

that have happened during his tenure. He states he keeps his distance but remains polite and cordial. His second line supervisor is Dr. Robert Matteri, Associate Director. Dr. Matteri was just recently promoted to this position. In an affidavit dated February 10, 2009 he swears to the following in substance (Exhibit 16).

Dr. Conn states he has worked with complainant for about 4 ½ years. He states they have a cordial working relationship. They do not see each other a lot because they are in different parts of the building. He does however stop by and talk with her every now and then. He thinks she is a really good researcher. She is a hard worker and he is impressed with what she does. They have done some joint research together. He states complainant has expertise in doing DNA finger printing work. They did some joint work on White Sweet Clover. They tried to figure out where the invasive population originated from and how they were related to each other.

He states there is one intervening office between complainant's office and that of Dr. Pantoja. The Administrative Officer, Janis Contento occupies the office between them. He states his office is down the hall about 100 yards away and he is surrounded by UAF people. He describes the morale of the Unit as poor. He thinks Ms. Contento tries to foster camaraderie, inclusion and tries to "mother" them. He states the RL creates an atmosphere of fear and intimidation. He states morale has come up as a topic of discussion. They have had a number of group meetings with facilitators addressing different issues. He does not feel there has been any improvement.

He states in response to complainant's allegation that Dr. Pantoja treats female scientists differently from her male scientist counterparts, he states the most obvious thing was there were no female scientists who were appointed acting RL when Dr. Pantoja was away from this location. He states this has been remedied. He does not know how this change came about but thinks it was a result of the initial EEO complaint. He states also in meetings the female scientists have been singled out more than their male counterparts by Dr. Pantoja. The females are grilled more on their research and relevance/impact to their work.

He states he was not aware of complainant's allegation of reprisal. He was contacted by an EEO Counselor in the preliminary investigation. Just after the preliminary findings came out there was an incident during the 4th of July weekend. He and his technician were going to do some field work the following week and he had his technician come in and do some work in preparation. They filled in their timesheets reporting this work. He states he was called into Dr. Pantoja's office. Dr. Pantoja started yelling at him. He was required to write a detailed narrative of what his technician did. He talked to his technician and gave Dr. Pantoja the additional information.

He states Dr. Pantoja told him he changed his story and it was probably more accurate the first time. He states it made him afraid. He could not understand why Dr. Pantoja reacted in this manner and to the degree that he did. It made him think this was reprisal for the testimony he had given as part of the investigation,. In the initial inquiry he asked to remain anonymous but after this incident with Dr. Pantoja, he wrote a letter to the EEO

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office and to the Area Office saying that he thought there may be some reprisal happening here. He sent the letter by registered mail. He never heard from anyone on this.

Claim 1: "On February 26, 2008, she was issued a letter of caution."

Dr. Conn states he knew the letter of caution was issued. The complainant did not show him the letter. He states he has not received a letter of caution from Dr. Pantoja.

Claim 2: "She was subjected to termination."

Dr. Conn states he has no direct knowledge of this claim. He states he has been threatened with termination indirectly a couple of times. Once at the science presentation in January 2008, he felt Dr. Pantoja was being unfair to complainant in his questioning. He stood up and defended some of the things she said. Then when it came time for him to discuss his research, Dr. Pantoja stated that they had two agronomists at Fairbanks doing the work on weeds. He asked him why he should keep him rather than the other scientist if there were budget shortfalls. He stated this publicly. Dr. Pantoja pretty much asked all of the scientists what impact the research would have. He responded to Dr. Pantoja's questions and he pretty much let it go. It seemed with the female scientists he kept grilling them more and more. Dr. Pantoja stated that he was trying to simulate what might be asked at a national meeting or by national staff of their agency. He states he came away from the meeting thinking they were a great group of people doing such neat stuff, but after the meeting everyone felt, "Gee this was horrible" because instead of praising people Dr. Pantoja kept knocking people down.

