

1 ROBERT C. SELDON & ASSOCIATES, P.C.
Molly E. Buie, Esq. (Pro Hac Vice Pending)
2 1319 F. Street, NW, Suite 200
Washington, DC 20004
3 Telephone: 202-393-8200
Facsimile: 202-318-2287
4 Email: meb@rcseldon-associates.com

5 LAW OFFICES OF ROBERT P. SPRETNAK
Robert P. Spretnak, Esq. (Bar No. 5135)
6 8275 S. Eastern Avenue, Suite 200
Las Vegas, Nevada 89123
7 Telephone: (702) 454-4900
Fax: (702) 938-1055
8 Email: bob@spretnak.com

9 Attorneys for Plaintiff

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 MARCUS BOWEN,
13 Plaintiff,

14 vs.

15 MICHAEL CHERTOFF, Secretary of the
16 Department of Homeland Security,
17 Defendant.

Case No.: 2:08-cv-00589

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

18
19 Plaintiff MARCUS BOWEN alleges as follows:

20 1. This is an action brought by Marcus Bowen, who served as a Federal Air Marshal
21 (FAM), pay band I, in the Las Vegas Field Office (LVFO) of the Federal Air Marshal Service
22 (FAMS) from May of 2002 to June of 2006. During that time, Mr. Bowen demonstrated himself to
23 be an outstanding FAM through his professionalism, leadership, work ethic, and intelligence. Mr.
24 Bowen's direct supervisors thought highly of him and believed that he was ready for promotion to
25 a management position. Mr. Bowen's prior federal law enforcement experience, including eleven
26 years as a GS-1811 Special Agent with the Department of Agriculture and the U.S. Marshals
27 Service, also made him exceptionally well qualified for promotion.

28 2. Despite his experience, qualifications, and performance, Mr. Bowen, who is African

1 American, was repeatedly passed over for permanent promotion as well as career-enhancing acting
2 managerial assignments and detail opportunities due to the agency's discrimination against him on
3 account of his race and retaliation on account of his protected Equal Employment Opportunity (EEO)
4 activity.

5 3. When Mr. Bowen challenged the agency's actions through the administrative EEO
6 complaints process, he was branded as a "serial problem FAM" by the Assistant Special Agent in
7 Charge (ASAC), the second highest manager in the LVFO, and effectively was barred by upper
8 management from having any chance at promotion in Las Vegas or anywhere else. Faced with this
9 barrier, Mr. Bowen resigned from the FAMS in June of 2006 and returned to the U.S. Marshal
10 Service as a GS-1811 Deputy U.S. Marshal.

11 4. This case arises under Title VII of the Civil Rights Act of 1964, as amended, 42
12 U.S.C. §2000e-16, and seeks redress for defendant's discriminatory and retaliatory failure to rate Mr.
13 Bowen as "best qualified" or to select him for one of the two permanent J-band Assistant to the
14 Special Agent in Charge (ATSAC) positions in the Las Vegas Field Office filled in October of 2004
15 (Vacancy Announcement 04-3298); to select him for any of the four permanent J-band ATSAC
16 positions in the Atlanta and Los Angeles Field Offices filled in March of 2005 (Vacancy
17 Announcement 04-3316); or to select him for one of the two permanent J-band ATSAC positions
18 in the Las Vegas Field Office filled in September of 2006 (Vacancy Announcement FAMS-ALL-06-
19 0030).

20 5. Mr. Bowen also seeks redress for the agency's discriminatory and retaliatory failure
21 to select him to any of three career-enhancing acting ATSAC assignments in the Las Vegas Field
22 Office during 2005 and 2006; for a career-enhancing detail assignment to the Federal Bureau of
23 Investigation's Joint Terrorism Task Force (JTTF) in November of 2004; and for its unjustified
24 issuance to him of a letter of counseling in April of 2004.

25 6. To remedy defendant's unlawful conduct, plaintiff seeks equitable relief a.) declaring
26 that he was denied promotion to the permanent ATSAC positions, and was not selected for the
27 career-enhancing detail assignments (both ATSAC and JTTF) on account of discrimination due to
28 his race and/or reprisal due to his participation in protected EEO activity; b.) promoting plaintiff to

1 the position of Assistant to the Special Agent in Charge, pay band J, in Phoenix, Arizona, retroactive
2 to the earliest non-selection at issue, with corresponding backpay and benefits; c.) ordering defendant
3 to rescind the letter of counseling and delete it from agency records; and d.) enjoining defendant
4 from further discriminating or retaliating against him. Plaintiff also seeks compensatory damages
5 in the maximum amount allowed by law and an award of his attorneys' fees and costs.

