimination, including a petition for class certification, with the Office of Small Business and Civil Rights of the U.S. Nuclear Regulatory Commission. Plaintiff's petition for class certification was denied, on April 28, 2006, by Administrative Judge, Young B. Kim, of the U.S. Equal Employment Opportunity Commission. In the Judgment entered, the Administrative Judge remanded the case to the Agency to be processed as an individual complaint. Plaintiff informed the Agency in writing that an individual complaint was not filed in the absence of a class action complaint. Nearly six years after Judge Kim's decision, an Agency EEO Counselor revealed to Plaintiff that Judge Kim denied class certification because Plaintiff was not an attorney. Plaintiff did not know the reason why Judge Kim denied class certification beforehand. Nonetheless, the merits of the allegations of race and sex discrimination as alleged in the ongoing class action complaint were not adjudicated by Judge Kim. Plaintiff believed (and still believes) that Judge Kim's decision

had the effect of upholding Defendant's ongoing discriminatory hiring and promotion policies inflicting involuntary servitude on members of the Black male class.

7. On August 11, 2006, Plaintiff filed an ongoing class action complaint of race and sex discrimination, including a written motion for class certification, in the United States District Court for the Northern District of Illinois, Eastern Division. The case (civil no. 06C 4351) was assigned to Judge Charles Kocoras. After unsuccessfully urging Plaintiff on several occasions to proceed in the case as an individual action rather than as a class action, Judge Kocoras dismissed the case on January 17, 2007. Judge Kocoras gave no reason as to why he would not allow Plaintiff to proceed in the case as a class action, nor did Judge Kocoras inform Plaintiff that the requirements of Fed. R. Civ. P. 23 were not satisfied. Prior to Judge Kocoras' dismissal of the case, Plaintiff had informed him on several occasions that an individual complaint was not filed in the absence of a class action complaint (the language of the filed class action complaint supported Plaintiff's statements). Nonetheless, the merits of the allegations of race and sex discrimination as alleged in the ongoing class action complaint were not adjudicated by Judge Kocoras. Plaintiff believed (and still believes) that Judge Kocoras' decision had the effect of upholding Defendant's ongoing discriminatory hiring and promotion policies inflicting involuntary servitude on members of the Black male class.

8. On March 14, 2007, Plaintiff filed a notice of appeal of Judge Kocoras' decision in the District Court. On appeal in the United States Court of Appeals for the Seventh Circuit, Plaintiff-Appellant presented the following statement of issues: 1) Whether the District Court abused its discretion in dismissing the case and, if so, 2) Whether the District Court abused its discretion in denying class certification. Circuit Judges William J. Bauer, Joel M. Flaum, and Terence T. Evans were initially assigned to Plaintiff-Appellant's appeal case (appeal no. 17-1596). On June 8, 2007, the assigned Judges granted only to extent the Briefing request of the United States' Motion for Summary Affirmance or To Reset Briefing Schedule. Brief of Defendant-Appellee was due by July 6, 2007 (completed) and reply brief of Plaintiff-Appellant was due by July 23, 2007 (completed). Implied from the reading of Defendant-Appellee's brief, Defendant-Appellee seemed worried that the Judges assigned

would rule against it and rule in favor of Plaintiff-Appellant by permitting class certification. However, during an estimated time period between June 8 and October 11, 2007, a switcheroo took place. In other words, during that time period Judge William J. Bauer and Judge Joel M. Flaum were no longer assigned to Plaintiff-Appellant's appeal case and were replaced by Judge Richard Posner and Judge Kenneth F. Ripple. As such, Judge Richard Posner, Judge Kenneth F. Ripple, and Judge Terence T. Evans became the Judges assigned to Plaintiff-Appellant's appeal case. On October 11, 2007, the Judges assigned or panel majority of Judges assigned affirmed the District Court's denial of class certification and dismissal of the case. On December 4, 2007, Plaintiff-Appellant's petition for rehearing was denied. Plaintiff believed (and still believes) that the Judges' or panel majority of Judges' decision had the effect of upholding Defendant-Appellee's ongoing discriminatory hiring and promotion policies inflicting involuntary servitude on members of the Black male class.

9. On December 23, 2008, the United States Congress amended 18 U.S.C. § 1589 to provide a definition of the term 'abuse or threatened abuse of law or legal process.' In 18 U.S.C. § 1589(c)(1), the term 'abuse or threatened abuse of law or legal process' means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action. Thanks to the U.S. Department of Justice for encouraging Congress to amend 18 U.S.C. § 1589.

10. On November 30, 2011, Plaintiff initiated Defendant's EEO counseling on an ongoing class action complaint of retaliatory discrimination based on opposition. Plaintiff specifically made clear to the assigned EEO Counselor that "the ongoing class action complaint of retaliatory discrimination relates back to or grows out of the original filed class action complaint of race and sex discrimination. The class consists of current and former Black male employees and applicants for employment (including applicants who would have applied but for the retaliatory discrimination) at Region 3 of the U.S. Nuclear Regulatory Commission who had or have been, or are being adversely deprived of employment

opportunities on the basis of their race and sex as a consequence of their opposition to Defendant's ongoing discriminatory hiring and promotion policies being based on prohibited race and sex discrimination under Title VII of the Civil Rights Act of 1964, as amended (this identifies the Black male class, including Plaintiff as a member)." Plaintiff's claims of discrimination were not resolved with Defendant in counseling. As a result, Defendant's ongoing discriminatory hiring and promotion policies inflicting involuntary servitude on members of the Black male class continued.

