

**WITNESS AFFIDAVIT**

**I, Alberto Pantoja am an employee of the :**

**(Agency) U. S. Department of Agriculture**  
**(Office) Agricultural Research Service**  
**(Division) Subarctic Agricultural Research Unit**  
**(Branch) Pacific West Area**  
**Located in Fairbanks, Alaska 99775**

**In the capacity of (show both your organization title and the classification of your job, if different):**

**Title: Research Leader and Location Coordinator, Research Entomologist**

**Grade: GS 15**  
**Dates: April 19, 2003 to present**

**My telephone number during working hours is: 907-474-7536**

**I HAVE BEEN ADVISED OF THE FOLLOWING:**

**I am required by Federal regulations and Department of Agriculture policy to cooperate fully and promptly with the investigator who has been assigned to conduct a thorough and impartial investigation into a complaint of discrimination against the Department of Agriculture. I must provide a statement for the investigative report which is true and complete to the best of my knowledge and which discloses all of my first-hand knowledge having a bearing on the merits of the complaint. My statement is provided under oath (or affirmation), without a pledge of confidentiality, in accordance with Equal Employment Opportunity Commission rules and regulations and Department of Agriculture policy. This means that any employee(s) whom I accuse of discrimination or other acts of impropriety may be shown relevant portions of my affidavit and be provided an opportunity to respond for the record. In addition, the Complainant and the appropriate Department Officials involved in the EEO complaint process will receive the entire investigative file. I have the right to review my statement prior to signing it and may make initialized corrections if it is incomplete or inaccurate. I have the right to receive a copy of the signed statement.**

**Having been advised of the above information about my role as a witness in the investigative process, I solemnly swear the statement which follows is true and complete to the best of my knowledge and belief, and addresses the issues and concerns raised with me by the investigator.**

**1. Please state your name for the record.**

Alberto Pantoja

**2. What is your gender?**

Male

**3. What are your job title, occupational series, and grade?**

Research Leader/Location Coordinator, Research Entomologist GS-0414-15

**4. What are your major duties?**

Serve as Research Leader and Location Coordinator for the USDA, ARS Unit in Fairbanks, Alaska and conduct research on integrated pest management. Serve as leading scientist for the integrated pest management and the plant germplasm projects.

**5. How long have you been in your present position? Date?**

Since April 19, 2003.

**6. How long have you worked for the Federal government?**

Since April 19, 2003

**7. What is the organizational name of the unit/branch/section/division to which you are assigned?**

US Department of Agriculture

Agricultural Research Service

Subarctic Agricultural Research Unit

Fairbanks Alaska 99775

SARU is one of the Units under the Pacific West Area

**8. Where is your duty station located? City/County/State?**

North Star Borough, Fairbanks, Alaska

**9. Who is your immediate supervisor? Name and job title?**

I am under the direct supervision of the Pacific West Area Director. Current Area Director is Andrew Hammond, Area Director, USDA, ARS Pacific West Area, Albany, California.

**10. How long has he/she been your immediate supervisor?**

Dr. Hammond was appointed Area Director on April 13, 2008; he served as Acting Area Director since January 2008.

**11. Who is your second line supervisor? Name, job title, and grade?**

Dr. Robert Matteri, Associate Area Director

**12. How long has h/she been your second line supervisor?**

Dr. Matteri was appointed Associate Area Director on January 04, 2009; previously he was the Acting Associate Area Director and Assistant Area Director.

**13. Do you supervise complainant? If yes, in what level supervisor?**

Yes, I am the direct supervisor of Complainant. I am the Research Leader and Location Coordinator for the Unit and also the Leading Scientist for the project under which the Complainant works.

**14. How long has complainant been under your supervision?**

Since May 30, 2004

**15. Can you describe what kind of working relationship you have with complainant?**

A professional relationship.

**16. How many employees do you directly supervise?**

As January 12, 2009 I directly supervise 14 employees.

**17. Can you describe what kind of working relationship you have with the other employees you directly supervise?**

I maintain a professional relationship with all employees in the Unit.

**18. Complainant alleges you have set a tone that is punitive, hostile, isolating, fear-driven, and discriminatory against the women scientists. What is your response to this allegation?**

I perform all duties in a manner which consistently demonstrates professionalism, fairness, cooperation, and respect toward coworkers. All scientists in the Unit are treated equally regardless of their gender.

**19. How would you describe the work environment where complainant and others under your supervision are situated?**

ARS in Alaska is collocated with the University of Alaska Fairbanks. The working environment is very professional with ample opportunity for interaction between ARS and University employee and students. ARS have a friendly environment with frequent professional and social gatherings. Personnel is scattered in various buildings and in two localities. Also see question 18.

**20. Complainant alleges you treat females differently from her male counterparts. What is your response to this allegation?**

This allegation was addressed under question 18.

**21. Were you aware of complainant's allegation of reprisal (opposition to discriminatory practices)? If yes, what knowledge, role, or involvement do you have of this claim?**

I became aware of alleged reprisal complaint during May 2008 during an investigation to a grievance. I have not engaged in reprisal actions against Complainant or any member of the Unit.

**Whether the agency subjected the Complainant to discrimination and harassment, based on sex (female) and reprisal (unspecified prior EEO activity or**

**opposition of discrimination) when:**

**Claim 1: on February 26, 2008 she was issued a letter of caution**

**22. What knowledge, role, or involvement did you have with this claim?**

On February 2008, I issued Complainant a letter of caution.

