UNITED STATES OF AMERICA

BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY

SAN FRANCISCO REGION

AFFIDAVIT

I, Jeffrey Nathan Lewis, make the following voluntary statement in cooperation with an official investigation being conducted pursuant to the Federal Service Labor-Management Relations Statute. I understand that this statement will be considered confidential by the United States Government and will not be disclosed as long as the case remains open, unless I testify at a formal hearing and it becomes necessary to produce the statement at the hearing. Upon the closing of the case, the statement may be subject to disclosure in accordance with the Freedom of Information Act, as amended.

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This affidavit addresses a pair of Unfair Labor Practices, which I filed on August 10, 2012. These ULP's were timely filed, in accordance with Section 7118(a)(4)(b) of the Statute. The filing charged actions by Agency representatives and Union representatives, which effectuated a collusion to discriminate against a bargaining unit member, obstructing his Due Process and Grievance rights.

Although Agency records confirm this collusive relationship existed for more than five years (beginning in early 2007), the event that triggered the August 10th filing occurred on February 14, 2012. It was on this date that I first saw a copy of the final, signed settlement, which closed the grievance I alone had filed four years earlier. I had not been included in any discussions leading to this settlement, nor was I a signatory to this settlement. This settlement was struck between the Agency and the Union. In fact, my right to directly negotiate my grievance with the Agency had been overtaken by the right of the Union to represent in my place. As such, I was completely dependent on the Union to act in good faith. The Union failed this responsibility when, in the final week prior to the scheduled arbitration, they abruptly accepted the Agency's settlement offer. Any reasonable person would have found this settlement grossly deficient, and would have

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found the Union's action to be arbitrary. The larger record shows the Union has fully arbitrated many other cases that were clearly not winnable and of far lower monetary value.[1]

Both the Agency and the Union had a vested interest to cancel this arbitration hearing. Agency's case against me was completely fabricated, and Agency has consistently concealed key records for more than five years; a hearing would have revealed this. The Union has consistently failed their Duty of Fair Representation, which also would have been brought forward in a hearing record. Thus, the Union's unilateral acceptance of the Agency settlement offer in February 2012 destroyed the last opportunity to compile a record, and robbed me of a good chance at Due Process.

As a workaround to Agency concealment of records, I have spent in excess of $2,000 to obtain copies, mostly via the FOIA laws passed by our Congress. In the last two years, I have slowly acquired critical Agency records showing numerous slanders and misrepresentations by both Agency and Union officials. An actual hearing would compel these officials to explain these records and respond to questions, many of which would have proven embarassing for the colluding officials. In an environment of fairness and accountability, a hearing record would result in disciplinary actions against numerous Agency and Union officials. So, again, it was beneficial to both the Agency and the Union, to ignore the merits of the case and 'settle' with no Hearing record.

In the remainder of this Affidavit, I will first present an overview of Violations charged against the Agency, and Violations charged against the Union. I will then present a chronology with the deeper background of this case. Lastly, I will attach a list of names/phones for witnesses associated with this case, an Index of Exhibits, and a collection of Exhibits.

[1] FLRA investigators need to confer with Union and Agency officials and obtain information about other arbitrations that were NOT prematurely closed. One good example is the arbitration hearing for Andy Papageorge, a Concord coworker for whom I testified in March 2008. Andy had a long disciplinary history and was slapped with a 30-day suspension just prior to retiring in February 2007. Given his history, an arbitration appeared to be a wasted effort; the arbitrator sustained the suspension.

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Violations by the Agency:

§7116(a)(1): *"...to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter..."*

and,

§7116(a)(3): *"...to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having an equivalent status..."*

I exercised various rights, including the filing of a grievance on May 1, 2008. The right to file a grievance carries with it the right to have the complete grievance process, so that the grievance is decided to a fair conclusion. Agency interfered with my right at many points. First, Agency ignored grievance timelines and never responded at Step One. Second, Agency made known false statements supporting an arbitrary denial at Step Two. Third, Agency again made known false statements supporting another arbitrary denial at Step Three (review by Regional Office). Fourth, Agency delayed my arbitration for nearly four years. And, fifth, after years of delay, Agency colluded with Union officials, to prematurely 'close' my grievance just days prior to a scheduled Arbitration Hearing. This last action assisted the Union to avoid a Hearing that would have revealed many known failures and misrepresentations by Union officials including Regional Vice President Hamid Ghaffari, Regional LR Lead Michael Hull, SFO Local Rep David Caldwell, CCR Local Rep Bill Marks, and four other NATCA members (Ken Moyer, Ken Hougey, John Crabtree, and James Swanson).