11. On December 28, 2011, Plaintiff filed a formal, ongoing class action complaint of retaliatory discrimination based on opposition, including a petition for class certification, with the Office of Small Business and Civil Rights of the U. S. Nuclear Regulatory Commission ("NRC"). Plaintiff explicitly named Ms. Kostantina 'Dina' Sotiropoulos in the class action complaint of which Ms. Kostantina 'Dina' Sotiropoulos filed an affidavit against said complaint. Plaintiff's petition for class certification was denied, on April 27, 2012, by Administrative Judge, Laurie Wardell, of the U.S. Equal Employment Opportunity Commission. In the Judgment entered, the Judge remanded the case to the Agency to be processed as an individual complaint. Plaintiff informed the Agency in writing that an individual complaint was not filed in the absence of a class- action complaint. After having completely read Judge Wardell's Order denying class certification, it became clear to Plaintiff that Judge Wardell treated Plaintiff's filed class- action complaint of retaliatory discrimination based on opposition as a class action complaint of race and sex discrimination for class certification. The NRC form 646 (formal discrimination complaint) that Plaintiff filed with the class action complaint of retaliatory discrimination based on opposition clearly showed that only the "reprisal" box was checked as the basis for Plaintiff's class action complaint. Plaintiff's filed ongoing class action complaint of retaliatory discrimination based on opposition was not evaluated by Judge Wardell for class certification. Plaintiff believed (and still believes) that Judge Wardell's decision had the effect of upholding Defendant's ongoing discriminatory hiring and promotion policies inflicting involuntary servitude on members of the Black male class. On June 18, 2012, Plaintiff filed a notice of appeal of Judge Wardell's denial of class certification.

12. On March 9, 2017, Plaintiff initiated Defendant's EEO counseling on four individual complaints of discrimination and retaliation. Plaintiff alleged and discussed in detail with the assigned EEO Counselor the following claims of discrimination and retaliation:

a. Retaliatory Discrimination Based on Opposition under Title VII of the Civil Rights Act of 1964, as amended. This alleged discrimination occurred on February 3, 2017, and was related to and arose from Defendant's ongoing pattern or practice of retaliatory discrimination alleged in the ongoing class action complaint. As a note, the ongoing class action complaint of retaliatory discrimination was still pending before the Office of Federal Operations of the Equal Employment Opportunity Commission.

b. Disability Discrimination under Section 501 of the Rehabilitation Act of 1973, as amended. This alleged discrimination occurred on February 3, 2017.

c. Retaliatory Disability Discrimination Based on Opposition under Section 501 of the Rehabilitation Act of 1973, as amended. This alleged discrimination occurred on February 3, 2017.

d. Race and Sex Discrimination in the Application of the Agency 's 10 C.F.R. 10 Process. This alleged discrimination occurred on February 3, 2017, and was related to and arose from Defendant's ongoing discriminatory hiring and promotion policies alleged in the ongoing class action complaint.

13. The mentioned claims are the same claims of discrimination and retaliation which are presented to this Court for de novo adjudications, and each will be alleged and discussed in detail below. The claims of discrimination and retaliation came about, among others, as a result of Defendant's ongoing discrimination and Ms. Kostantina 'Dina' Sotiropoulos's discriminatory conduct or behavior which caused Plaintiff to be involuntarily suspended, involuntarily removed from the Region 3 office, and placed on involuntary leave on February 3, 2017. Ms. Kostantina 'Dina' Sotiropoulos was (and probably still is) the Director of the Division of Resource and Management Administration (DRMA) at Region 3 of the U.S. Nuclear Regulatory Commission, located in Lisle, IL 60532. Each of the mentioned claims

was alleged in a written formal complaint of discrimination filed, on May 9, 2017, with the Agency's Office of Small Business and Civil Rights.

14. On November 6, 2017, Ms. Pamela R. Baker, Director of the Office of Small Business and Civil Rights of the U.S. Nuclear Regulatory Commission, made a decision to dismiss, without any investigation conducted beforehand, Plaintiff's alleged claims of discrimination and retaliation for failure to timely initiate EEO counseling and failure to state a claim. Plaintiff believed that Ms. Baker's dismissal of Plaintiff's claims resulted from Ms. Baker having deliberately misconstrued Defendant's prior discriminatory acts deemed outside the 45-day limitation period as Plaintiff's actual claims. During the EEO counseling process, Plaintiff and the assigned EEO Counselor discussed in detail discriminatory acts deemed outside the 45-day limitation period. Plaintiff informed the assigned EEO Counselor that discriminatory acts deemed outside the 45-day limitation period can still be used as relevant background evidence to support Plaintiff 's timely filed claims of discrimination and retaliation. Plaintiff believed that he did not fail to timely initiate EEO counseling, and that his claims of discrimination and retaliation did not fail to state a claim and were timely filed. Plaintiff also believed (and still believes) that Ms. Baker's decision of dismissal had the effect of upholding Defendant's ongoing discriminatory hiring and promotion policies inflicting involuntary servitude on members of the Black male class. Pursuant to 29 C.F.R. 1614 .402(a), on December 8, 2017, Plaintiff filed a notice of appeal of Ms. Baker's decision of dismissal with the Office of Federal Operations of the Equal Employment Opportunity Commission.

15. On December 4, 2017, five years or more after Plaintiff had filed his notice of appeal of Judge Wardell's denial of class certification, for the Commission, Ms. Bernadette B. Wilson (Acting Executive Officer) Executive Secretariat, affirmed the Agency's Final Order implementing the Judge Wardell's denial of class certification for failure to satisfy the requirements set forth at 29 C.F.R. § 1614.204(a)(2). After having read the appeal decision, Plaintiff's asked himself one question without a factual answer: Was Ms. Bernadette B. Wilson temporarily promoted from Executive Secretariat to Acting Executive officer for the purpose of affirming the Agency's final order implementing Judge Wardell's denial of class

certification for failure to satisfy the requirements set forth at 29 C.F.R. § 1614.2 04(a)(2)? Plaintiff believed that the requirements set forth at 29 C.F.R. § 1614.204(a)(2) were satisfied. As Plaintiff stated in paragraph 11 above, Plaintiff's filed ongoing class action complaint of retaliatory discrimination based on opposition was not evaluated by Judge Wardell for class certification. Plaintiff believed (and still believes) that Ms. Bernadette B. Wilson's decision had the effect of upholding Defendant's ongoing discriminatory hiring and promotion policies inflicting involuntary servitude on members of the Black male class.