6 **Parties, Jurisdiction, And Venue**

7 7. Plaintiff, Marcus Bowen, was employed as a Federal Air Marshal, pay band I, in the
8 Las Vegas Field Office of the Federal Air Marshal Service from May of 2002 until June of 2006.
9 Mr. Bowen is an African American who participated in protected EEO activity, and who resides at
10 40115 N. Lytham Way, Anthem, Arizona 85086.

11 8. Defendant, Michael Chertoff, is the Secretary of Homeland Security and as such is
12 the official who heads the Transportation Security Administration, the federal agency that employed
13 plaintiff and engaged in the acts of discrimination and retaliation that are the subjects of this action.
14 Defendant is named in his official capacity only.

15 9. Jurisdiction of this Court is based upon 28 U.S.C. §1332, and 42 U.S.C. §2000e-16
16 (incorporating by reference 42 U.S.C. §2000e-5(c)). Venue lies in this judicial district pursuant to
17 42 U.S.C. §2000e-16 (incorporating by reference 42 U.S.C. §2000e-5(f)(3)), because the large
18 majority of defendant's acts of discrimination and retaliation occurred here, where plaintiff was
19 employed and where the majority of the promotions and career-enhancing acting assignments would
20 have be carried out but for defendant's discrimination and retaliation.

21 **Statement of the Case**

22 10. Mr. Bowen joined the Federal Air Marshal Service as an H-band FAM shortly after
23 the agency's formation in 2002. He was later promoted to the I-band in May of 2003. Prior to
24 joining the FAMS, from 1998 to 2002, Mr. Bowen was employed as a GS-1811 Deputy U.S.
25 Marshal with the U.S. Marshals Service, and from 1991 to 1998 as a GS-1811 Special Agent with
26 the Department of Agriculture.

27 11. Mr. Bowen's duties and responsibilities as a FAM included providing security for
28 U.S. commercial aircrafts, flight crews, and passengers throughout the world from criminal or

1 terrorist acts. He flew over 2,500 missions including several critical and international missions as
2 Team Leader. He also submitted numerous Surveillance Detection Reports (SDRs) to FAM
3 management officials regarding suspicious behavior and/or activity of airline passengers.

4 12. Mr. Bowen's diverse and vast criminal investigator experience also allowed him the
5 opportunity to assist with the career development of less experienced Federal Air Marshals when
6 employing various investigative techniques such as conducting field interviews, writing criminal
7 complaints, and initiating surveillance of persons of interest.

8 13. During his time as a FAM, Mr. Bowen also performed a prestigious 90 day detail with
9 the Immigration and Customs Enforcement (ICE), Office of Investigation in its "Operation Ice
10 Storm" Financial Crimes Task Force in Phoenix, Arizona. While there, Mr. Bowen participated in
11 an investigation concerning a large-scale criminal enterprise that involved drug smuggling, alien
12 smuggling, and money laundering. At the conclusion of the investigation, the task force seized over
13 \$3.2 million dollars, arrested twenty-six persons, and identified approximately twenty car dealerships
14 associated with the conspiracy.

15 14. Except for the time he was on the ICE detail, Mr. Bowen was based in the FAM
16 Service's Las Vegas Field Office (LVFO), which was headed by Special Agent in Charge (SAC),
17 David Knowlton. SAC Knowlton was Mr. Bowen's third-level supervisor. His second-level
18 supervisor was Assistant Special Agent in Charge (ASAC) Greg Korniloff. While Mr. Bowen was
19 in the LVFO, there were approximately 7 first-level supervisors, otherwise known as Assistants to
20 the Special Agent in Charge (ATSACs), each of whom was responsible for supervising an
21 administrative area, such as training, or heading a squad of "flying FAMs."

22 15. The two ATSACs who primarily supervised Mr. Bowen – ATSAC Schott Shire and
23 ATSAC Michael Marzigliano – found him to be an outstanding performer.