§7116(a)(4): *"...to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition or has given any information or testimony under this chapter..."*

When I filed my first grievance on May 23, 2007, Agency retaliated by attempting to medically retire me on a disability. The Regional Flight Surgeon created a highly slanderous document and inserted it into my medical file. The many slanderous assertions were not supported by any Agency records. A medical

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retirement was initiated, but I challenged and eventually prevailed when my ATC medical clearance was fully restored on 1/10/08.

When I filed my next grievance on May 1, 2008,[2] the result was an abrupt retaliation by Agency. At the time, I had been locked out of my workplace for more than fourteen months.[3] Immediately following my grievance filing, the suspension was redrafted as a removal. 'New' charges were added, based solely on the stale contents within a Report of Investigation (ROI) that had been completed more than a year earlier, in March 2007. As stated in a 5/15/08 (Thursday) email from Ros Marable to Andy Richards:

> *"...so you are aware, thoroughly reviewed the ROI and have added to the Lewis letter based on the ROI. The second charge will have at least 6-7 specifications regarding not being truthful. I want to review the letter again before I send it to you on Tuesday...."*

None of the allegations of 'not being truthful' were supported by any evidence. In fact, all were factual reponses made during the ROI interview, but simply did not conform to what Agency officials wanted to hear.

§7116(a)(5): *"...to refuse to consult or negotiate in good faith with a labor organization as required by this chapter..."*

Agency records strongly suggest that there was a collusion between Agency and Union officials, wherein both controlling parties (the Agency and the Union) would benefit by denying, delaying, and eventually settling. All of these tactics served to protect Agency officials from producing a record of past failures for which they might be held accountable. Each of these Agency actions served to deny justice and obstruct Due Process. There can be no 'good faith' where the objective is bad faith damages against an individual. This was Agency's way of playing hardball;

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[2] For the record, I did not initiate this grievance; FAA offered it to me. In mid-April 2008, LR Specialist Glen Rotella contacted me and offered a settlement. His stated objective was for me to withdraw ULP SF-CA-08-0087 (which I had filed in November 2007), in trade for actions that would allow me to 'be made whole' for other Agency actions taken during 2007. This 'make whole' was to clean up $40,000 worth of pay and correct/clarify slanderous Agency records. I readily accepted his settlement offer.

[3] Agency had issued a Letter of Reprimand to me in late July 2007. Nine months later, LR Specialist Ros Marable began drafting a suspension proposal on April 17, 2008. For the record, I knew nothing about this proposal for many years; I first saw a FOIA copy three years later, in April 2011.

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their actions showed malicious intent and blatant disregard for the rights of the employee.

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Violations by the Union:

§7116(b)(1): *"...to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter..."*

When I exercised my grievance rights, I filed using the imposed **Whitebook Contract**. Multiple Union officials had advised they would not honor my grievance unless I filed it using the older and obsolete **Greenbook Contract**. Union retaliated against me by prematurely withdrawing my first grievance in June 2007; when I later learned of this, I filed my first ULP against the Union in October 2007, which became SF-CO-08-0046.

The right to file a grievance has no weight if it does not carry with it the right to a complete grievance process. When a Union arbitrarily withdraws or settles a grievance, against the interest and request of the individual who filed the grievance, the Union must ensure their action is reasonable and consistent. Where it is neither consistent nor reasonable, it will be revealed as arbitrary. In this case, the Union had made it quite clear that they were hostile toward the **Whitebook Contract** grievance I had filed in May 2007. After I filed ULP SF-CO-08-0046, Union officials recognized that FLRA lacked a General Counsel and essentially refused to work with FLRA. When I filed the 'make whole' grievance on May 1, 2008, the Union again interfered and restrained by not supporting; in the meantime, they were actively filing hundreds and thousands of **Greenbook Contract** grievances each month. The Union just ignored my new grievance; it got to be so bad that, at one point, in July 2008, Agency LR representative Glen Rotella actually emailed top Union officials, saying:

> *"...if ever there were someone in need of representation and your professional advice it is Mr. Lewis. He has been on administrative leave for way over a year with almost no communication from the Agency. Now he*

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> *receives a proposed removal based on stuff that occurred more than a year and a half ago…."*

The Union did nothing. Not even a phonecall.