16. On May 10, 2018, Mr. Carlton M. Hadden, Director, Office of Federal Operations, made a decision to affirm the Agency's dismissal of Claims 2, 3 and 4 as defined in the Agency's Order dated November 6, 2017. Mr. Hadden remanded Claim 1 for further processing. Claim 1, 2, 3, and 4 were defined in the Agency's Order as follows:

1. On August 25, 2016, Mr. Doornbos and Ms. Sotiropoulos assigned three additional work assignments (including updating Region Ill's phone listing and updating, creating and printing Region Ill's wallet card or phone card) to you, despite your informing them that the assignments are highly inappropriate work for you and will likely cause you high stress which will increase your blood sugar, thus negatively affecting your diabetic condition.
2. On December 5, 2016, Mr. King issued a Counseling Memorandum to you accusing you of inappropriate conduct and insubordination for initially refusing to perform two of the three additional work assignments referenced in Claim 1.
3. On February 3, 2017, Ms. Carpenter issued a notification letter dated January 30, 2017, to you stating that your U.S. Nuclear Regulatory Commission Access Authorization and Employment Clearance was to be suspended, effective immediately.
4. On February 3, 2017, Mr. Heilig issued a Notice of Proposed Indefinite Suspension dated February 1, 2017, to you pursuant to the procedures set forth in Title 10 of the code of Federal Regulations (C.F.R.) Part 10. Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance. Subsequently, on March 16, 2017, Mr. Pulliam issued a Notice of Decision of Indefinite Suspension dated February 1, 2017,

to you yet the individuals you filed a class action case against in 2011 were not subjected to the Title 10 C.F.R. Part 10 process.

17. Claims 1, 2, 3, and 4 defined in the Agency's Order dated November 6, 2017, were not Plaintiff's actual claims of discrimination and retaliation, but were prior acts or decisions revealed in documents that Plaintiff submitted as relevant background evidence in support of Plaintiff's timely filed claims of discrimination and retaliation. Plaintiff's actual claims of discrimination and retaliation were alleged in a written formal complaint filed May 9, 2017. See the Notice of Right to File a Formal Discrimination Complaint dated April 24, 2017, and paragraph 24 of Plaintiff's written formal complaint dated May 9, 2017. Mr. Hadden did not evaluate Plaintiff's actual claims of discrimination and retaliation as alleged in the written formal complaint filed by Plaintiff on May 9, 2017. Plaintiff believed (and still believes) that Mr. Hadden's decision had the effect of upholding Defendant's ongoing discriminatory hiring and promotion policies inflicting involuntary servitude on members of the Black male class.

18. On May 18, 2018, Mr. Daniel H. Dorman, Acting Deputy Executive Director for Materials, Waste, Research , State, Tribal, Compliance, Administration, and Human Capital Programs, Office of the Executive Director for Operations, U.S. Nuclear Regulatory Commission, made a decision not to restore Plaintiff's security clearance because Plaintiff did not resolve the Agency's security concerns raised under Guideline I (Psychological Conditions). In order for Plaintiff to have resolved the Agency's security concerns, Plaintiff must have received treatment, medical or otherwise, to help Plaintiff to disbelieve that the statutory and constitutional civil rights have been violated as alleged. During the 10 C.F. R. 10 process, including the administrative hearing held July 13, 2017, and the administrative appeal decided on April 4, 2018, it was apparent to Plaintiff that the Agency not only wanted Plaintiff to believe and say that there were no violations of the statutory and constitutional civil rights alleged (under Title VII of the Civil Rights Act of 1964, amended, and Thirteenth Amendment to United States Constitution), but also wanted Plaintiff to believe and say that no person or employee was responsible for said violations, otherwise the 10 C.F. R. 10 process continued based on the information received. Plaintiff believes that such Agency's action has been an abuse of the 10 C.F.R. 10 process. How could

the Agency get away with such action? Because the Agency knew (and knows) that under *Department of the Navy v. Egan*, 484 U.S. 518 (1988) and Title VII of the Civil Rights Act of 1964, amended, courts are not permitted to review Agency's decision regarding national security. Nonetheless, Mr. Daniel H. Dorman's decision resulted in continuous deprivation of Plaintiff's constitutional right to be free from involuntary servitude under the Thirteenth Amendment to United States Constitution as indicated in paragraph 5 above and paragraphs 24 through 26 below. Deprivation of said constitutional right is contrary to said Thirteenth Amendment.

19. On June 15, 2018, Mr. Timothy I. Pulliam, Director, Division of Facilities and Security, Office of Administration, U. S. Nuclear Regulatory Commission, made a decision, based on Mr. Daniel H. Dorman's decision, to remove Plaintiff from the position of IT Specialist GG-2210-12, and from Federal service (effective July 5, 2018, by COB). Mr. Timothy I. Pulliam's decision resulted in continuous deprivation of Plaintiff's constitutional right to be free from involuntary servitude under the Thirteenth Amendment to United States Constitution as indicated in paragraph 5 above and paragraphs 24 through 26 below. Deprivation of said constitutional right is contrary to said Thirteenth Amendment.

20. As used herein, the term Defendant refers to a combination of persons united (or joined) as one in their official and individual capacity. Each member becomes or acts as the agent of every other member. "[T]he agreement was a tacit understanding, created by a long course of conduct and executed in the same way. Not the form or manner in which the understanding is made, but the fact of its existence and the further one of making it effective by overt conduct are the crucial matters." *Direct Sales Co. v. United States*, 319 U. S. 703, 714 (1943) (emphasizing "prolonged cooperation"). The act of one partner may be the act of all.

First Cause of Action

Ongoing Pattern or Practice of Retaliatory Discrimination Based on Opposition Under Title VII of the Civil of 1964, as amended

A pattern or practice of resistance to Title VII

21. Plaintiff incorporates and realleges by reference the foregoing paragraphs 5 through 8, as if they were fully set forth herein. Pursuant to Fed. R. Civ. P. 15(c)(1)(8), this amended

class claim of an ongoing pattern or practice of retaliatory discrimination based on opposition relates back to the filing date of the original class action complaint of race and sex discrimination (civil no. 06C 4351), which was filed on August 11, 2006, in the United States District Court for the Northern District of Illinois, Eastern Division, and was timely filed within the 90-day statute of limitations period for filing the complaint.

22. Plaintiff believes that he has been a victim as other Black males of retaliatory discrimination by Region 3 of the U.S. Nuclear Regulatory Commission ("Defendant"). In that, Plaintiff reasonably believes that he has been adversely deprived of employment opportunities on the basis of his race and sex (as other Black males have been) as a consequence of Plaintiff's opposition to Defendant's ongoing discriminatory hiring and promotion policies being based on prohibited race and sex discrimination under Title VII of the Civil Rights Act of 1964, as amended, as demonstrated in the ongoing class action complaint of race and sex discrimination ("filed class action complaint") (civil no. 06C 4351).