In another instance he states Dr. Pantoja asked the same question about having two agronomists. He can't remember if this happened in Dr. Seefeldt's office or Dr. Pantoja's office. Dr. Seefeldt was present when the comment was made.

Claim 3: "She was subjected to public humiliation."

Claim 4: "She was subjected to disrespectful behavior."

Claim 5: "She was subjected to open hostility."

Dr. Conn states there were two instances he knows of where he believes complainant was subjected to public humiliation, disrespectful behavior, and open hostility from Dr. Pantoja. One is the January 2008 research presentation described above. The second incident happened a couple of years ago in the parking lot in the back of their building. Dr. Kuhl, Dr. Pantoja, and he were walking from where their offices are located to another building where their labs are located. Complainant was walking toward them. He states Dr. Pantoja stopped and started yelling at complainant. He does not know exactly what it was about but he and Dr. Kuhl kept walking and did not want to be a part of it.

Claim 7: "She was denied the opportunity to act as Research Leader."

Dr. Conn states that was certainly the case. No female scientist, all three, were given the opportunity to act as Research Leader up until August 2008, He states basically there was a new policy rotating the acting position in alphabetical order among all of the scientists. Prior to August Dr Pantoja appointed Dr. Seefeldt, Dr. Fielding, Dr. Bechtel, and himself as acting in his absence from SARU. He states Dr. Kuhn may have also acted but he is not sure of this. He states he was given the opportunity to act as RL on average, once a year.

Claim 8: "She was subjected to having her peer-reviewed publications downgraded to research notes."

Dr. Conn states Dr. Pantoja has a policy not to count research notes as peer-reviewed publications. This would apply to the Primer Notes that complainant, her technician and he publish. It involves research complainant did on how to do the DNA fingerprinting for White Leaf Clover. He states there was a lot of work that went into this research. Complainant was first author and he was third author. He claimed this research toward his required work performance publications. He cannot recall if Dr. Pantoja rejected this credit. At that point in time they had a policy of one author and peer-reviewed to meet their "fully successful" performance rating criteria for publishing. He had another paper in which he was first author and used that to meet these performance criteria so it really was not an issue for him.

He states he has not had any publications rejected by Dr. Pantoja. He has submitted approximately seven manuscripts and they have all been approved with minor revisions.

Claim 9: "She was not allowed to hire permanent technicians."

Claim 10: "She was not allowed to hire technicians at GS-7 level."

Dr. Conn states he was aware of Claim 9. He states the same applied to him. He was only allowed to hire a 2-year term employee at the GS-5/6 level. He believes this was a policy that came down from the PWA office. Toward the end of the 2-year term his technician left because she wanted a permanent position. He looked at the job announcements coming out from USDA and a good number of them were permanent positions. He was able to talk Dr. Pantoja into making his next technician a permanent technician. They made it a GS-6/7 level. He still has a permanent GS-7 technician. He states his technician has been doing a lot of statistical work above her grade level so he recently sent in some paper work through Dr. Pantoja to have her position reviewed with the possibility of going to a GS-8. The request was turned down and he is not sure by whom. He doesn't know if it was Dr. Pantoja or Human Resources. He states he did send an e-mail to Dr. Pantoja to find out who made the decision but has not received a response from him.

He states he has also hired students on 180-day appointments. He also had some funding outside of USDA and was able to hire temporaries, GS-4/5 under this funding. He states the second technician he hired was at the GS-7 level. She also holds a Masters Degree.

He states he knew complainant was not able to hire at the GS-7 level. This was the reason her technician left. His name is Andrew Krohn and he accepted another job in Wisconsin. He states the kind of work complainant does is very technical. Mr. Krohn had a Masters Degree and really should have been eligible to get up to a GS-9.

Claim 11: "She received unfair performance appraisals."