The final interference by the Union occurred last February, when they abruptly stopped any possibility for a hearing record and Due Process by arbitrarily accepting Agency's deficient 'settlement' offer. A year earlier, this same grievance was singled out by an elite panel convened to help FAA and NATCA clean up tens of thousands of backlogged grievances. The Mediation-to-Finality Panel was geared toward conducting quick reviews and making quick decisions. I had appealed for a full arbitration, so that I could achieve some Due Process on the issues within the grievance. The Panel agreed, and directed FAA and NATCA to refer the matter *"…to a full arbitration hearing before another neutral…."*

§7116(b)(2): *"…to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter…"*

I responsibly challenged the Agency's errors by filing **Whitebook Contract** grievances in May 2007, and again in May 2008.[4] The Union was clearly hostile toward these filings, and actually withdrew the first grievance, which spawned the first ULP I filed against the Union. In retaliation, Union officials influenced Agency officials toward discrimination on at least two occasions. On the first occasion, two faxes were sent by SFO Local Rep Dave Caldwell to FAA Manager Jason Ralph in May-June 2007, advising of the intent to withdraw an employee-filed grievance, then withdrawing it. On the second occasion, which happened last February, the Union fully abandoned its responsibility and enabled a discriminatory action, by accepting Agency's deficient offer of settlement.

§7116(b)(3): *"…to coerce, discipline, fine or attempt to coerce a member of the labor organization as a punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee…"*

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[4] I ultimately prevailed on both grievances. However, in the second grievance, nearly four years passed before the Union allowed the Agency to pay the monetary award at just 40% of full value, and also fully ignored all non-monetary awards. The record shows I had repeatedly and clearly advised Union officials that the non-monetary awards were far more critical. In the end, the arbitrator was paid for a two-day hearing that was cancelled at the last minute, stopping the needed hearing record.

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Despite all efforts by the Union to scuttle my May 2007 **Whitebook Contract** grievance, I prevailed via the ULP settlement offered by Glen Rotella, which I had signed on May 1, 2008. But, the 'make whole' grievance filed as part of that settlement was again being ignored by Union officials. When investigated by FLRA, Agency records will show that the Union was generally ignoring this new grievance. This was a collusion, wherein the Union was passively aiding the Agency by not challenging when Agency failed to respond at Step One, issued a specious denial at Step Two (on 6/19/08), and again issued a specious denial at Step Three (on 9/25/08). This grievance presented substantial case issues and was worth more than $40,000 in restored pay. Passive collusion was the Union's way to punish and retaliate for my having successfully filed multiple **Whitebook Contract** grievances.

§7116(b)(4): *"...to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition..."*

When Agency fired me on November 6, 2008, I was six months shy of age-50. I was thus made ineligible to retire the next May, unless I found new Federal employment. I filed an MSPB Appeal, but Agency continued to withhold the key exculpatory records. During this time, Agency offered me a disability retirement, but I declined it as I was not eligible.[5] So, in early March 2009, given the challenge of winning at MSPB without the missing Agency records,[6] I was 'forced' to 'voluntarily' retire at earliest eligibility.

Union passivity and non-support of my case, both while I was employed as well as in the years after, strongly suggests that Union officials wanted me to simply 'age out' of my job. All delays and inactions would put me days and months closer to retirement. Once I was actually retired, despite the fact it was clearly coerced by Agency, Union felt comfortable offering no assistance on the grounds that my age

[5] My ATC medical clearance had been improperly revoked on the day I was locked out, February 16, 2007. But, I challenged this action and eventually prevailed; my ATC medical clearance was fully restored on January 10, 2008. Thus, during the MSPB Appeal process, I was not eligible to retire on a disability.
[6] These records did not begin to emerge until June 2009, AFTER I was retired.

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made me eligible to continue to receive an under-sized retirement annuity. It appears conceivable that a thorough FLRA investigation will prove the Union also remained passive with the belief I would be offered an attractive disability retirement; if so, the Union failed to factor in I would ethically decline this offer.