**23. Complainant alleges the Letter of Caution was because you asserted that she contacted the Human Resources Division and that as a result her technician was hired at a higher promotion potential (GS-7) than what was approved (GS-6) in the Annual Resource Management Plan System. Is this correct?**

I issued the letter of caution due to Complainant failure to communicate recruitment and hiring issues with me prior to contacting the Western Services Branch, Human Resources Division (HRD).

**24. What policies/procedures are to be followed for employees to contact the Human Resources Division?**

In terms of hiring, the Unit follows the Pacific West Area Guidance on Recruitment Actions (PWAGRA). The PWAGRA defines the procedure and approvals required during the hiring process. Complainant was provided an electronic version of the PWAGRA on 04-19-05 (see attachment Q24-04-19-05). Additionally, scientists are requested to keep the Research Leader or the Administrative Officer informed on programmatically and operational aspects of the project that affects the budget, such as hiring.

**25. Did complainant follow established procedures?**

Complainant did not follow Pacific West Area Guidance on Recruitment Actions.

**26. Complainant alleges she was treated differently from similarly situated employees not in her protected group because male scientists are allowed permanent technicians at higher FPLs. She further alleges she was told her technician's position had been downgraded while those for the male scientists were upgraded and they are allowed to write their own very specific KSA**

**questions and you require the women scientists KSAs to be very general and to interview technicians by committee. The male scientists did not have the same requirements imposed upon them. What is your response to these allegations?**

Allegations are inaccurate. All positions defined, and approved through the Pacific West Area Guidance on Recruitment Actions (PWAGRA) and funded through the ARMPS procedure can be hired regardless the gender of the requesting scientist. Currently, two female Scientists have permanent technicians or are hiring a permanent technician. One male scientist, no longer with the agency did not have a permanent technician position. As January 30, 2009 five male scientists have permanent technician positions; including two permanent positions created before my arrival to the Unit. Since 2003, we have converted three temporary technician positions to permanent positions; one of those three positions is under a female scientist. The grade level and type of appointment are decided following the PWAGRA and funds availability. KSA's and selecting factors (SF) are listed in the position description and are not determined by the gender of the hiring official, but cannot be used to block specific candidates as suggested by Complainant (see attachment Q26-11-01-04). The selecting official (scientist) serves as the expert in the particular field of science in developing KSA's and SF's. Complainant was involved in defining KSA's, SF, and required information for her technicians as evidenced by email interaction between Complainant, myself, and the assigned human resource specialist (see attachments Q26-11-01-04, Q26-11-22-04, Q26-02-15-05). Complainant involvement in defining KSA dates back to 2004, during Complainant hiring process, while she was at Oregon State University. The constitution and functions of the Candidate Evaluation Panel (Interview Committee)

are defined under PWAGRA and applied uniformly to all scientists in the Unit.

Complainant technician position was not downgraded; Complainant was aware of the Units budget limitations and how funds could affect the GS level of the technician (see attachments Q26-03-02-05 and Q26-04-11-07). The process is equal to all scientists in the Unit regardless of their gender.

**27. Whose responsibility is it to ensure the SF-52, Request for Personnel Action is properly executed?**

According to Pacific West Area Guidance on Recruitment Actions, recruiting is the responsibility of the selecting official (Complainant) in coordination with the human resource specialist (HRS). Also see question 24.

**28. Complainant contends to scapegoat her for someone else's mistake on her who is not a fund holder and has no authority to authorize hiring is absurd. What is your response?**

The letter of caution was issued due to Complainant's failure to communicate recruitment and hiring issues with me prior to contacting the Western Services Branch, Human Resources Division. The hiring authority as defined in the Pacific West Area Guidance on Recruitment Actions (see attachment Q24-04-19-05) was not an issue on the letter of caution. Also see questions 23, 24, and 27.

**29. Do you have any additional information related to this claim?**

Complainant's interaction with the Human Resources Specialist was documented by Rita J. Atta, Lead, Human Resources Specialist, HRD, Western Services Branch, 5601 Sunnyside Ave., Beltsville, MD 20705-5106, 301-504-1550, FAX: 301-504-1586, [Rita.Atta@ars.usda.gov](mailto:Rita.Atta@ars.usda.gov). On March 07, 2008, C. Prucha, Human Resource Specialist confirmed the conversation with Complainant and indicated Complainant

discussed with her a GS 9 level position. Complainant is overly concern with the use of KSA's and veterans qualifications (see attachment Q26-11-01-04).

**Claim 2: she was subjected to threats of termination (dates not provided)**

**30. What knowledge, role, or involvement did you have with this claim?**

Allegation has no merit; I have never threatened or discussed termination with Complainant.

**31. On November 1, 2004, complainant alleges you told her that you could terminate her at anytime when you authorized her to cooperate with ARS scientist Larry Lacey. What is your response?**

I have never discussed termination with Complainant. The meeting was related to the need to officially document collaboration between ARS Units. Seems odd that I will discuss a collaborative research effort and a termination action at the same meeting. On November 01, 2004 the Complainant reacts via email to the referred meeting without a reference to the alleged termination threat (see attachment Q31-11-01-04).