Dr. Conn states he only knew what complainant told him about her performance appraisal. She did not show him the evaluation. He states they both talked with some university researchers about the possibility of their participating in a research grant. He states it was just about preliminary research. He does not know how Dr. Pantoja became aware of this and it may be possible that he talked to him about it. He states Dr. Pantoja was very upset that he was not included in the talks. He had them come to his office and they had to talk to the Area Director. He states it was a "big deal" and complainant got knocked down on her appraisal for this. He states his evaluation was not affected. They found out that it was something that would not fit in easily so they dropped the subject. He explained on any formal grant, they have to fill out various forms so that everyone knows what is going on and to ensure there is no conflict of interest and that sort of thing.

He states he generally agrees with the ratings he has received and the ratings have been favorable. Of course he would like to see them higher. He does not feel Dr. Pantoja has punished him. He states he received a performance bonus in 2007.

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."

Dr. Conn states he did not know anything about this claim. He states at a facilitated retreat they had at Alaska Land, Dr. Pantoja described employees talking about their EEO issues as gossip. He states Dr. Pantoja made the point over and over again that they should not be gossiping about those things. He states there was no discussion as he remembers it. They just sat there and took it.

He states when he contacted EEO and the Area Office as previously discussed he did not mention what Dr. Pantoja said at the retreat. His main point in contacting EEO was that he wanted his name listed in any proceeding in case retaliation should occur. He states he is surprised this situation with complainant has been allowed to go on for so long. It seems to him that USDA Administrators are aware of this but it keeps going on. He states he does not think this has affected his mental health that much but he knows that the women have been affected, He states it would be nice to see it resolved.

Dr. Peter Bechtel (male), Research Food Technologist, GS-1372-15, USDA, ARS, PWA, SARU, UAF, Fairbanks, AK has been in his present position for about nine years and has worked for the Federal government since May 2000. His major duties include being the Lead Scientist in Charge of Alaska Fish By-Products Project in Alaska. His immediate supervisor is Alberto Pantoja, Research Leader. Dr. Pantoja has been his

immediate supervisor since his arrival here in approximately 2004. He guesses someone in the PWA office in Albany, California is his second line supervisor. The position is vacant at the present time. In an affidavit dated March 6, 2009 he swears to the following in substance (Exhibit 17):

Dr. Bechtel states he does not work with complainant. He has known complainant ever since she was hired. He attended her seminar when she was a candidate to come to Alaska. He was not on the selection committee. He knows her as a colleague and as one of the scientists in the Unit. He states she is in a different area than he is and their work does not overlap. He states they have three programs in Alaska. They are the Alaska Genetics Program, Integrated Test Management Program, and the Fish By-Products Program. Complainant is in the Integrated Test Management Program and he is in the Fish By-Products Program. He is the lead scientist for the program he is in. Dr. Pantoja is the lead scientist for the other two programs. "Lead Scientists" have the added duty of handling project paperwork, but they do not actually "lead" any research except their own.

He states SARU was a very small Unit in 2003 or 2004. Then they hired a lot of people. The Unit is a new Unit. He states it is making progress and becoming more productive. Dr. Pantoja was hired as the Research Leader. He states he has not observed that Dr. Pantoja treats female scientists differently from male scientists. He states he sees Dr. Pantoja but they do not work together a lot. He states he heard things were going on concerning complainant's EEO issues but that is all he knows.

Claim 1: "On February 26, 2008, she was issued a letter of caution."

Dr. Bechtel states he did not know complainant was issued a letter of caution. He states he has not been threatened with a letter of caution by Dr. Pantoja.

Apparently, Dr.

Bechtel was

physically present in the small meeting room, but completely

unaware of the heated exchange

occurring between

the Complainant and

Dr. Pantoja. The two

people who

intervened (to halt

Dr. Pantoja's verbal

attack on the

Complainant) also

went unnoticed by Dr.

Bechtel.

Claim 2: "She was subjected to threats of termination."

Dr. Bechtel states he has no knowledge of specific threats of termination.

Claim 3: "She was subjected to public humiliation."

Dr. Bechtel states he has no knowledge of this claim. When asked to respond to a question concerning a 2008 group meeting, he states he recalled a group meeting where the scientists gave presentations on his or her research. He states he would not characterize Dr. Pantoja's questions in that light (hostile) and does not recall the incident well.