23. The filed class action complaint served as informing Defendant that Plaintiff believes that Defendant was engaging in prohibited race and sex discrimination under Title VII of the Civil Rights Act of 1964, as amended. Plaintiff's "opposition" is based on a reasonable and good-faith belief that Defendant has engaged and continued to engage in prohibited race and sex discrimination under Title VII of the Civil Rights Act of 1964, as amended. Plaintiff believes that Defendant has acted and continued to act purposefully and with reckless disregard or indifference to the "injury" Defendant is made aware. See updated status in paragraph 26 below for results of this alleged ongoing pattern or practice of retaliatory discrimination.

Background of the Filed Class Action Complaint

24. As indicated in the filed class action complaint, from January 19, 1975, to present is the relevant time period of the alleged race and sex discrimination. January 19, 1975, is the date that the United States Nuclear Regulatory Commission was opened for business, and November 4, 2005, is the date that it was conveyed to Plaintiff that his sought-after promotion was denied. During the relevant time period of discrimination, Plaintiff has been

subjected to the discrimination, as alleged, since Plaintiff's initial hire as a Federal employee on or about January 2, 2002.

25. It is clear that paragraphs 1 and 1(a) of the filed class action complaint show, among others, Defendant's direction or course of action or interest opposite to Plaintiff's direction or course of action or interest. Paragraphs 1 and 1(a) also show the imposition of Defendant's will against the will of Plaintiff. The gist of the filed class action complaint is as follows:

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Allegations of Race and Sex Discrimination

A pattern or practice of resistance to Title VII

1. Prior to 11/4/2005, Defendant had been following hiring and promotion policies and an integrated practice of discrimination of disproportionately and purposefully excluding all, or substantially all, Black males, including myself, from Administrative, Professional, Supervisory, or Management positions on the basis of our race and sex at Region 3.
    a. Except for the discrimination, being hired or promoted would have provided an employment opportunity, among others , to receive training or experience to qualify for, to be hired in, or to be promoted to a higher position, or to advance promotionally within occupied position, or to receive an unbiased performance appraisal of the performance of duties in occupied position, within any Division of Region 3, including
    the Division of Resource and Management Administration.
2. Such ongoing and longstanding discriminatory policies were unrelated to measuring job, or subsequent job, capability; whereas the effect was depriving me, as other Black males, of employment opportunities, and was causing me mental anguish.
3. Such ongoing and longstanding discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class were violating (and continue to date to violate) the first section of the Thirteenth Amendment to the United States Constitution. As stated in paragraph 5 above, "the involuntary servitude or service consists in each class

member being compelled by force to involuntarily submit to and comply with the prescribed course of action by Defendant for the benefit of another, and there have been no reasonable means of escape and no choice except to remain in the involuntary service."

4. As of 11/4/2005, Defendant had an estimated 205 employees of Region 3. Of these, 4 were Black males and approximately 100 were white males. Calculated roughly, 2 Black males (although considered professionals) were in Administrative positions; 2 Black males were in Professional positions; and no Black males were in Supervisory or Management positions (100% excluded).

5. As a result of Defendant's ongoing discriminatory policies that resulted in the rejection of a disproportionately greater percentage of Black males, I have been deprived of promotional and other employment opportunities, and my performance-rating status as an employee has been adversely affected.

6. As a further result of Defendant's ongoing discriminatory policies that resulted in the rejection of a disproportionately greater percentage of Black males, my downgraded performance rating, in my 2005 performance appraisal, contributed to the disparity in treatment of Black males in being selected to receive and presented with a performance award on an equal basis as white males.

   a. No Black male was selected to receive and presented with a performance award during the 12/5-6/2005 Divisional and Regional award presentations.

   b. As I have indicated already, another Black male also was given a downgraded performance rating in his 2005 performance appraisal. Although he submitted a grievance to dispute the performance rating, such grievance was subsequently and unfortunately withdrawn.

7. Absence of a statistical showing of such, the ongoing discriminatory policies of Defendant have resulted in a disparate impact on Black males than on white males, since a disproportionately greater percentage of Black males were excluded from any of the positions mentioned in paragraph 1 than were white males; and, in

addition, such ongoing discriminatory policies have resulted in a disparate treatment which involved the refusal to hire and promote Black males on an equal basis with white males.

a. With respect to the disparate treatment, the refusal to hire and promote conformed to the pattern or practice of discrimination against Black males as shown in paragraph 1.

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26. As an updated status relating to paragraph 4 of the abovementioned filed class action complaint:

As of October 31, 2011, Defendant had an estimated 220 employees of Region 3. Of these, 6 were Black males and approximately 100 were white males. Calculated roughly, 2 Black males (although considered professionals) were in Administrative positions within DRMA; 3 Black males were in Professional positions within DRS, and no Black males were in Professional positions within DRP or DNMS (100% still excluded); 1 Black male was in a Supervisory position within DRS, and no Black males were in Supervisory positions within DRP, DNMS, or DRMA (100% still excluded); and no Black males were in upper Management positions (100% still excluded). Note: Allegations relating to paragraphs 1 through 6 of the filed class action complaint should not be construed as excluding ORA (within ORA 100% of Black males were still excluded as other divisions of Region 3).

As of February 3, 2017, Defendant had an estimated 200 employees of Region 3. Of these, 8 were Black males and approximately 100 were white males. Calculated roughly, 1 Black male (although considered a professional) was in an Administrative position within DRMA; 4 Black males were in Professional positions within DRS; 1 Black male was in a Professional position within DRP; no Black males were in Professional positions within DNMS (100% still excluded); no Black males were in Professional positions within ORA (100% still excluded); no Black males were in Supervisory positions within DRS (100% excluded); 1 Black male was in a Supervisory position within DRP; no Black males were in Supervisory positions within DNMS (100% still excluded); no Black males were

in Supervisory positions within DRMA (100% still excluded); no Black males were in Supervisory positions within ORA (100% still excluded); and 1 Black male was in an upper Management position within ORA.