24 16. In a deposition taken in connection with *Bowen v. Chertoff*, EEOC No. 480-2006-
25 00105X,¹ ATSAC Shire described Mr. Bowen as a "very professional" FAM with strong written and
26

27 ¹ Mr. Bowen requested a hearing before the EEOC on January 31, 2006, where the case was
28 assigned EEOC No. 480-2006-00105X. Discovery was pursued between April of 2006 and
December of 2007. After more than 180 days passed without this matter proceeding to a hearing or
being decided by the EEOC, Mr. Bowen instituted this action.

1 oral communication skills and demonstrated leadership abilities who performed his duties in an
2 excellent manner.

3 17. ATSAC Marzigliano described Mr. Bowen as having “a very good temperament, easy
4 to get along with” and being “very, very articulate and intelligent.” He also found Mr. Bowen’s
5 written reports to be “meticulous and well written.” ATSAC Marzigliano’s overall assessment of
6 Mr. Bowen was that he was an “excellent FAM.”

7 18. Both ATSACs Shire and Marzigliano testified that Mr. Bowen was ready for
8 promotion to an ATSAC position, and both recommended him for one or more of the positions that
9 are at issue in this action.

10 19. ATSACs Shire and Marzigliano, along with a third ATSAC from the LVFO, Roger
11 Schofield, testified that the reason Mr. Bowen did not get promoted was because SAC Knowlton,
12 ASAC Korniloff, and ATSAC John Plunkett blocked Mr. Bowen’s efforts.

13 20. ATSACs Marzigliano, Shire and Schofield all testified that ATSAC John Plunkett,
14 who was involved in most of the selections at issue in this Complaint, stated during one of the
15 selection processes that he would never select Mr. Bowen to an ATSAC position. More so than the
16 other ATSACs, ATSAC Plunkett had a close working relationship with SAC Knowlton and ASAC
17 Korniloff.

18 21. ATSAC Shire testified that “despite [plaintiff’s] 1811 experience, despite his ICE
19 detail, [and] despite his timely and accurate reporting” he was marked as “tainted” by SAC
20 Knowlton and ASAC Korniloff, which effectively precluded him from attaining promotion.

21 22. ATSAC Schofield confirmed that “it was very clear that Mr. Bowen was not going
22 to be selected for anything.” He reiterated that, despite Mr. Bowen’s qualifications, he “was not
23 going to get promoted.”

24 **Non-Selection Under Vacancy Announcement 04-3298**

25 23. Mr. Bowen timely applied for two vacant ATSAC positions in the LVFO that were
26 advertised under Vacancy Announcement 04-3298. Mr. Bowen’s application was forwarded to
27 FAMS Human Resources, which notified him on or about October 7, 2004 that he had been rated
28 “qualified” for the position, but that he did not make the “best qualified” list, thereby eliminating

1 him from competition for the position.

2 24. Mr. Bowen’s extensive federal law enforcement experience should have given him
3 an advantage in competing for this and other promotional opportunities. ATSAC Shire testified that
4 in the FAM Service, 1811 experience is more heavily weighted than other types of law enforcement
5 experience due to the fact that 1811 agents do casework, “whereas a local police officer may be on
6 patrol and may not get as in depth as a federal law enforcement officer would.” ATSAC Shire also
7 confirmed that within the federal law enforcement community, 1811 positions are considered to be
8 the most prestigious.

9 25. Despite this, the four FAMs who did make the “best qualified” (BQ) list, FAM M.M.,
10 FAM B.G., FAM E.S., and FAM S.S.,² all of whom are Caucasian, had significantly less law
11 enforcement experience than Mr. Bowen. For the purposes of this action, Mr. Bowen’s claims of
12 race discrimination and reprisal focus on FAMs M.M., B.G., and E.S.

13 26. FAM M.M. had approximately 5 fewer years of experience as an 1811 agent than Mr.
14 Bowen did, and had not even completed phase two of the basic training required to be a fully
15 credentialed FAM.

16 27. Two of the applicants who made the BQ list failed to meet the qualifications for the
17 position that were specified in the vacancy announcement for 04-3298, which required all applicants
18 to have served in a “primary” (non-supervisory) federal position continuously for three years without
19 a break in service exceeding three days in order to be eligible for selection to a permanent ATSAC
20 position. This requirement was confirmed by agency human resources employees Sandra Mosso and
21 Greg Simms in their depositions in connection with *Donaldson v. Chertoff*, EEOC No. 480-2007-
22 00210X.³

23 28. Unlike Mr. Bowen, who met all the qualifications for 04-3298, neither FAM B.G. nor
24 FAM E.S. met the continuous service requirement.