Claim 4: "She was subjected to disrespectful behavior."

Claim 5: "She was subjected to open hostility."

Dr. Bechtel states he has no knowledge of this. He states they do have a lot of meetings where they all get together and he has not witnessed disrespectful behavior by Dr. Pantoja. He has no knowledge of any open hostility.

Claim 6: "She was subjected to intimidation."

Dr. Bechtel states he is not sure what complainant is talking about in terms of intimidation. He is sure there are issues complainant feels very strongly about but he would not classify what he has seen as intimidation.

Claim 7: "She was denied the opportunity to act as Research Leader."

Dr. Bechtel states complainant was not a Research Leader until just recently when she served a period as Acting Research Leader. Prior to August 2008, Dr. Pantoja generally assigned the acting Research Leader duties to him. He states he travels a great deal so that when he was not available either Dennis Fielding or Steven Seefeldt, long time ARS employees, were appointed acting. In his opinion selection was based on experience.

Claim 8: "She was subjected to having her peer-reviewed publications downgraded to research notes."

Dr. Bechtel states he heard this. His understanding in that ARS wanted to make out a clear distinction between Research Notes and Publications. He states it is relatively a clear cut matter as he understands it. Most journals have peer-reviewed articles and some also have research notes. Designation as a peer-reviewed publication or research notes is not something that can be done arbitrarily by someone.

He states he believes the requirements to publish right now are one first authorship publication and one that is a second or third authorship on the publication. He states this change took place in their performance evaluations about three years ago.

He states he has not had his peer-reviewed publications downgraded to research notes by Dr. Pantoja. He states they do not publish in those formats very much.

Claim 9: "She was not allowed to hire permanent technicians."

Dr. Bechtel states this has been a real big issue in Alaska. It has to do with the fact of how their money comes in, whether they have permanent money or if the money is earmarked, or has the ability to be withdrawn. The Agency told them they basically had to make a lot of temporary hires with funds that were not permanent. If hiring used "add on money" temporary people were hired.

He states he has a permanent technician and has had this position since 2000. He also has a post-doctoral fellow and part of a technician that are temporary. He states the permanent technician position is currently vacant. The temporary post-doctoral position came in as a GS-11 and is now a GS-12. The other is a Chemist, GS-11, temporary position. He states they have one permanent and one temporary technician.

Claim 10: "She was not allowed to hire technicians at GS-7 level."

Dr. Bechtel states he has no knowledge of this.

Claim 11: "She received unfair performance appraisals."

Dr. Bechtel states he has never seen complainant's performance appraisals. He states his performance appraisals have been okay. They all think they can do better.

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."

Dr. Bechtel states he did not know anything about this until contacted by the investigator. He states he has never been involved with any EEO issue. He assumes that they have an EEO Coordinator that he could talk to about that. He guesses if someone came to him about an EEO matter, he would put him/her in contact with the person who would handle it. He would handle it immediately and contact people in the Agency.

Dr. Dennis Fielding (male), Research Entomologist, GS-0414-13, USDA, ARS, PWA, SARU, UAF, Fairbanks, AK has been in his present position since May 1999 and has worked for the Federal government for the same period of time. His major duties include research and biology of grasshoppers. His immediate supervisor is Dr. Alberto Pantoja, Research Leader. Dr. Pantoja has been his immediate supervisor for about four years. His second line supervisor is Dr. Bob Matteri. In an affidavit dated February 13, 2009 he affirms to the following in substance (Exhibit 18):

Dr. Fielding states he works with complainant as a colleague and collaborator. He began working with her about 3 ½ years ago. He states they share a collegial and professional working relationship. He states the work environment for the most part is comfortable and collegial. His office is located on the same floor as complainant but at the other end of the building. He states he has not observed anything he could say is unequivocally gender related. He was aware of complainant's EEO activity when she told him she got a bad evaluation from Dr. Pantoja and that he opposed her. He states he was sympathetic, listened to her concerns and did not have a response.