§7116(b)(5): *"…to refuse to consult or negotiate in good faith with an agency as required by this chapter…"*

Both controlling parties (the Agency and the Union) who signed the Settlement Agreement stood to benefit if they denied, delayed and eventually settled. All of these tactics served to protect Union officials from producing a record of past failures for which they might be held accountable. Union officials ignored communications from me and from others. They willfully took no action where action was clearly needed. There can be no 'good faith' where the objective is a bad faith effort to damage an individual.

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Chronology and Background:

The following presents a series of some of the Agency retaliatory actions and Union passive collusion, as made evident by the referenced Exhibits:

1. **February 16, 2007**: After a brief meeting at the start of my 10AM shift, I departed on approved sick leave. Unbeknownst to me, my manager, Jason Ralph, initiated a Violence in the Workplace Teleconference (ViWP). Detailed notes were recorded by AWP EAP[7] Manager Cindy Lopez-Hickson.[8] Her notes show that Jason Ralph made numerous false and damaging charges. Jason Ralph's charges were the sole basis used by the Regional Flight Surgeon, Dr. Stephen Goodman, to temporarily suspend my ATC medical clearance. Dr. Goodman then faxed a memo to Jason Ralph, formally declaring my incapacitation, but Jason Ralph failed to forward this memo on to me; thus, I was not provided the required official notification that I had

[7] Employee Assistance Program at FAA's Western Pacific Region (AWP).
[8] See Exhibit 1. This record concealed until March 2010. Please note on the far-right column of the Index of Exhibits, I have marked the dates these concealed records were revealed, often years later.

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been declared incapacitated. A few days later, I received a letter signed by Jason Ralph,[9] initiating a "lockout" that continued for 21-months, mostly in a paid status. For the record, I am presently 53-years old and have no past history of violence or other misconduct.

2. **April 17, 2007**: An illegal Constructive Suspension was begun. I was forced to use up all of my accumulated sick leave and vacation leave. By mid-August, I had run out of leave, thus went into a Leave Without Pay (LWOP, or no-pay) status, which continued through the end of September. In October 2007, I was returned to a paid administrative status, retroactive to August 30, 2007. I was reimbursed with me pay for dates after August 30th, but was NOT reimbursed for the time period between April 17th and August 30th. This Constructive Suspension became a core element of the grievance I filed on May 1, 2008 which was supposed to have been heard at arbitration last February.

3. **May 9, 2007**: A large list of FAA officials were "in the loop" on my case, as indicated by an email from LR Specialist Dick Fossier to Dr. Goodman.[10] This and other agency records clearly show that the intent was to misuse the medical authority of the Regional Flight Surgeon, to impose a disability retirement where there was no documented disability. This effort was extensively coordinated between key officials from three Agency units: LR, Air Traffic, and Medical. In this particular email, Dick Fossier notes that Air Traffic and LR would need to "*...decide our next move...*" if Dr. Goodman restored my ATC medical clearance.

4. **May 17, 2007**: I needed the support of the Union, but the Union was mired in an impasse with Agency, related to the imposed workrules. The effect was as if we had no viable grievance process. Union officials Mike Hull and David Caldwell clearly stated in emails that, if I filed my own grievance, they would assert their authority and withdraw my grievance.[11] This they did, in June.

5. **May 23, 2007**: I filed my first grievance, seeking payment for the first pay period of enforced sick leave (the 72-hours of pay at the start of the Constructive

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[9] See Exhibit 2.
[10] See Exhibit 4.
[11] See Exhibit 5 through Exhibit 9; also, Exhibit 13.

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Suspension). I notified the Union of the decision I had made, which precipitated two email replies.[12] Both Mr. Hull and Mr. Caldwell indicated that my grievance would be withdrawn.