As of July 2, 2018, Defendant had an estimated 200 employees of Region 3. Of these, 7 were Black males and approximately 100 were white males. Calculated roughly, 1 Black male (although considered a professional) was in an Administrative position within DRMA; 3 Black males were in Professional positions within DRS; 1 Black male was in a Professional position within DRP; no Black males were in Professional positions within DNMS (100% still excluded); no Black males were in Professional positions within ORA (100% still excluded); no Black males were in Supervisory positions within DRS (100% excluded); 1 Black male was in a Supervisory position within DRP; no Black males were in Supervisory positions within DNMS (100% still excluded); no Black males were in Supervisory positions within DRMA (100% still excluded); no Black males were in Supervisory positions within ORA (100% still excluded); and 1 Black male was in an upper Management position within ORA.

Abbreviations used: DRS, Division of Reactor Safety; DRP, Division of Reactor Projects; DNMS, Division of Nuclear Material and Safety; DRMA, Division of Resource Management and Administration; ORA, Office of the Regional Administrator.

27. In relation to Defendant's conduct described in the filed class action complaint, the "[e]nvironment illuminates the meaning of acts, as context does that of words. What a man is up to may be clear from considering his bare acts by themselves; often it is made clear when we know the reciprocity and sequence of his acts with those of others, the interchange between him and another, the give and take of the situation." *Cramer v. U.S.*, 325 U S. 1, 33 (1945). Indeed, "past wrongs are evidence bearing on whether there is a real and immediate threat of repeated injury." *O'Shea v. Littleton*, 414 U.S. 488, 496 (1974). Likewise, and without doubt, the Black male class members, including Plaintiff, possess and share a common interest in equal employment opportunities without discrimination on the basis of our race and sex, and suffer the same "injury" in deprivation of employment opportunities on the basis of our race and sex. "[A] primary objective of Title VII is

prophylactic: to achieve equal employment opportunity and to remove the barriers that have operated to favor white male employees over other employees." *Teamsters v. United States*, 431 U.S. 324, 364 (1977).

28. Relevant to Defendant's adverse action alleged in the retaliatory discrimination, it is clear from the language of the filed class action complaint, including its updated status, that members of the Black male class, including Plaintiff, are continually being restrained. Restrain is defined as meaning "to keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by any interposing obstacle; to repress or suppress; to curb." (Webster's New International Dictionary 2d Ed. unabridged, 1958). As stated in Webster's Second New Riverside University Dictionary (1984), restrain is defined as "1. To control: check. 2. To take away freedom or liberty of [without any doubt this is the same as being against the self--executing 13th Amendment and Its enforcement statutes]. 3. To restrict or limit."

29. To sum up and to repeat, Plaintiff has indicated in the filed class action complaint that Defendant has been carrying out part of its operations with a middle finger thrown up at Title VII of the Civil Rights Act of 1964, as amended, section 1 of the Thirteenth Amendment to the United States Constitution and other laws.

Class Certification

30. Plaintiff, as Agent of the class and Private Attorney General, seeks class certification of this action pursuant to Fed. R. Civ. P. 23(a), (b)(2) and/or (b)(3). The class consists of current and former Black male employees and applicants for employment (including applicants who would have applied but for the retaliatory discrimination) at Region 3 of the U.S. Nuclear Regulatory Commission who had or have been, or are being adversely deprived of employment opportunities on the basis of their race and sex as a consequence of their opposition to Defendant's ongoing discriminatory hiring and promotion policies being based on prohibited race and sex discrimination under Title VII of the Civil Rights Act of 1964, as amended.

31. The class that Plaintiff, as a class member, seeks to certify satisfies the numerosity, commonality, typicality, and adequacy of representation prerequisites for class certification

under Fed. R. Civ. P. 23(a).

32. Numerosity, Fed. R. Civ. P. 23(a)(1): The members of the class identified in paragraph 30 above are so numerous that joinder of all members is impracticable. Given the fact that Defendant has sought and continued to seek employment of individuals from the general population for its Region 3 office, and the fact that the class consists of current and former Black male employees and applicants (including outside applicants), it is difficult to determine the exact number of Black males who had or have been, or are being adversely deprived of employment opportunities on the basis of their race and sex as a consequence of their opposition to Defendant's ongoing discriminatory hiring and promotion policies being based on prohibited race and sex discrimination under Title VII of the Civil Rights Act of 1964, as amended. Even a good-faith approximation of the number could not be attempted. In other words, "the number of those interested in the litigation is so great as to make difficult or impossible the joinder of all because some are not within the jurisdiction or because their whereabouts is unknown or where if all were made parties to the suit its continued abatement by the death of some would prevent or unduly delay a decree." Plaintiff's class satisfies the numerosity requirement.

33. Commonality Fed. R. Civ. P. 23(a)(2): This legal action poses numerous questions of law and fact that are common to and affect the rights of all members of the class. The answers to these questions will be determined on the basis of common evidence that is applicable to each class member. This includes, if necessary, the utilization of statistical evidence as proof of Defendant's pattern or practice of retaliatory discrimination based on opposition to Defendant's ongoing discriminatory hiring and promotion policies being based on prohibited race and sex discrimination under Title VII of the Civil Rights Act of 1964, as amended. This also includes expert testimony, as well as testimonies from class members that may serve as anecdotal evidence about specific instances that also illustrate the persistent pattern or practice of retaliatory discrimination.

Specific examples of factual and legal commonality include, but are not limited to:

a. Common Questions of Fact and Law. Claims of Plaintiff and each class member implicate common factual questions including (without limitations) the following:

1. Whether Black males, including Plaintiff, as a class have been and continued to be adversely deprived of employment opportunities on the basis of their race and sex as a consequence of their opposition to Defendant's ongoing discriminatory hiring and promotion policies being based on prohibited race and sex discrimination under Title VII of the Civil Rights Act of 1964, as amended;

2. Whether Defendant's ongoing discriminatory hiring and promotion policies being based on prohibited race and sex discrimination under Title VII of the Civil Rights Act of 1964, as amended, have deterred and continued to deter Black males, including Plaintiff, as a class from opposing such ongoing discriminatory hiring and promotion policies, and from exercising their right of equal employment opportunities without discrimination on the basis of their race and sex; and

3. Whether Defendant has subjected and continued to subject Black males, including Plaintiff, as a class to the retaliatory discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, at its Region 3 office.

b. The presence of central questions of fact and law that are common to Plaintiff and to each class member satisfies the commonality requirement.