**32. On November 3, 2004, complainant alleges you told her that you may terminate her position at any time when she bypassed a veteran during the interview process to fill a vacancy. You ordered her to call and interview the veteran. What is your response?**

I did not discuss or talk about terminating Complainant. During November 2004, the Complainant evaluated several candidates for a technician position. The certificate of eligibles included a candidate that claimed veteran preference. The Complainant indicated not to agree with the Human Resources Specialist regarding the veteran's qualifications. Complainant concerns about veteran qualifications are documented in a November 01, 2004 email from Complainant (see attachment Q26-11-01-04). I explained to the Complainant applicable federal policies regarding veteran

applicants and consulted the situation with the Human Resources Specialist (HRS) and the Pacific West Area Office. On November 02, 2004 the HRS provided guidance on the procedure to follow and the need to document why Complainant felt the veteran candidate did not meet KSA's and qualifications (see attachment Q32-11-02-04). I conveyed the HRS message to Complainant and instructed her to either interview the veteran candidate or justify her decision not to interview a veteran candidate listed in a Certify of Elegibles generated by a Human Resources Specialist. On November 05, 2004, I visited with Complainant to further discuss veteran preference regulations. Complainant did not agree on HRS and PWA ruling and in a rude and unprofessional mode left the room without finishing the discussion (see attachment Q32-11-09-04).

- 33. On November 9, 2004 complainant alleges you threatened to fire her and intimidated her. Sent an e-mail to Jack Nelson, copies to Hammond and told them of threats to fire her with claims that you fired a plant pathologist before. What is your response?**

I have never threatened, intimidated, or discussed terminating Complainant. I have not send emails regarding threats, intimidation, or firing plant pathologists.

Furthermore, I have never terminated or fired a plant pathologist at any time during my professional career. Jack Nelson was the PWA Real State Warrant Officer in Albany California and was not involved in personnel actions. I have emailed J.

Nelson in many occasions, none related with Complainant, threats, or firing a plant pathologist.

- 34. On December 17, 2004, complainant alleges you were disrespectful with threats to fire her. She states you told her that she is supposed to be a plant pathologist and questioned her hire if she cannot diagnose diseases. She states she had no equipment and you told her you only had two options, retain or not retain. What is your response?**

I have never threatened or discussed terminating Complainant. I have no recollection of a meeting or conversation with Complainant on December 17, 2004. There was a meeting with Complainant and J. Contento on December 14, 2004 regarding the importance and need to follow government procedures and to document expenses incurred by Complainant with the Oregon State University Diagnostic Laboratory. During the meeting, Contento and I provided guidance on procurement procedures including the procedure to equip her laboratory. Complainant was also advised not to incur in expenses before receiving approval. I was not disrespectful or threaten Complainant with termination. There was no discussion on her retention.

**35. On April 9, 2008 complainant alleges threats, intimidation, and public humiliation when you burst into her office claiming that she was interfering with university decisions because she supported Roseann Leiner for tenure and even offered to write a letter. She claims she did not write a letter, vote on a committee, or have any influence on university decisions. What is your response?**

On April 08, 2008 I visited with Complainant to provide guidance and discuss her interaction with University of Alaska Fairbanks (UAF) personnel in an attempt to interfere on a process to remove a UAF professor. I knocked at the door before entering. I was not disrespectful and did not threaten, intimidate, or humiliate Complainant. The Complainant attempt to interfere on UAF matters was brought to my attention by Carol Lewis, Dean of SNARS, Fairbanks, Alaska during a meeting related to a potato research project (see attachment Q35-04-28-08).

**36. On September 5, 2008, complainant alleges you and Janis Contento visited her office and told her that the most recent example of her unprofessional conduct was the EEO comments she made in an e-mail to Ms Contento. What is your response?**

Complainant's recount of the events is inaccurate. On August 28, 2008, I emailed Complainant regarding unprofessional behavior in internal communications (see attachment Q36-08-28-08). On the same date, Complainant requested evidence of such behavior. On September 05, 2008, J. Contento, Administrative Officer, and I discussed with Complainant an email dated August 18, 2008 from Complainant to Contento regarding a property report. The last statement of the August 18 email was presented as the example of unprofessional behavior requested by Complainant on her August 28 email. The email used as example of unprofessional behavior was related to a Property Report (see attachment Q36-08-18-08), not EEO as alleged by Complainant.

**37. Do you have any additional information related to this claim?**

Complainant failed to mention that in spite of alleged threats of termination, on December 2007 she was promoted to GS 13 under my leadership and guidance.

Janis Contento, Administrative Officer (phone 907-474-6516) was present during the meeting related to questions 34 and 36.

**Claim 3: she was subjected to public humiliation (dates not provided)**

**38. What knowledge, role, or involvement did you have with this claim?**

Allegation has no merit; I have no knowledge, role, or involvement in any act of public humiliation to Complainant or any member of the Unit.

**39. Complainant alleges on June 16, 2005 she was subjected to public humiliation, intimidation, and bullying when you berated her in the parking lot in front of two male Sys for requesting a key for her technician.. What is your response?**

My recollection of the events is that the Complainant transferred a key to her technician without following the established University of Alaska Key Request procedures. I asked the secretary to inform both, the Complainant and her technician on the importance and need to follow established procedures and document the key transfer. I saw the Complainant in the parking lot and reminded her on the issue. I called her aside to discuss the issue at a distance that others in the area could not hear our conversation. The conversation was informative; there were no yelling, arguments, intimidation, bullying, or humiliation. On an email regarding the keys' issue one day after the alleged incident, Complainant makes no reference to inappropriate acts or behavior (see attachment Q39-06-17-05).