6. **June 7, 2007**: A highly slanderous note was inserted into my Medical File.[13] This slander was compounded a month later, when Dr. Goodman emailed Dick Fossier with an invitation to come look at the confidential medical file, as left on his desk.[14]
7. **July 27, 2007**: District Manager Dennis Sullivan signed a letter, admonishing me for two alleged uses of the n-word.[15] I replied with a letter noting I had used the n-word once, non-disparagingly quoting a Randy Newman song lyric, and asked he provide details of the other alleged usage. He never replied.
8. **September 5, 2007**: LR Specialist Dick Fossier emailed[16] Security Manager Richard Giles and reported that I had been admonished, the case was closed, and it was thus OK to issue to me a copy of the ROI. CC copies were sent to numerous others, and included a lengthy string of emails and attachments.[17]
9. **October 4, 2007**: I emailed District Manager Andy Richards[18] and advised I had considered his offer of disability retirement from a week before, and had decided I could NOT accept it, as I did not qualify. Andy Richards replied with a phonecall an hour later. Medical appointments were set up, and my ATC medical clearance was fully restored three months later.
10. **October 10, 2007**: I received a copy of the Report of Investigation (ROI) and thus learned new allegations that had not been shared with me previously. The ROI had been completed in late March and was promptly sent to Air Traffic officials. Based

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[12] See Exhibit 7 and Exhibit 8.
[13] See Exhibit 10. Slanders presented in this note between Dr. Goodman and Dr. Roberts were not supported by any records in my entire medical file.
[14] See Exhibit 16.
[15] See Exhibit 20.
[16] See Exhibit 21.
[17] Much of this was concealed during MSPB Discovery.
[18] See Exhibit 22.

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on this new information, I filed my first two ULP's, against both the Union (filed 10/22/07) and the Agency (filed 11/13/07).[19]

11. **December 3, 2007**: An email[20] from Senior Advisor Barry Davis to Western Terminal Director Teri Bristol reveals that Andy Richards wanted to discipline me and assign me to a different tower, at Santa Rosa. This fact was concealed from MSPB and FOIA; I did not learn of this plan until July 2010, sixteen months after I was forced to retire.

12. **January 10, 2008**: My ATC medical clearance was fully restored by Dr. Goodman.[21] When I received a mail copy, I sent Dr. Goodman a letter of thanks,[22] and asked that he explain the slanderous June 7th 2007 doctor-to-doctor memo that had been placed into my medical file. He never replied.

13. **April 5, 2008**: A decision was made that my disicplinary case was to be taken away from Dick Fossier and assigned to Ros Marable.[23] Dick Fossier sent Ros Marable a slanderous email, calling me a slimeball, and claiming I had not certified in twenty years. In truth, I had been fully certified for most of my ATC career, and at multiple towers.

14. **April 17, 2008**: Ros Marable checked out the ROI and drafted a letter proposing to suspend me for 14-days.[24] She emailed a copy to District Manager Andy Richards. At the same time, Glen Rotella emailed Andy Richards advising he was working on a settlement of my ULP against Agency. As soon as he received Glen Rotella's email, Andy Richards sent me a letter (as part of that settlement),[25] confirming I was in a paid leave status and advising: *"...a return to work plan will be discussed...."* Andy Richards never did follow up on the return to work plan.

[19] See Exhibit 23 and Exhibit 24.
[20] See Exhibit 25.
[21] See Exhibit 26.
[22] See Exhibit 27.
[23] See Exhibit 29.
[24] See Exhibit 31.
[25] See Exhibit 30.

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15. **May 1, 2008**: I accepted Glen Rotella's offer to settle, by mailing a signed settlement agreement, along with a new grievance to be made whole.[26] Glen Rotella made PDF copies on May 7th, and forwarded them to Andy Richards and others. One week later, Ros Marable emailed Andy Richards with a revised disciplinary action; the 14-day suspension proposal[27] was now a removal proposal, with new charges added, based solely on a 14-month-old stale ROI.

16. **May 20, 2008**: The first record indicating Air Traffic wanted to fire me appeared in a biweekly Terminal Report,[28] which said: *"...previously drafted a 14-day, management now requests a removal...."* Thus, the plan to return me to work, with a possible tower reassignment (as was pursued from at least December 2007 until early May 2008) was abandoned, when I filed a new grievance. Also, there is no evidence confirming who (if anyone) in Air Traffic actually made this request.