34. Typicality, Fed. R. Civ. P. 23(a)(3): Plaintiff's claims are typical of the claims of the class members as a whole. Plaintiff possesses the same interest and suffers the same injury as the class members. Plaintiff and class members possess and share a common interest in equal employment opportunities without discrimination on the basis of our race and sex, and suffer the same injury in deprivation of employment opportunities on the basis of our race and sex as a consequence of our opposition to Defendant's ongoing discriminatory hiring and promotion policies being based on prohibited race and sex discrimination under Title VII of the Civil Rights Act of 1964, as amended. The claims of Plaintiff and the class arise out of common facts and similar legal and remedial theory or theories. The relief Plaintiff seeks will benefit the class. Plaintiff and class members also share a common interest in assuring that Defendant ends its unlawful retaliatory discrimination against Black males at its Region 3 office. This shared interest in remedying a shared injury through similar legal and remedial theory or theories satisfies the typicality requirement.

35. Adequacy of Representation, Fed. R. Civ. P. 23(a)(4): Plaintiff, as Agent of the class and Private Attorney General, or, if represented, the representative, will fairly and adequately protect the interests of the class. Plaintiff's interest and injury are coextensive with those of the class. Plaintiff seeks to end and remedy Defendant's pattern or practice of retaliatory discrimination under Title VII of the Civil Rights Act of 1964, as amended, so that the class will no longer suffer the retaliatory discrimination. Plaintiff is able and willing to represent the class fairly and vigorously as Plaintiff pursues this common goal through this action, and hereby states that there are no conflicts of interest between Plaintiff and the class. The coextensive interest and injury of Plaintiff with class members, along with the interest, resources of their class counsel, if an attorney is retained and designated as class counsel, to litigate competently this class action of retaliatory discrimination based on opposition at issue here, satisfy the adequacy requirement.

36. Fed. R. Civ. P. 23(b)(2): Defendant has acted or refused to act in a manner generally applicable to the class. As indicated in paragraphs 22 through 26 above, and without limitations, Defendant has maintained a pattern or practice of retaliatory discrimination based on opposition and ongoing discriminatory policies of treating Black males, including Plaintiff, less favorably than white males. Defendant 's pattern or practice and ongoing discriminatory policies have resulted in a hierarchy dominated exclusively by white males with little or no employment opportunity for Black males, including Plaintiff. Defendant's system of decision-making has resulted in a disparate treatment of, and has resulted in a disparate impact on, the Black male class including Plaintiff as a whole. These continuing pattern or practice and ongoing discriminatory policies are common to and typical of the claims of class members and Plaintiff and satisfy Fed. R. Civ. P. 23(b)(2)'s requirement that Defendant has acted in a manner generally applicable to the class.

37. Fed. R. Civ. P. 23(b)(2): The Appropriateness of Injunctive and Declaratory Relief to the Class. Plaintiff seeks declaratory relief that Defendant's pattern or practice and ongoing discriminatory policies, as alleged, violate federal law; and injunctive relief designed to end and remedy the effect of the Defendant's pattern or practice and ongoing discriminatory policies. Such relief by its nature is applicable to the class as a whole and satisfies Fed. R.

Civ. P. 23(b)(2)'s requirement that injunctive and declaratory relief be appropriate.

38. Fed. R. Civ. P. 23(b)(3): Predominance and Superiority. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(3) in this case because, as set forth in more detail in paragraphs above, common questions predominate over those affecting class members individually, and a class action is superior to other available methods of resolving this controversy. The alternative to class treatment is certainly numerous individual suits. Such a multiplicity of actions would defeat the economies of scale inherent in the class action procedure and result in substantial waste of judicial resources. Thus, from the viewpoint of public policy, transactional costs and judicial economy, multiple litigations would be manifestly inferior to a class action, thereby satisfying Fed. R. Civ. P. 23(b)(3).

Second Cause of Action

Disability Discrimination under 501 of the Rehabilitation Act of 1973, as amended

39. Plaintiff had been employed at Region 3 of the Nuclear Regulatory Commission ("NRC"), located in Lisle, IL 60532, for 16 years in the IT Specialist (Applications Software/Data Management) position without a disability accommodation. Plaintiff also worked in the IT Specialist (Applications Software/Data Management) position for approximately 14 years and 6 months without the requirement for Plaintiff to involuntarily perform two additional work assignments being listed in the position description (PD) document. During the month of August 2016, Ms. Kostantina 'Dina' Sotiropoulos, Director of Resource Management and Administration (DRMA), assigned two additional work assignments to Plaintiff. The two additional work assignments were in addition to an assignment already excepted by Plaintiff.

40. The two additional work assignments entailed updating the Region Ill Phone List and updating, creating, printing the Region Ill Wallet Card (or Phone Card). The Region Ill Phone List and Region Ill Wallet Card (or Phone Card) were "data entry input applications" and required no expert or specialized skills of the underlying database(s), and in order to keep the Phone List and Wallet Card data updated, one must constantly monitor Region Ill staff members moving from location to location and changes to their home, cell, and office phone numbers.

41. As the application programmer, the database administrator, and given the need for Plaintiff to learn Hyper Text Markup Language (HTML), JavaScript, jQuery, Document Object Model (DOM), and Drupal due to his excepted Web design work assignment, Plaintiff repeatedly communicated to Ms. Kostantina "Dina" Sotiropoulos during the period of August 2016 to December 2016 that performing the two additional work assignments (Phone List and Wallet or Phone Card) would be too much for Plaintiff to focus on and would cause Plaintiff high stress and thus increased blood sugar. In conjunction with his primary duties, Plaintiff was the only staff member singled out to be assigned three different work assignments by Ms. Kostantina 'Dina' Sotiropoulos. Plaintiff believes that Ms. Kostantina 'Dina' Sotiropoulos intended to cause Plaintiff hardship and harm regardless of having repeatedly informed her about his diabetes condition.

42. To establish that Plaintiff has a disability within the meaning of the Rehabilitation Act of 1973, as amended, Plaintiff alleges that he has diabetes which substantially limits the major life activity of endocrine function, and that he has a history of diabetes.