**40. Complainant alleges on November 15, 2005 you called her to your office and reprimanded her for participating in outside non-government activities. She claims they were not. She states your door was wide open and several people heard that you were rude and unprofessional. What is your response?**

Allegation has no merit. I did talk to Complainant on two requests she presented to conduct non-ARS activities without following ARS approved procedures. There was no reprimand, the meeting was informative. I was not rude or unprofessional. After consulting with the Area Office in Albany California, I met with Complainant and Janis Contento. During the November 15 meeting, I counseled Complainant not to engage on outside professional activities that would limit the time available to conduct and report research as outlined in the approved CRIS project. Complainant was also advised not to engage on outside professional activities before receiving proper approval and guidelines. The minimal requirement to meet the approved performance plan was also discussed. I do not remember if the door was open.

Since my office is in front of a University of Alaska classroom/laboratory, I usually

close the door to avoid noise interference. On November 16, 2005 I followed with an email summarizing the outcome of the meeting. In a rebuttal email dated 11-17-05 Complainant indicated she disagreed with the Area Office and the Unit decisions and guidance, but made no reference to the alleged reprimand, rudeness, or unprofessional behavior (see attachment Q40-11-17-05).

**41. Complainant alleges inequitable treatment, public humiliation, and hindered protected activity at a staff meeting with Jeffrey Schmidt. She alleges you attempted to publicly humiliate all 3 female Sys by attacking what they said and mildly accepted what the male Sys said. What is your response?**

During the referred meeting all SY's in the Unit made a professional and technical presentation of their research accomplishments to the group. I asked questions to all presenters in a professional manner, following principles used in professional societies. All questions were related to the presentation and its relation to the approved project plan. Speakers were informed on the objectives and format of the presentations. Scientists were aware of the question/answer section. It is expected that a scientist be prepared to answer questions related to their research projects and their presentations. Scientists from both genders were unable to answer some of the questions. The presentations and the questions and answers sections were witnessed by J. Schmidt, USDA, ARS Cooperative Resolution Program and the rest of the USDA ARS group in Fairbanks. Complainant difficulties in providing satisfactory answers to research questions are documented in appendix Q40-11-17-05.

**42. Complainant alleges on April 9, 2008, you burst into her office and claimed she was interfering with university decisions because she supported Roseann Leiner for tenure and offered to write a letter. What is your response?**

This allegation was addressed under question 35.

**43. Do you have any additional information related to this claim?**

Janis Contento (907-474-6516) was present during meetings related to questions 40 and 41. Jeff Schmidt (301-504-1352) was present during the meeting referred in question 41.

**Claim 4: she was subjected to disrespectful behavior (dates not provided)**

**44. What knowledge, role, or involvement did you have with this claim?**

Allegation has no merit; I have no knowledge, role, or involvement with disrespectful behavior towards Complainant or any member of the Unit.

**45. Complainant alleges you were disrespectful when on December 17, 2004 when you asked her, “Why did we hire you if you can’t diagnose diseases?” What is your response?**

This allegation was addressed under question 34. I did not question her expertise or the need of a plant pathologist in the Unit.

**46. Complainant alleges on June 15, 2005 she received disrespectful treatment when you sent two male Sys to “fix her problems.” What were the problems?**

I do not recall sending representatives or asking anyone to represent me on such activities.

**47. Complainant alleges on August 12, 2005 you sent her an e-mail asking why she took so much time sampling late blight and why she wasn’t working on white mold. Implying that she was not working of project plan milestones and was doing extension work. What is your response?**

My recollection of the events is that during the week of August 12, 2005, Complainant left a voice mail on my phone indicating that she needed to modify the travel authorization to accommodate additional sampling in the Palmer area. Since I was unable to contact her by phone and the message was confusing, I emailed Complainant. The intention of the email was to clarify her request and provide

guidance. Since Complainant was a fairly new employee and it was towards the end of the project plan cycle, I reminded Complainant on the need to meet approved milestones before engaging on other activities. (See attachment Q47-08-12-05).

- 48. Complainant alleges on August 15, 2005 you called her again and claimed she took too many late blight samples that it is not part of the project plan. She states you told her, “If Roseann is the expert, why do we need you?”. What is your response?**

On August 15, 2005 I discussed with the Complainant her long term research plan and the desirability of developing an independent research program. Also we discussed the importance of documenting collaborative efforts and the difference between extension work and ARS research programs. R. Lainer program was used as an example to illustrate the difference between research and extension programs. I did not question her expertise or the need of a plant pathologist in the Unit. Also see questions 34, 45, and 47.

- 49. On November 15, 2005 complainant alleges you called her to your office and reprimanded her for participating in outside non-government activities. She states you were rude and disrespectful. What is your response?**

This allegation was addressed under question 40; I was not rude or disrespectful.

- 50. Complainant alleges she has tried to reason with you to no avail. What is your response?**

On August 2006 and December 2008, I arranged training on conflict resolution. After engaging in conflict resolution on August 2006, Complainant offered to be “less defensive”, but there was only little and temporary improvement in communication. Complainant refused to engage on conflict resolution during 2008. Since most of the issues are associated with the Complainant’s disregard for approved government procedures, laws, or regulations and in an effort to reach out and solve differences

and communication problems, I have asked Complainant to “meet me midway”.

Complainant has indicated that in her opinion there are no communication problems, but fail to accept counseling or guidance (see questions 26, 32, 35, 40 and attachment Q40-11-17-05).

**51. Do you have any additional information related to this claim?**

Janis Contento (phone 9070-474-6516) was present during the meeting related to question 49.

**Claim 5: she was subjected to open hostility (dates not provided)**

**52. What knowledge, role, or involvement did you have with this claim?**

Allegation has no merit; I have no knowledge, role or involvement in hostilities toward Complainant or any member of the Unit.