Claim 1: "On February 26, 2008, she was issued a letter of caution."

Dr. Fielding states complainant showed him the letter she received from Dr. Pantoja. In the letter, Dr. Pantoja alleged that complainant overreached her authority by allowing a vacancy announcement recruitment for a technician be posted up to a GS-7 level without his knowledge. Dr. Pantoja did not want the position to be advertised for more than a GS-6.

He states he has not been issued a letter of caution by Dr. Pantoja.

Claim 2: "She was subjected to threats of termination."

Claim 3: "She was subjected to public humiliation."

Claim 4: She was subjected to disrespectful behavior.”

Claim 5: “She was subjected to open hostility.”

Claim 6: “She was subjected to intimidation.”

Dr. Fielding states he has very little knowledge of claims 1 and 2. Complainant did not mention the incidents to him. He states he has not observed this alleged behavior on the part of Dr. Pantoja.

In response to Claim 3, he states there was one time that he did witness at a staff meeting in which scientists gave presentations of their research and research agenda. After complainant gave her presentation, Dr. Pantoja basically gave her a hard time on recommendations she proposed to present to growers because these recommendations were not entirely based on her research, but rather were based in large part on others' research published in the scientific literature. He states he was uncomfortable with the interaction because he could not understand why Dr. Pantoja objected to her recommendations because it seemed to be something that most scientists are expected to do (make recommendations based on scientific literature, not necessarily strictly based on one's own research). He does not think Dr. Pantoja's criticism of complainant was warranted. Furthermore, he believes if Dr. Pantoja had a concern he could have made his point and then dropped it. Instead, he belabored the point such that it could be interpreted as public humiliation. Dr. Pantoja did not react the same way to any of the other scientists who made their presentations in that meeting.

In response to Claim 4, he states he has no knowledge of this. In response to Claim 5 and 6 he states Dr. Pantoja was bordering on open hostility and intimidation toward complainant as discussed in Claim 3 above.

Claim 7: “She was denied the opportunity to act as Research Leader.”

Dr. Fielding states he was aware that complainant was denied the opportunity to act as Research Leader. When Dr. Pantoja was out of the State he designates an Acting Research Leader to act in his behalf. Appointments to Acting RL have always been to the same 4 scientists, himself and 3 other scientists. They are Drs. Conn, Seefeldt, and Bechtel. Assignments were rotated among the four depending upon their availability. There were no other male scientists at Fairbanks but there were in Palmer, AK. The two female scientists in Fairbanks are complainant and Dr. Bower. Going back to 2004, he would say he acted as Research Leader about 4 to 6 times. He does not believe the acting duties accrue “points” toward his performance evaluation and/or promotion potential. He states he has never listed or taken credit for this in his evaluation.

Claim 8: “She was subjected to having her peer-reviewed publications downgraded to research notes.”

Dr. Fielding states complainant told her that Dr. Pantoja refused to allow her papers that were published in a journal ‘Plant Disease Notes’ to count towards her publication requirements. In the annual performance plans for scientists, there is a requirement for a

certain number of publications, typically two are required per year. If this requirement is not met then a scientist may be graded "less than fully successful" in that critical job element of the performance evaluation. A rating of 'not fully successful' in a critical job element can result in the employee being placed on a Performance Improvement Plan (PIP) and ultimately losing their job. Scientific notes are generally short communications and are not considered to meet the requirements for peer-reviewed publications. Even though the journal in question has "Notes" in its name, to his knowledge the articles in this Journal are comparable in detail and scope to other scientific publications. It is his understanding that plant pathologists in other units with the USDA-ARS receive full credit for publishing in this particular journal. Nevertheless, Dr. Pantoja insisted these articles were not full journal articles and could not be counted towards publication requirement in complainant's performance plan.

Claim 9: "She was not allowed to hire permanent technicians."

Claim 10: "She was not allowed to hire technicians at GS-7 level."