25
26
27 ² In order to protect the identity of FAMS who may still be flying, Plaintiff has used their
initials rather than their full names.

28 ³ Mr. Donaldson is an African American FAM in the Las Vegas Field Office who also filed
a request for a hearing before the EEOC.

1 29. FAM B.G. had a four year break in federal service before joining the FAM Service
2 in 2002; accordingly, he did not have three years of continuous service and should have been
3 disqualified from competing for the ATSAC position.

4 30. FAM E.S. made the BQ list even though he had a nine year break in federal service
5 before joining the FAM Service in June of 2002. Apart from a three and a half year stint with the
6 Secret Service between 1989 and 1993, FAM E.S.'s resume did not list any other work experience,
7 federal or non-federal.

8 31. Defendant's failure to place Mr. Bowen on the BQ list and its decision to select FAM
9 B.G. over him for the ATSAC position advertised under 04-3298 were the products of discrimination
10 against plaintiff on account of his race.

11 **Non-Selection Under Vacancy Announcement 04-3316**

12 32. Mr. Bowen timely applied for two ATSAC positions each in the Los Angeles and
13 Atlanta Field Offices. On approximately April 21, 2005, Mr. Bowen was notified by letter that he
14 had been found qualified for the positions, but that he had not been selected. Ultimately, FAMs A.D.
15 and B.P. were selected for the Atlanta positions and FAMs C.M. and A.J. were selected for the Los
16 Angeles positions. For the purposes of this action, Mr. Bowen's claims of race discrimination and
17 reprisal focus on the selection of FAMs B.P., C.M., and A.J.

18 33. As before, Mr. Bowen's qualifications for the ATSAC positions exceeded those of
19 one or more of the selectees, in particular FAM B.P. who did not meet the requirement of having 3
20 years of continuous federal service prior to his selection for the position.

21 34. Mr. Bowen's candidacy for the positions was improperly blocked by the LVFO,
22 which resulted in the agency's failure to fairly consider his application.

23 35. During the selection process for 04-3316, FAMS Headquarters solicited
24 recommendations from the SAC of each Field Office that had a candidate on the qualified list. The
25 SACs' recommendations were given considerable weight by the Headquarters rating and ranking
26 panel, which used them to help determine whether a candidate was placed on the "exceptional"
27 "above average" or "average" referral list.

28 36. A strong recommendation could move a candidate from an "above average" rating

1 to an “exceptional” rating. A negative rating by a SAC could result in a downgrading of the panel’s
2 initial rating of a candidate.

3 37. In providing the recommendation for Mr. Bowen, SAC Knowlton forwarded an email
4 from ASAC Korniloff that included derogatory information about alleged unprofessional conduct
5 by Mr. Bowen during two flights in 2002 and 2003, one of which was personal travel. ASAC
6 Korniloff also wrote that Mr. Bowen had failed to cooperate with the investigation of the incidents,
7 which was untrue.

8 38. Both incidents had been thoroughly investigated by ATSAC Marzigliano who found
9 little or no evidence to substantiate the allegations of unprofessional behavior, and recommended
10 oral counseling.

11 39. Prior to considering ASAC Korniloff’s recommendation, the rating and ranking panel
12 for 04-3316 had included Mr. Bowen on the “above average” referral list. The derogatory
13 information forwarded by ASAC Korniloff was considered by the rating and ranking panel, and had
14 a negative impact on plaintiff’s candidacy for the position.

15 40. Despite the fact that other FAMs in the LVFO had received more serious discipline
16 than plaintiff, ASAC Korniloff admitted during his deposition in connection with *Bowen v. Chertoff*,
17 EEOC No. 480-2006-00105X, that he favorably recommended one or more of them for promotion
18 without mentioning their disciplinary records.

19 41. Defendant’s failure to select plaintiff for promotion under 04-3316 and its disparate
20 treatment of plaintiff in forwarding derogatory and untrue disciplinary information about him were
21 the products of race discrimination and reprisal for plaintiff’s engagement in protected EEO
22 activities.

23 **Non-Selection Under Vacancy Announcement FAMS-ALL-06-0030**

24 42. In approximately December of 2005, Mr. Bowen timely applied for three ATSAC
25 positions in the Las Vegas Field Office and one vacancy in the Charlotte, North Carolina Field
26 Office under Vacancy Announcement FAMS-ALL-06-0330. On approximately September 5, 2006,
27 the agency selected FAMs D.C., B.I., and S.H. for the LVFO positions, and C.Mc. was selected for
28 the Charlotte position. Mr. Bowen’s claims of race discrimination and reprisal focus on the selection

1 of FAMs D.C., S.H., and C.Mc.