**53. Complainant alleges she was subjected to open hostility from you from September 1, 2004 through September 29, 2008. She alleges threats of termination, unfair treatment, disrespectful and demeaning conduct, intimidation, impeded research/communication/collaboration, inequitable treatment, public humiliation, intimidation and bullying, reprisal, discrimination, harassment, and breach of confidentiality. What is your response?**

These allegations have been addressed under questions 17 to 52.

**54. Do you have any additional information related to this claim?**

No.

**Claim 6: she was subjected to intimidation (dates not provided)**

**55. What knowledge, role, or involvement did you have with this claim?**

Allegation has no merit; I have no role, knowledge or involvement in any act of intimidation toward Complainant or any member of the SARU Unit.

**56. Complainant makes the same claims as stated in question 53. What is your response?**

These allegations have been addressed under questions 15 to 55.

**57. Do you have any additional information related to this claim?**

No.

**Claim 7: she was denied the opportunity o act as Research Leader (dates not provided).**

**58. What knowledge, role, or involvement did you have with this claim?**

As Research Leader I appoint the Acting Research Leader.

**59. What policies/procedures are followed to appoint an employee to act as Research Leader?**

From July 2003 to June 2008 the criteria for selection of the Acting Research Leader (ARL) was the GS grade level (preference for highest rank/grade level), time at the Unit (enter on duty date), and physical presence in the Fairbanks office. I selected the ARL based on these criteria.

**60. Prior to August 1, 2008, how were appointments made?**

See answer to question 59.

**61. What rationale was used to make appointments?**

See answer to question 59.

**62. Who was appointed in 2004 through 8/1/2008?**

Peter Bechtel, Jeff Conn, Dennis Fielding, Nancy Robertson, and Steve Seefeldt.

**63. Did you appoint any of the female scientists during this time? If yes, who? If no, why not?**

Yes, Nancy Robertson was appointed ARL on August 01, 2008.

**64. What rotation plan is in place at the present time?**

In an effort to provide all scientists the opportunity to serve as Acting Research Leader, on July 2008 a rotation system was implemented. The rotation uses the Enter on Duty Date, then alphabetical order as criteria to establish the order of rotation. Scientists can serve as Acting RL after 12 consecutive months in the Unit, with no GS grade or location restrictions.

**65. Do you have any additional information related to this claim?**

Complainant has acted as Research Leader on three occasions since the rotation plan was implemented.

**Claim 8: she was subjected to having her peer-reviewed publications downgraded to research notes (dates not provided).**

**66. What knowledge, role, or involvement did you have with this claim?**

I have not downgraded manuscripts at SARU.

**67. Complainant alleges you incorrectly changed several of her publications and those of Dr. Nancy Robertson from "Peer Reviewed Journal" to Research Notes (an undefined category that does not count as peer-reviewed). Did you do this? Why?**

Official records indicate all Research Notes entered into the USDA data base were published in peer-reviewed journals (see attachment Q67-01-15-09). All manuscripts presented to me have been registered and coded into the appropriate USDA-ARS-database. USDA-ARS use a reporting system called *Agriculture Research Information System (ARIS)*. ARIS is a central repository that holds project research information to allow users to continue to input, update, and retrieve research project information. In consultation with the Pacific West Area office, I have corrected manuscripts incorrectly classified by the Complainant into the appropriate ARIS codes. Research Notes presented by myself and those of a male scientist

working under my supervision, were also coded into appropriate ARIS codes. ARIS codes are designed to retrieve data, not to define the peer review process.

Manuscripts are not loaded into ARIS, relevant information and key words used to retrieve data are loaded into ARIS. The peer reviewed process is defined by the professional societies and/or associations and their editorial boards, not by the ARIS codes. On October, 2006, Dr. Robertson elevated the publications classifications issue to the Pacific West Area office. On November 21, 2006 the Area Director, the Associate Area Director (now Area Director), and the Assistant Area Director interacted with Dr. Robertson and indicated that the ARIS codes were not designed to define the manuscript types (peer-reviewed versus research notes) or provide information about the peer review process (see attachment Q67-11-21-06).

**68. Complainant alleges you refused to accept the peer reviewed Disease Notes (in the journal Plant Disease) and Primer Notes (in the journal Molecular Ecology Notes) appropriately as peer review journal articles. Is this true? If yes, why?**

I have never rejected a manuscript submitted by the Complainant or any scientist in the Unit. The classification of manuscripts under the ARIS system is addressed under question 67 and is uniformly applied to all scientists in the Unit. Official ARIS records reflect that all "Disease Notes" and "Primer Notes" submitted by Complainant were published in the peer-reviewed journals "Plant Disease" or "Molecular Ecology Notes" (see attachment Q67-01-15-09).

**69. What policies and procedures are followed? Please describe.**

ARS follows the Agricultural Research Information System (ARIS) on line Manual available at <http://www.npstaff.ars.usda.gov/ARIS/Manual/>. Additional guidance is provided in the ARS-115 form (see attachment Q69-16-01-09). Once the

manuscript is coded into ARIS, it is the scientist responsibility to contact, submit, and interact with the journal and the editorial board regarding the manuscript revision. I am not involved in the interaction between the Journal and the scientist.