43. Plaintiff is qualified, without an accommodation, to perform the essential (fundamental) functions of the IT Specialist (Applications Software/Data Management) position.

44. As a qualified employee with a disability and as a result of his involuntary suspension, involuntary removal from the Region III office, and placement on involuntary leave, Plaintiff believes that he has been adversely deprived of the ability to perform the essential (fundamental) functions of the IT Specialist (Applications Software/Data Management) position on the basis of his disability. Also, because Plaintiff informed Ms. Kostantina 'Dina' Sotiropoulos of his diabetes condition, Plaintiff is "regarded as" disabled.

45. Plaintiff believes that Ms. Kostantina 'Dina' Sotiropoulos has acted with 'reckless or deliberate indifference' to his federally protected right(s) under the Rehabilitation Act of 1973, as amended, and his medical condition of being a diabetic. Being a diabetic increases Plaintiff's risk for many serious health problems. Besides nerve damage, gangrene and infection, other complications include leg(s) amputation, heart disease, stroke, blindness in the eyes and kidney failure, etc.

46. Diabetes qualifies as a serious condition if it requires one to go to the doctor at least twice a year. See http://www. diabetes.org/living-with-diabetes/know-your-rights/ discrimination/employment-discrimination/medical-leave .html. Plaintiff has gone (and Plaintiff still do go) to his medical doctor at least three to six times a year.

47. Given that Ms. Kostantina 'Dina' Sotiropoulos stated during the informal EEO complaint process that the Personnel Security Branch (Tim I. Pulliam) (also hereinafter, "PSB") and/or Office of Administration (Cynthia Carpenter) (also hereinafter, "ADM") of the NRC made the decision regarding Plaintiff's employment with Region Ill of the NRC, and that she only provided information to PSB and/or ADM, Plaintiff believes that his claim of disability discrimination should be evaluated under the so-called cat's paw theory of liability for discrimination.

48. Under the cat's paw theory of liability, "a biased subordinate who lacks decision-making power uses the formal decision-maker as a dupe in a deliberate scheme to trigger a discriminatory employment action." under the cat's paw theory, the biased subordinate or supervisor, not the nominal decisionmaker, is the driving force behind the adverse employment action. A Supreme Court opinion, *Staub v. Proctor Hospital*, 562 US 411 (2011), made the cat's paw theory slightly more employee-friendly. "Cat's paw" claims exist where a plaintiff seeks to hold the employer liable for the intentional discrimination of an employee, usually a supervisor, who did not make- but influenced-the ultimate employment decision in question.

Under the Staub rule, the employer will be held liable if three conditions are met:

a) a non-decision-maker, who is the employee's supervisor, is motivated by discriminatory (or retaliatory) intent;

b) the biased non-decision-maker performs an act intended to cause the employee to suffer an adverse employment action (such as termination, etc.); and

c) the biased non-decision-maker's act is a proximate (foreseeable) cause of the adverse action.

Under the Staub rule, as long as the biased supervisor's input is a factor (but not

necessarily the sole factor) in the decision, the employer can still end up being liable.

49. Plaintiff has no doubt that the false and misleading information provided by biased Ms. Kostantina 'Dina' Sotiropoulos, along with the aid of Ms. Mary Walsh, Deputy Director of DRMA, and Mr. Jared Heck, Regional Attorney, influenced and was a factor in the decision made by PSB and/or ADM. See Notification Letter dated January 30, 2017, and Plaintiff's Response to such letter on March 30, 2017. Plaintiff believes that when providing the false and misleading information, biased Ms. Kostantina 'Dina' Sotiropoulos was motivated by hostility to Plaintiff's disability (his diabetes condition), and biased Ms. Kostantina 'Dina' Sotiropoulos was motivated also by retaliation for Plaintiff's opposition to prohibited disability discrimination. There was no independent investigation conducted, apart from biased Ms. Kostantina 'Dina' Sotiropoulos' input, prior to the decision to take an adverse employment action against Plaintiff on February 3, 2017.

50. Direct evidence of Ms. Kostantina 'Dina' Sotiropoulos' discriminatory intent includes statements made on Ms. Kostantina 'Dina' Sotiropoulos' behalf during an October 27, 2016 meeting, and such statements demonstrated the foreseeable course of events set in motion by Ms. Kostantina 'Dina' Sotiropoulos. See e-mail dated November 1, 2016, that was sent by Plaintiff to Ms. Kostantina 'Dina' Sotiropoulos. In said e-mail, Plaintiff stated the following:

"Dina,

During a meeting held on 10/27/2016, I was informed [by Michael LaFranzo] of your intention to make or require me perform the two-additional work assignment. Also, I was warned in an angry tone of voice that if I didn't perform the two- additional work assignment the following will happen:

- I will be subjected to psychological evaluations. (Completed).
- I will have my security clearance taken away. (Completed).
- I will lose my current Job (loss of income as well no doubt). (Completed with respect to loss of income); (Mr. Timothy Pulliam placed Plaintiff on LWOP effected March 31, 2017); (Mr. Timothy Pulliam set July 5, 2018 by COB for

Plaintiff to be removed from the position of IT Specialist, GG-2210-12, and from Federal service).

- And if I think that I'm sick now, just wait until I lose my job from the Government I'll really, really be sick.

Dina, I believe that I have been right to fear that certain persons with knowledge of my health issue will use such knowledge to harm me."

Mr. Michael LaFranzo, Ms. Desiree Smith, and Plaintiff were the only persons in attendance at the October 27, 2016 meeting when the above statements were made. The only reason that the October 27, 2016 meeting took place was for Plaintiff to be informed of Ms. Kostantina 'Dina' Sotiropoulos' intention as to what Ms. Kostantina 'Dina' Sotiropoulos planned to do given that Plaintiff was unwilling to performed the two additional assignment due to his health issue (his diabetes condition). As documented in the email dated November 1, 2016, Plaintiff was indeed informed of Ms. Kostantina 'Dina' Sotiropoulos' intention.

51. This alleged disability discrimination occurred on February 3, 2017.

Third Cause of Action

Retaliatory Disability Discrimination Based on Opposition under Section 501 of the Rehabilitation Act of 1973, as amended

52. Plaintiff incorporates and realleges by reference the foregoing paragraphs 48 through 50, as if they were fully set forth herein.