2 43. The positions advertised under FAMS-ALL-06-0030 were limited to credentialed
3 FAMs. Plaintiff was a fully credentialed FAM at the time he applied for the positions, and met all
4 qualifications of the vacancy announcement.

5 44. Plaintiff's qualifications for the position greatly exceeded those of one or more of the
6 selectees. In particular, FAM S.H., who is outside of plaintiff's protected groups, had no college
7 degree and no law enforcement experience apart from his time as a FAM prior to being selected.
8 Furthermore, FAM S.H. had been assigned to a non-flying duty as a FAM, and had flown many
9 fewer missions than plaintiff.

10 45. AT SAC Schofield testified in deposition that during the selection process for FAMS-
11 06-0030, plaintiff was ranked in the top 3 candidates by the LVFO AT SAC panel.

12 46. ASAC Korniloff confirmed that plaintiff made the "short list" that was forwarded to
13 him of approximately 10 applicants for the LVFO positions; however, he did not rank plaintiff's
14 application, supposedly because plaintiff had left the FAM Service by that time.

15 47. Although plaintiff resigned from the FAM Service in June of 2006, he transferred
16 directly to another federal law enforcement position with no break in service. He was and is eligible
17 for rehire to the FAM Service. On information and belief, the agency should have continued
18 processing his application under FAMS-06-0030.

19 48. Defendant's failure to continue processing plaintiff's application and to select
20 plaintiff for promotion under FAMS-06-0030 was the product of race discrimination and reprisal for
21 plaintiff's engagement in protected EEO activities.

22 **Non-Selection for Three Acting AT SAC Positions in the Las Vegas Field Office**

23 49. During plaintiff's time in the LVFO, he applied for at least three detail assignments
24 for career-enhancing Acting AT SAC positions. Those positions were filled on or about October 5,
25 2005; March 9, 2006; and April 20, 2006. The selectees were FAMs J.P., M.L., and G.Q.,
26 respectively, all whom are outside of plaintiff's protected groups.

27 50. Mr. Bowen's law enforcement experience vastly exceeded the selectees'. For
28 example, FAM J.P.'s experience was limited to four and a half years as a (non-1811) Border Patrol

1 agent prior to joining the FAM Service. Furthermore, prior to his selection to the Acting ATSAC
2 position, FAM J.P. had received a suspension for misconduct involving a mock kidnaping of another
3 FAM from the LVFO.

4 51. As for FAM G.Q., who worked as a (non-1811) Bureau of Prisons prison guard prior
5 to joining the FAM Service, ATSAC Marzigliano testified that plaintiff had “much more law
6 enforcement experience, much more, definitely meatier ... experience” than FAM G.Q.

7 52. Regarding FAM M.L., who worked as a (non-1811) local law enforcement patrol
8 officer for approximately 2 years prior to joining the FAM Service, ATSAC Marzigliano testified
9 that plaintiff’s law enforcement experience was “much more extensive” and that FAM M.L. did not
10 possess the people skills and conflict resolution skills necessary to be a manager, whereas plaintiff
11 “did and does.” ATSAC Schofield testified that, to his understanding, “Mr. Bowen would be the
12 individual most of the FAMs would rather work with” because of “his experience, and his
13 background, and his demeanor, the way he carried himself.”

14 53. Despite his superior qualifications, plaintiff was passed over for these three career-
15 enhancing Acting ATSAC positions in the LVFO due the agency’s discrimination and retaliation
16 against him.

17 **Non-Selection for JTTF Assignment in Phoenix**

18 54. In October 2004, SAC Knowlton distributed an email in the LVFO announcing that
19 the FAM Service was soliciting applications to the FBI’s Joint Terrorism Task Force (JTTF), which
20 is a very prestigious, career-enhancing, inter-agency detail assignment. The JTTF assignment was
21 to be located in Phoenix, Arizona. Upon completion of the detail, the successful FAM was to be
22 given his or her choice of the FAM Field Office to which they would be assigned.

23 55. Mr. Bowen timely applied for the JTTF assignment along with five other FAMS from
24 the LVFO. In approximately November of 2004, SAC Knowlton and ASAC Korniloff selected
25 FAM M.M. for the position.