17. **October 2007 to June 2008**: A prolonged slander was contained within the biweekly Terminal Reports.[29] My disciplinary case was carried in the last pages of each Terminal Report, using a 'Justin Lewis' pseudonym. Each report claimed that I was AWOL, pending a medical revocation. The use of this pseudonym prevented other Agency officials from recognizing that a controller at Concord was being paid to stay away from work from February 2007 until November 2009. It also obstructed my learning these details via FOIA requests.[30]

18. **June 19, 2008**: My grievance was denied at Step Two by Jason Ralph.[31] He flatly (and wrongly) declared that I had already been reimbursed the money part of the grievance via a prior settlement.[32]

19. **July 17, 2008**: I had received a letter the day before, signed by Andy Richards, proposing to fire me. It was a complete surprise, and I emailed Glen Rotella with

[26] See Exhibit 32.
[27] It is noteworthy that I knew nothing about this 14-day suspension proposal until April 2011, two years after I was forced to retire. It was concealed from MSPB, and from numerous FOIA responses.
[28] See Exhibit 35.
[29] See Exhibit 36.
[30] It was not until December 2010 that the pseudonym was identified, and I was able to start obtaining these records via a series of FOIA requests.
[31] See Exhibit 39.
[32] In fact, reimbursement did not happen until May 2009.

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my shock. Glen then sent an email to two AWP Union officials, Ham Ghaffari and Mike Hull, pointing out their need to provide assistance to a bargaining unit member.[33] They did nothing. Also, I did not learn about this email from Rotella to Ghaffari and Hull until January 2011, two full years after I was forced to retire.

20. **August and September 2008**: the Union sat passively and offered no assistance as I scrambled to rebut Agency's false and unsubstantiated charges.[34] I made extensive efforts to open communications with Andy Richards, Kathryn Vernon, and others, and initiated new FOIA requests, but was generally ignored and stonewalled by Agency.[35]

21. **September 25, 2008**: LR Manager Dan Castrellon completed his letter[36] and speciously denied my 'make whole' grievance[37] at Step Three. On this same day, Patricia Hardy reported she was making 600-day-old timecard corrections,[38] to change my pay for the day I was locked out (February 16, 2007) from sick leave (which I had requested and was granted by Jason Ralph) to paid administrative leave.[39] This change was to conform the record to Jason Ralph's sworn testimony.

22. **October 3, 2008**: Glen Rotella sent an email to his boss, Dan Castrellon, expressing his concerns that Air Traffic needed to be timely in responding to a new grievance I had filed in late August. He added that this new grievance was related to the ULP he had settled with me, and he expressed concern that action was needed to protect the Agency from an unwinnable ULP.[40]

23. **October 6, 2008**: Andy Richards had departed SFO on a detail to DFW, to help clean up a whistleblower problem there. In his absence, Acting District Manager Mark DePlasco had to finish my removal process. He submitted a 7-page Douglas

[33] See Exhibit 40.
[34] See Exhibit 41.
[35] See Exhibit 42.
[36] See Exhibit 45. This same specious denial was done in June, too; payment was not made until May 2009.
[37] See Exhibit 46. Note that, in the official records from the LR office, each Step of the grievance response indicates the purpose of the grievance was ***"To be made whole"***.
[38] See Exhibit 44.
[39] Note that I never would have known about this 600-day-old paycard amendment, if I had not naively questioned extra pay that appeared in my paycheck. I was concerned an error had been made and eventually spoke with outsourced payroll consultants at Department of Interior.
[40] See Exhibit 47.

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Factors Checklist. On the last page, he answered that nothing less than a removal could be considered for me, as *"...Mr. Lewis was asked to consider a medical retirement but he refused...."*[41] This was false, as he failed to note that a 14-day suspension had been considered, and also failed to note an admonishment letter had actually been issued in July 2007.

24. **October 21, 2008**: Ros Marable completed the removal decision letter and forwarded it to Mark DePlasco for his signature. In the process, she also sent Mark DePlasco a copy of the Randy Newman "Rednecks" lyrics,[42] as if to suggest I had been repeatedly using the n-word (the lyrics are filled with it). In fact, I had used the word only once, quoting one line of these lyrics, non-disparagingly.

25. **February 24, 2009**: AWP Counsel Naomi Tsuda emailed numerous Air Traffic officials,[43] and noted she had made it clear to the MSPB ALJ that she wanted armed guards and metal detectors at my hearing location. Thus, although I have no history of violence, Agency Counsel was slandering me in MSPB pre-hearing discussions.