53. Plaintiff reasonably believes that he has been adversely deprived of the ability to perform the essential (fundamental) functions of the IT Specialist (Applications Software/Data Management) position on the basis of his disability as a consequence of his opposition to prohibited disability discrimination.

54. Given that Ms. Kostantina 'Dina' Sotiropoulos stated during the informal EEO complaint process the Personnel Security Branch (Tim I. Pulliam) ("PSB") and/or Office of Administration (Cynthia Carpenter) ("ADM") of the NRC made the decision regarding my employment with Region Ill of the NRC, and that she only provided information to PSB and/or ADM, Plaintiff believes that his retaliatory disability discrimination claim should be

evaluated under the so-called cat's paw theory of liability for discrimination as indicated in paragraphs 48 through 50.

55. This alleged retaliatory discrimination occurred on February 3, 2017.

56. Note: All documents are submitted as relevant background evidence in support of my timely claims of disability discrimination and retaliation.

Fourth Cause of Action

Race and Sex Discrimination in the Application of NRC 10 C.F.R. 10 Process under Title VII of the Civil Rights Act of 1964, as amended

57. Plaintiff believes that the application of the NRC 10 C.F.R. 10 Process has been discriminatory on the basis of race and sex. Such process applied in a racially and sexually discriminatory manner singled Plaintiff out for suspension of his security and employment clearance and questioned his eligibility to maintain such clearance while others (majority of white males/females), whom Plaintiff has alleged in an ongoing class action complaint of race and sex discrimination, filed in federal court on August 11, 2006, as having violated both civil rights and criminal civil rights laws in their official and individual capacity, were not subjected to suspension and questionable eligibility of their security and employment clearances. The others' unlawful action has been and continues to be much more serious than what has been claimed that Plaintiff is or did.

58. See 10 C.F.R. 10.11(a)(4) and (a)(9). In the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (2005), see 3 and 4(c)(4) of Guideline A: Allegiance to the United States; 30 and 31(a) and (c) of Guideline J: Criminal Conduct.

59. Timothy Pulliam and/or Cynthia Carpenter initiated the NRC 10 C.F.R. 10 Process. Plaintiff believes that PSB and/or ADM was/were aware of the ongoing class- action complaints based on the reasoning as follows: 1) During his evaluation of Plaintiff on November 2, 2016, Dr. Rodney Burbach questioned Plaintiff as to why did Plaintiff file the class action complaints; 2) the class action complaints were listed in a document that Dr. Burbach was reading from during the evaluation; and 3) the document, in Plaintiff's belief, had been transmitted or given to Dr. Burbach by PSB and/or ADM.

60. This alleged race and sex discrimination in the application of NRC 10 C.F.R. 10

Process occurred on February 3, 2017.

Jury Demand

61. A trial by jury is hereby demanded in this action for all issues triable by right.

Prayer for Relief

62. Wherefore, Plaintiff on own behalf and on behalf of the class members and on behalf of the general public whom he seeks to represent requests the following relief:

63. Appointment of class counsel pursuant to Fed. R. Civ. P. 23(g).

64. Certification of the case as a class action pursuant to Fed. R. Civ. P. 23(a), (b)(2) and/or (b)(3) on behalf of the Plaintiff's class and designation of Plaintiff as representative of the class and, if counsel is appointed or retained, their counsel of record as class counsel.

65. A declaratory judgment that Defendant's ongoing pattern or practice and ongoing discriminatory policies against the class and Plaintiff are unlawful and in violations of Title VII of the Civil Rights Act of 1964, as amended, the first section of the Thirteenth Amendment to the United States Constitution and other laws.

66. Expungement order expunging all recordation pertaining to information placed in Plaintiff's personnel file on or about January 30, 2017, regarding questions concerning Plaintiff's security and employment clearance. The expungement order should include expunging all information and documents relating to the 10 CFR 10 process against Plaintiff, the Counseling Memorandum dated December 6, 2016, and others as appropriate.

67. Removal of annual performance appraisals placed in Plaintiff's personnel file since the filing of the original class action complaint. The removal of annual performance appraisals includes appraisals for years 2017, 2016, 2015, 2014, 2013, 2012, 2011, 2010, 2009, 2008, 2007, 2006, and 2005.

68. Removal of Kostantina 'Dina' Sotiropoulos, Director of DRMA, along with others to be named, from leadership positions to other positions for their participation or involvement in maintaining, among others, an unsafe and hostile work environment toward the class members, including Plaintiff, at the Region 3 office.

69. An award of back pay; interest on back pay; front pay; hiring and/or promotion of the class members, including Plaintiff; damages for lost compensation and job benefits, including health and fringe benefits, that the class members, including Plaintiff, would have received but for Defendant's ongoing pattern or practice of retaliatory discrimination based on opposition. Compensatory damages for pain and suffering, mental and emotional distress, humiliation, injury to reputation, and injury to credit. Restoration of Plaintiff's security clearance, reinstatement of Plaintiff in the IT Specialist (Applications Software/Data Management) position without loss of time in service, and reinstatement of Plaintiff in the same office #A3007. Such other and further relief as appropriate.

70. An order enjoining Defendant from engaging in each of the proven ongoing discriminatory practices/policies against Plaintiff and the class, and requiring Defendant to institute and carry out policies. practices and programs for its Region 3 office that remedy the effect of past and present unlawful employment practices. An order prohibiting Defendant and its Region 3 office from retaliating, in any form, against Plaintiff and class members. An order requiring Defendant to offer Plaintiff and class members jobs or positions at its headquarters or other regional offices, if Defendant closes its Reg ion 3 office or combines its Region 3 office with headquarters or any other regional office.

71. If an attorney is appointed or retained, a reasonable attorney and expert witness fees and costs and expenses of suit.

Plaintiff, Class Agent and
Private Attorney General,

s/ Daniel L. Miles
United States Nuclear Regulatory Commission, Region 3
2443 Warrenville Road
Lisle, IL 60532

Home Address:
17 North Taft Ave. Hillside, IL 60162
Home Phone: 708-449-0379
Cell Phone: 708-466-8942
Email: dlmiles@comcast.net

Date: October 1. 2018