**70. Complainant alleges some peer-reviewed publications for women are not given full credit despite the fact that no other ARS scientists in the nation have this “rule” What is your response?**

On December 2007 Complainant was promoted to GS 13 confirming that all her manuscripts received the appropriate “credit”. The classification of manuscripts under the ARIS system is addressed under questions 67 to 69. The classification of manuscripts is consistent and uniform for all scientists in the Unit regardless of their gender. Official ARIS records indicate that for the years 2005 to 2007 the SARU entered eleven manuscripts that were coded as research notes. Fifty-five percent of the research notes were entered by male scientist; including entries submitted by myself, and a Post-Doctoral Associate working under my supervision (see attachment Q67-01-15-09). The standards and requirements to report research results are defined under Critical Element 2, Report Research Results of the Annual Performance Plan and applied uniformly to all scientists in the Unit regardless of their gender. Specific goals under each element of the Annual Performance Plan reflect the scientist field of expertise and approved milestones for the project and are not set nationally as suggested by Complainant. The SARU develop annual performance plans following the Pacific West Area Guidance for Performance Plan (PWAGPP). PWAGPP are issued for each fiscal year (see attachment Q70-10-08-08). Additional guidance on manuscripts requirements was provided during the

November 15, 2005 meeting related to non-ARS research activities (see attachment Q40-11-17-05).

**71. Complainant states she filed an Administrative Grievance on February 23, 2007. What was the outcome of this grievance?**

Grievances are filed at the Pacific West Area Office. I am not informed on the progress or outcome of grievances. This question should be address to Dr. Andrew Hammond, Pacific West Area Director, Albany California, phone 510-559-6060.

**72. Complainant alleges she and Dr. Robertson are the only ARS scientists in the nation not allowed to have peer reviewed Disease Note publications in the journal Plant Disease and peer reviewed Primer Notes in the Journal Molecular Ecology Notes counted as a Peer Reviewed Journal articles. What is your response?**

I cannot answer the question as stated. I am not familiar or aware with the national survey or report from which the Complainant inferred this allegation. In an effort to answer the question, I requested an ARIS report with the parameters defined above and also under question 70, but a nationwide ARIS report could not be generated using such parameters. The classification of manuscripts under the ARIS system is addressed under question 67 to 70.

**73. Complainant alleges ARS Scientists in Fairbanks, AK are held to a higher standard when submitting manuscripts for publication in a journal compared to other scientists doing research for ARS at other ARS locations? What is your response to this allegation?**

The standards and manuscripts requirements are defined under Critical Element 2 of the Annual Performance Plan (APP). The procedure and guidance used to develop the APP is addressed under question 70. Standards are applied to all scientists in the Unit. Performance plans are reviewed by the Pacific West Area Reviewing

Official and signed by the scientist every year. Also see questions 68, 69, 72 and attachments Q40-11-17-05 and Q70-03-14-08.

**74. Define what constitutes Research Notes and Peer-Reviewed Journal entries.**

The ARIS Manual provides a “Matrix for Data Entry Determinations” available at <http://www.npstaff.ars.usda.gov/ARIS/Manual/ARIS%20Chapter%205%20Revised%20January%202006.pdf>. Additionally, the local ARIS expert periodically distributes instructions and the ARIS matrix to scientists in the Unit (see attachment Q74-12-15-08). Professional societies and editorial houses provide definitions on what constitutes research note entries or have peer-reviewed journals dedicated to research notes (<http://www.wiley.com/bw/journal.asp?ref=1755-098X&site=1>; [http://apsjournals.apsnet.org/userimages/ContentEditor/1173400877343/pd\\_author\\_instructions.pdf](http://apsjournals.apsnet.org/userimages/ContentEditor/1173400877343/pd_author_instructions.pdf)). The publisher, Wiley-Blackwell, publish both journals “Molecular Ecology” and the companion publication “Molecular Ecology Notes”.

**75. Are Research Notes restricted to a number of pages?**

ARIS does not define a page requirement for research notes. A definition of the ARIS entry determinations was addressed under question 74.

**76. Do you have any additional information related to this claim?**

No

**Claim 9: she was not allowed to hire permanent technicians (dates not provided).**

**77. What knowledge, role, or involvement did you have with this claim?**

As Research Leader, I approve all personnel action in the Unit.

**78. What policies and procedures are followed o hire permanent technicians or temporary technicians at ARS?**

SARU follows the Pacific West Area Guidance on Recruitment Actions (attachment Q24-4-19-05). Also see question 24.

**79. What policies and procedures are followed in the hiring process?**

See response to questions 26 to 29.

**80. Who makes the decisions as to grade level, type of appointment, and selection?**

The grade level and type of appointment are determined based upon the Pacific West Area Guidance on Recruitment Actions (PWAGRA) and funds availability. The final selection of the candidate is by the hiring official based on a Certificate of Elegibles issued by the Human Resources Division in Maryland and with concurrence of the Research Leader. Also see questions 24, 26, 78, 79, and attachments Q24-4-19-05 and Q26-03-02-05.

**81. What is the rationale used to determine type of appointment and/or grade to fill the technician positions?**

See response to questions 78 to 80.

**82. Complainant alleges the male scientists were approved to hire permanent technicians. If this is true, why?**

This allegation was addressed under question 26.

**83. Were the female scientists allowed to hire permanent technicians? If yes, who? If no, why not?**

Two female scientists in the Unit (Nancy Robertson and Bonnie Furman) have permanent technician position. N. Robertson is currently hiring a permanent technician. Also see question 26.

**84. Do you have any additional information related to this claim?**

No

**Claim 10: she was not allowed to hire technicians at GS-7 level (dates not provided)**

**85. What knowledge, role, or involvement did you have with this claim?**

As Research leader, I approve all personnel actions in the Unit.