26. **February 27, 2009**: AWP Counsel Naomi Tsuda emailed numerous Air Traffic officials, stating: *"...despite our best efforts, Mr. Lewis has rejected our settlement offer...."* This closed the last offer of a disability retirement. Thus, the effort to medically retire me had included a disqualification by Dr. Goodman in June 2007, a disability retirement offer by Andy Richards in September 2007, the full restoration of my ATC medical clearance by Dr. Goodman in January 2008, and a renewed offer of a disability retirement in January-February 2009 (this time by AWP legal counsel, as a 'settlement offer' for the pending MSPB Appeal).

27. **March 4, 2009**: An MSPB hearing was scheduled, but never actually commenced. ALJ LuNell Anderson substituted for ALJ Craig Berg at the last minute. My counsel had filed a pleading the night before, noting there had been an admonishment in July 2007, and that the removal was thus a second disciplinary action for the same charges. Before starting the hearing, ALJ Anderson asked

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[41] See Exhibit 48.
[42] See Exhibit 49.
[43] See Exhibit 51.

Naomi Tsuda about this; Ms. Tsuda flatly declared that I had not been previously admonished. Yet, in the three-hour deposition of Jason Ralph just two weeks earlier, on February 19th, Ms. Tsuda had witnessed seven declarations by Jason Ralph, that he had admonished me.[44]

28. **March 25, 2009**: Although too late to be considered within the MSPB Appeal (which was never actually heard), a two-page letter was eventually provided by PhD Psychiatrist Dr. Douglas Haldeman, in which he concluded, *"...Mr. Lewis' main concerns were reality-based and completely associated with maltreatment in his work environment...."*[45] Within this letter, Dr. Haldeman also noted he had had a phone conversation with Dr. Goodman on October 8, 2007, in which he was told I would (again) be offered a disability retirement.

29. **June 29, 2009**: I received a copy of the exculpatory Detailed Incident Report,[46] created by FAA Special Agent Sarita Burr. In this document, Jason Ralph provided a contradictory story about misconducts he had alleged. In the official version used to fire me, he claimed I had 'lunged' at a supervisor to get back some papers I had signed; in this concealed version, he claimed the papers were instead provided to me by a coworker, and there is no mention of a 'lunge'. Agency records show that the 'lunge' allegation was created by Jason Ralph on February 20, 2007, four days after the ViWP Teleconference. Note, too, although this was a very serious charge, it was not documented until fourteen days after the alleged February 6th incident.

30. **May 12, 2010**: After receiving numerous Agency emails and other records in early 2010, I filed an EEO complaint. An investigation was initiated. District Manager Andy Richards was identified as the responsible management official. FAA EEO Counselor Pedro Oliveras interviewed Andy Richards on May 12th.[47] Mr. Oliveras' notes included a comment by Andy Richards that I had been a danger to myself. In fact, this allegation of self-endangerment had never been presented, nor was it shared with any medical officials. (see the Dr. Haldeman letter dated 3/25/09)

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[44] See original deposition at pages 71, 74, 82 and 104. A copy of the Deposition is available on request.
[45] See Exhibit 52.
[46] A copy of the Detailed Incident Report is available on request. It was completed on 2/20/07 but was concealed from MSPB Discovery, from the ROI process, and from numerous FOIA requests.
[47] See Exhibit 53.

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31. **December 4, 2010**: AWP Union official Mike Hull sent me a copy of his presentation regarding the grievance for which I was seeking an arbitration hearing.[48] In the week prior, I had spent dozens of hours compiling and organizing Agency records so that Mike could fully understand the complex and lengthy history of my case. Mike appeared to understand it quite well, and his presentation was successful, as it did lead toward a decision to go forward with a hearing.

32. **March 31, 2011**: Dana Edward Eischen signed a decision[49] to refer this grievance *"...to a full arbitration hearing...."* This was the decision made by the Arbitration Review Board, following the December presentation by Mike Hull.

33. **November 18, 2011**: Union counsel Mark Wilson emailed the offices of Eric Lindauer, seeking to schedule an arbitration hearing for February 15-16, 2012.

34. **December 1, 2011**: Agency LR Specialist Bobby Rodriguez emailed arbitrator Lindauer and the Union, confirming an arbitration hearing was now scheduled at Daly City, CA, to occur on February 16-17, 2012.