Dr. Fielding states he has some second hand knowledge of Claim 9. As he understands it, there were several scientists who were not allowed to hire permanent technicians because Dr. Pantoja was not sure of the future funding for the Unit and directed that new technicians be hired as temporary employees on one or two year appointments. He believes this applied to all technicians who were hired in the last 3 to 5 years but is not certain. He states he has been with the Unit longer and when he hired a technician about 9 years ago he was able to fill the position with a permanent employee. At that time, this apparently was not an issue. He has not hired any technicians in the last 3 to 5 years.

He states he also has some second hand knowledge of Claim 10. The technician complainant hired (Andrew Krohn) was qualified at the GS-7 grade level and complainant told him that Dr. Pantoja would not allow that. He believes she had to hire Mr. Krohn at the GS-5 grade level.

Claim 11: "She received unfair performance appraisals."

Dr. Fielding states complainant showed him one performance appraisal she received. She was rated "less than fully successful" on one of the elements. It was not the publication element but he cannot recall at this time what it was. He also does not recall what year it was. The rating lowered her overall performance rating. He does remember thinking it was an extremely trivial point on which she was downgraded.

He states he does not feel that he received unfair performance appraisals by Dr. Pantoja.

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."

Dr. Fielding states he has no knowledge of this claim. He does not know the process to follow if any employee has concerns/issues about EEO. He states they have received

some training on various things such as diversity issues and civil rights. They usually receive training once a year. Somebody comes in to give a day long training or workshop.

Dr. Steven S. Seefeldt (male), Research Agronomist, GS-0471-14, USDA, ARS, PWA, SARU, UAF, Fairbanks, AK has been in his present position since May 2005. He has been a Federal government employee for about twenty-two years. His major duties include weed research focused on controlling weeds. He is also affiliate faculty at the University of Alaska Fairbanks. This allows him to be on graduate student committees. His immediate supervisor is Dr. Alberto Pantoja. Dr. Pantoja has been his supervisor since his arrival in the Unit about 4 years ago. Dr. Andrew Hammond, Area Director, PWA, Albany, CA has been his second line supervisor for about two years. In an affidavit dated February 3, 2009 he swears to the following in substance (Exhibit 19):

Dr. Seefeldt states he is a colleague of complainant working in the same Unit. He has worked with complainant for almost four years. He states they discuss their different experiments, statistical setups, and experimental designs and how they might set up a study to get valid information from it. He states complainant has real strengths in this area and he likes to bounce his ideas off of her. They are also working on the design of a cooperative project. It is scheduled for the summer after next. It has to do with herbicide use and the effect on micro-flora. He states they get along with each other very well. He would describe their relationship as collegial.

He states they have individual offices. He states he is not good with emotions so it is hard for him to say what the tenor is among scientists. It varies from day to day and generally he would say it is okay or average. There are highs and lows and bad times and good. He is speaking for himself and his observations.

He states he has observed that Dr. Pantoja is more comfortable with male scientists. In the past, Dr. Pantoja would ignore the female scientists. He states he has a pretty much collegial relationship with everybody in the unit. That is the way he is and he is older than most and has been in ARS for a long time. People do come to him and talk to him about a lot of things. He is a good sounding board. As an example about ignoring female scientists one time, about two years ago, complainant and he were walking toward the lab, which is in a separate building from where their offices are located. Dr. Pantoja was walking toward them and complainant told him, "Watch, he won't say 'hi' to me." As Dr. Pantoja got closer he said, "Hi Steve" and walked on by. Complainant said to him, "See?" He states he confronted Dr. Pantoja about that later and told him, "You can't do this. It is ridiculous. You're happy to say 'Hi' to me but not to the other scientist?" He states Dr. Pantoja is much better about this now.

He states he learned about complainant's allegation of reprisal later. He states a lot of what happened to complainant began before he started working in the Unit and has been growing since. For a long time people wanted to choose sides and they all assumed he was on the other side. Then everyone realized he had not picked a side. As people got to know him, after a lot of conversations over time, they realized he was not on one side or the other.