**86. Complainant alleges the story has changed often. You once said it was because she was the last one hired, then it was because her position was the last one established in the unit, then it was because your budget was uncertain and so was her job. What is your response:**

All positions are approved following the Pacific West Area Guidance on Recruitment Actions as described under questions 26 and 78 to 83 and funds availability. From 2003 to 2007 the Unit has been either in the agency closure list or under uncertain funding possibilities. Under uncertain budget considerations, the area office has advised to use term appointments whenever feasible to fill administrative and scientific support positions. Complainant was informed of budget restrictions during the hiring process and aware of the impact of budget on hiring technicians (see my comments on budget limitations on attachment Q26-03-02-05). Also see attachments Q26-04-11-07 and question 26.

**87. Complainant states she annually requested reconsideration of grade level and permanent status because she had requested a GS-5/9 permanent position in the ARMPS budget.**

Allegation is inaccurate; Complainant did not request promotion or conversion to a permanent technician during the 2009 ARMS budget request. On September 03, 2008, during a staff meeting, I requested that scientist who has temporary technicians can now convert those positions to permanent, since the unit's funding was no longer based on earmarks. The 2009 is the only year since 2004 that the

Units budget is on base funds. The procedure and requirement to approve positions is addressed under questions 26 and 80 to 83. Also see question 86.

- 88. Complainant states she was allowed to hire Andrew Krohn only at GS-5 with FPL to 7. She also was allowed to hire Jonathan Horrell as GS-6 but was never informed that you had approved the position for FPL at GS-6 rather than the GS-7 at which it was actually announced. What is your response?**

Allegation has no merit. Complainant has announced technician position in two occasions, 2004-05 and 2007. Evidence of her involvement in defining the 2004-05 and 2007 position are discussed under question 26 (see attachments Q26-11-01-04, Q26-11-22-04, Q26-03-02-05, and Q26-04-11-07). On April 09, 2007 Complainant suggested changes in KSA's to her most recent hire and eventually contacted the human resources specialist and discussed/amended KSA's to reflect a higher GS level than approved (see questions 23 and 32). According to official Human Resources records, A. Krohn was qualified only at the GS 5 level and appropriately hired at that level. Horrell was qualified at the GS-6 level. The grade level (GS) of the position has been addressed under questions 23 to 29.

- 89. Complainant states that Jeff Conn, Steve Seefeldt, and Joe Kuhl were all given the opportunity to hire and promote to GS-7. Is this true? If so, why?**

Allegation is inaccurate. In the most recent hires, Conn and Seefeldt hired from the same Certificate of Eligibles. The position was announced at the GS 5/6 level with promotion potential to GS 7. Conn hired at the GS 7 level, Seefeldt hired at GS 5. Over time, Seefeldt's technician reached the GS 7 level. In his last hire, Kuhl announced at the GS 5/6 level and hired at GS 5; the technician left the Unit after reaching the GS 6 level. Kuhl left the Unit without hiring another technician.

- 90. Do you have any additional information related to this claim?**

No

**Claim 11: she received unfair performance appraisals (dates not provided).**

**91. What knowledge, role, or involvement did you have with this claim?**

As Research Leader, I am the Rating official for Complainant. Appraisals have been fair.

**92. Complainant believes she received unfair performance appraisals for the rating periods covering 2004 to 2008, inclusive. What is your response?**

Appraisals have been fair. I followed approved Pacific West Area and Human Resources Division Guidance (see attachments Q70-10-08-08 and Q92-08-28-08). Appraisals have been reviewed and approved by the Pacific West Reviewing Official.

**93. What policies and procedures are followed when an employee disagrees with his/her rating?**

The Grievance Procedure is discussed and a copy of the procedure provided during the annual appraisal along with Form AD-435P (see attachment Q93-16-01-09). The grievance procedure is also available on line at

[http://www.afm.ars.usda.gov/hrd/ER/newsletters/Issue%206\\_2003.pdf](http://www.afm.ars.usda.gov/hrd/ER/newsletters/Issue%206_2003.pdf)

**94. Did complainant disagree with the ratings given and did she follow established procedures? Please describe what happened.**

In general, Complainant has disagreed with appraisals and with established procedures. If the Complainant decides to file a grievance, it will be addressed to my immediate supervisor. I am not involved in the procedure; therefore I cannot answer if Complainant followed the established procedures.

**95. Complainant believes she should have been given Superior or Outstanding ratings. What is your response?**

The requirements to meet Superior or Outstanding ratings are defined in Form AD-435P (see attachment Q93-16-01-09); Complainant has not satisfied those requirements. To ensure fairness, appraisals for which I am the Rating Official are reviewed and approved by the Pacific West Area Reviewing Official before I discuss them with employees. The guidance on performance appraisals was discussed under question 92. Complainant has been counseled on need to follow agency regulations and/or to focus on approved project milestones (see questions 23 to 26, 31 to 36, 39, 40, 47, and 48).

**96. Were any of her ratings changed? If yes, please explain.**

The appraisal from the January 1 to December 31, 2005 rating period was adjusted to reflect a change in the rating for Critical Element 3, Resource Management. The adjustment reflects a change from “meets fully successful” to “exceed fully successful”. The adjustment was completed after an informal grievance procedure. A second adjustment is documented for the January 1 to December 2006 rating period. This adjustment was to correct an error under Non-Critical Element 4, Represents Agency, Program Development, Personal Development. The change was from “does not meet fully successful” to “meets fully successful” in Element 4.