35. **January 4, 2012**: I emailed Mike Hull and he promptly replied with an email confirming we were going to arbitration.

36. **February 1, 2012**: Union arbitration lead James Barrett sent me an email, asking for a list of potential witnesses and advising we would need to meet all day to 'prep' on February 15th.

37. **February 2, 2012**: I replied to James Barrett's email.[50] I emphasized the need to not settle, and to proceed with the hearing, to achieve the Due Process that had been denied for so long. I noted the efforts and documents that went into the presentation by Mike Hull in December 2010. I attached a timeline and a copy of the Rotella email to Ghaffari and Hull (see Exhibit 40). I sent subsequent emails, seeking a reply; James eventually acknowledged, but never really responded to my questions.

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[48] A copy is available on request.
[49] See Exhibit 55.
[50] See Exhibit 56.

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38. **February 5, 2012**: I received the FOIA Appeal response related to the April 5, 2008 email by Dick Fossier in which he called me a 'slimeball'. I promptly shared it with Union officials. My 3:01PM email[51] to James Barrett and Mark Wilson included: *"...I cannot overemphasize how critical it is, in this case, that no settlement short of 'being made whole' (as if nothing ever happened) is acceptable unless that settlement delivers the Due Process I have been denied for the past five years. As I told Mike Hull in late 2010, the Due Process (and the needed closure that can facilitate) is far more important than any dollar figure. Given what I have been through and continue to endure, I think this is a reasonable position. What do you think?"* James Barrett emailed a reply on February 6th, saying we would talk later in the afternoon; however, there was never any substantive discussion about the need for a hearing and/or Due Process.

39. **February 7, 2012**: I sent a thorough email to James Barrett and Mark Wilson, with a detailed review of the grievance case, and attaching key records for both the FLRA ULP and MSPB cases, as requested by Mark Wilson. There was no reply, so I sent a similar email again on February 8th.[52]

40. **February 9, 2012**: Still no reply from the Union, so I followed with another short email, asking for an update and seeking to confirm our witnesses. No Union reply.

41. **February 10, 2012**: I emailed again, this time noting I needed details to finalize my travel plans (the arbitration hearing was set to begin in just six days). This time, James Barrett emailed a quick reply: *"Please stand by, Mark and I will give you a call later today."* Six hours later, I received a copy of the draft settlement Union wanted to accept.

42. **February 12, 2012**: I emailed James and Mark at 11:21PM[53] with a complete redraft of the proposed settlement agreement, which removed my signature line and added: *"...I cannot sign any settlement agreement, and would not even sign this draft. But if the Union is going to 'settle with the Agency and shut down this grievance – which is my best chance at achieving justice and a fair closure on this*

[51] See Exhibit 57.
[52] See Exhibit 58.
[53] See Exhibit 59.

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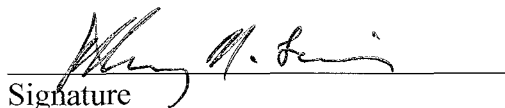
affair, I would ask you at least try to approach my terms…." I also attached a color PDF showing the dozens of Agency and Union officials involved in this case. Lastly, I proposed we finalize our list of arbitration witnesses.

43. **February 13, 2012**: Mark Wilson sent me a 10:28AM email[54] with the final version of the settlement, as agreed to by the Union, against my many protests. I sent an 11:42AM email reply,[55] with CC's to numerous high-level Union officials, which included: *"I do feel we need to say no to this unacceptable settlement. This case needs to go to arbitration, and I believe that our Union has a Duty of Fair Representation that compels this action…."* I also noted that one of the only rights I retained at my MSPB forced 'settlement' was my right to proceed with this grievance arbitration, and, *"…now, if you sign away my right to this arbitration, I never really had that right, did I? All because the Union is working with the Agency on this settlement, without proper consideration of the grievant and the Union membership…."* Union never responded.

44. I have since made a handful of inquiries to Union officials at NATCA Headquarters, mostly via email. The Union continues to not respond.

I have read and had an opportunity to correct this affidavit consisting of 18 pages, including this page, and affirm, under the pain and penalty of perjury, the facts asserted are true and correct to the best of my knowledge and belief.



Signature

8-28-2012
Date

[54] See Exhibit 60.
[55] See Exhibit 61.

Initials JNL