**97. Complainant alleges her ratings have always been unfair, subjective, and immeasurable. What is your response?**

The procedure and outcome of Complainant performance ratings were addressed under questions 91 to 96.

**98. Complainant alleges she and Dr. Robertson have never received performance bonuses from you and as far as she knows all the male scientists have despite having similar accomplishment. Is this true? If yes, why?**

Allegation is inaccurate; four male scientists have not received performance awards under my leadership. The records show no performance awards for Robertson or Complainant for the 2003 to 2008 rating periods. Awards are based on performance and accomplishments, not gender. For the appraisal period ending October 31, 2008, 33% of the females and 42% of the male scientists in the Unit received performance awards. There are twice as many male research scientists as compared to female researchers in the Unit, so is not unusual that the statistics on awards are not gender balanced.

**99. Do you have any additional information related to this claim?**

No

**Claim 12: on September 5, 2008 she was threatened for communicating EEO issues to various other people including the designated contact person for Civil Rights and Workplace Violence issues.**

**100. What knowledge, role, or involvement did you have with this issue?**

Allegation has no merit, I have never threat complainant.

**101. What policies and procedures are followed by employees to contact others to discuss EEO issued?**

The Agency and the Department of Agriculture have several Policies and Web sites dealing with EEO issues and the Employee Assistance Programs. The Pacific West Area office has an Outreach, Diversity & Equal Opportunity Program Manager that can assist with EEO issues. The Unit posted several memos on the bulletin board: The FAQ EEO Counseling Process, ODEO Washington DC Roster, THE ARS Anti-Harassment memo and Sexual Harassment Policy. The telephone numbers in the Unit bulletin board have either 202 or 800 state phone codes, Alaska phone code is

907. I am not aware of official procedures regulating EEO peer to peer communication.

**102. Who is the contact person for ARS, Fairbanks?**

SARU does not have a designated in-house EEO contact person. The designated EEO Contact Person for the Pacific West Area is Charmaine Scardina, Program Manager, Outreach, Diversity & Equal Opportunity, USDA-ARS-Pacific West Area, 800 Buchanan Street - Rm. 2034, Albany, CA 94710-1105, Phone 510-559-6076, Fax 510-559-5634, [charmaine.scardina@ars.usda.gov](mailto:charmaine.scardina@ars.usda.gov)

**103. Complainant states she contacted Janis Contento, Administrative Officer because she is the designated EEO contact. Has Ms. Contento been designated as the contact?**

No, J. Contento is not a designated EEO contact person at the Unit in Fairbanks.

Also see question 102.

**104. Complainant states you threatened performance appraisal and job because she contacted Ms. Contento. What is your response?**

Allegation has no merit. I have never threatened Complainant. Additionally, the incidents where Complainant alleges she was threatened (see questions 30 to 36) precede the alleged contact with J. Contento or the arrival of Contento to the Unit.

**105. Was complainant disciplined? If yes, what actions were taken?**

No; there have been no disciplinary actions associated to allegations under questions 100 to 104.

**106. Can you identify any witnesses who have direct information related to the claims accepted for investigation? Name, job title, telephone number, and relevance?**

Names of witnesses or persons that can provide additional information are provided under questions 29, 37, 43, 71, and 102.

**107. Do you have any relevant documents to submit as attachments to your affidavit? If so, please identify them for the record by placing your initials and date on the first page of each document provided.**

Table 1. List of attachments submitted with this affidavit. Attachments are identified in text using the question number and date (for example attachment Q24-04-19-05 refers to an attachment related to question 24 and is dated April 19, 2005).

Question #	Date (DD/MM/YY)	From	To	Topic
24	04-19-05	Pantoja	SY's	PWAGRA
26	11-01-04	Winton	Pantoja	KSA/Veterans pref.
26	11-22-04	Winton	Pantoja	KSA's
26	02-15-05	Reese	Winton	KS's
26	03-02-05	Winton	Pantoja	GS level/Budget
26	04-11-07	Contento	Pantoja/HRD	Tech. KSA
31	11-01-04	Winton	Pantoja	Coll. Lacey
32	11-02-04	Reese	Pantoja	Veteran Pref.
32	11-09-04	Pantoja	Winton	Tech hiring
35	04-28-08	Lewis	Pantoja	UAF
36	08-28-08	Pantoja	Winton	Prof. behavior
36	08-18-08	Contento	Winton	Prop. Report
39	06-17-05	Winton	Martin	Keys
40	11-17-05	Winton	Pantoja	Non-ARS-Activities
47	08-12-05	Pantoja	Winton	Samples
67	11-21-06	Hammond	Robertson	ARIS codes
69	16-01-09	n/a	n/a	ARS-115 Form
70	01-15-09	n/a	n/a	Report Res. Notes
70	01-08-08	Pantoja	SY's	PWAGPP
74	12-15-08	Philibert	SY's	ARIS Matrix
92	08-28-08	HRD	PWA	Guidance letter
93	16-01-09	n/a	n/a	AD-435P Form

**108. Do you have any additional information?**

No.

**I have reviewed this statement, which consists of 31 pages, and hereby solemnly swear that it is true and complete to the best of my knowledge and belief. I understand that the information I have given will not be held confidential and may be shown to the interested parties as well as made a permanent part of the investigation.**

\_\_\_\_\_  
**Alberto Pantoja**

\_\_\_\_\_  
**(Date)**

**Signed before me at Fairbanks, Alaska on 02 of February, 2009.**

\_\_\_\_\_  
**Witness**