26 56. According to ASAC Korniloff’s deposition testimony, the qualifications that were
27 considered in making the selection were “prior law enforcement experience,” “working with
28 interagencies [sic],” “able to get along with people, especially other agency counterparts,” and

1 “general administering.” He added that the JTTF position “requires you to work with not only the
2 FBI but IRS, Customs, Immigration, [and] ICE.”

3 57. ASAC Korniloff also testified that prior inter-agency federal law enforcement
4 experience was an important consideration.

5 58. Based on those criteria, Mr. Bowen was far and away the best qualified for the
6 assignment. Not only had he successfully completed a 90 day detail with ICE, he had previously
7 served on the JTTF while he was with the U.S. Marshals Service, and had received a commendation
8 from the U.S. Attorney for the Eastern District of Wisconsin at the conclusion of that assignment.
9 His federal law enforcement experience also vastly exceeded that of the other candidates.
10 Furthermore, ATSACs Marzigliano and Shire testified that plaintiff’s interpersonal skills and
11 compliance with administrative requirements were excellent.

12 59. By comparison, FAM M.M., who is Caucasian and had not engaged in EEO activity,
13 had no federal law enforcement experience apart from his brief time as a FAM. Prior to joining the
14 FAM Service in 2002, FAM M.M. had worked as a patrol officer and detective with the Gilbert,
15 Arizona police force for 13 years. Unlike Mr. Bowen, FAM M.M. had not previously completed a
16 JTTF or ICE detail assignment.

17 60. ASAC Korniloff testified that in selecting FAM M.M., he took into consideration the
18 fact that his family was in Phoenix and that he had a young child at home. Although Mr. Bowen’s
19 family also lived in Phoenix, ASAC Korniloff did not factor that into his evaluation of Mr. Bowen’s
20 candidacy.

21 61. Despite his superior qualifications, plaintiff was passed over for the JTTF assignment
22 due to the agency’s discrimination against him.

23 **April 3, 2004 Letter of Counseling**

24 62. As explained in paragraphs 32 through 41 above, ASAC Korniloff included
25 information regarding a letter of counseling issued to plaintiff in April of 2004 as part of the LVFO’s
26 recommendation of plaintiff for promotion under Vacancy Announcement 04-3316. That
27 information negatively impacted plaintiff’s candidacy for the position and was the result of the
28 agency’s discriminatory and retaliatory animus against plaintiff. Additionally, the unwarranted letter

1 of counseling was itself the result of race discrimination on the part of the agency.

2 63. On April 3, 2004, ASAC Korniloff issued plaintiff the letter of counseling for his
3 alleged failure to “professionally interact with airline personnel as necessary to accomplish specific
4 mission objectives or maintain the highest standard of conduct.” The letter was supposedly based
5 on plaintiff’s conduct during two flights – a Southwest Airlines flight in 2002 and a United Airlines
6 flight in 2003. The Southwest trip was for personal travel – plaintiff flew as an armed law
7 enforcement officer.

8 64. The Southwest incident involved confusion by the airline surrounding the boarding
9 procedures for an armed law enforcement officer. At the time the incident was reported to the FAM
10 Service in 2002, it was investigated by ATSAC Marzigliano, who was then plaintiff’s first-line
11 supervisor. ATSAC Marzigliano concluded that plaintiff was not at fault and that no disciplinary
12 action should be taken against plaintiff.

13 65. Ultimately, Southwest settled the matter privately with plaintiff by offering him a free
14 airline ticket and an apology.

15 66. ATSAC Korniloff admitted in deposition that he was aware of at least two other
16 incidents around the same time period as Mr. Bowen’s in which Southwest had inappropriately
17 refused to allow armed FAMs to board flights, which resulted in the airline being fined. Despite this,
18 he did not give Mr. Bowen’s version of events any credibility when deciding to issue the letter of
19 counseling.

20 67. Regarding the United Airlines incident, the allegation was that plaintiff engaged in
21 a dispute about boarding procedures with the pilot and used profanity during the conversation.
22 ATSAC Marzigliano, along with ASAC Doug Hladky, investigated the allegations in 2003 and
23 drafted a Conduct Incident Report in which they found that it was “not possible to ascertain the exact
24 nature of the exchange between FAM Bowen” and the pilot. They concluded that, “this situation,
25 in part, can be seen as symptomatic of the need for standardized boarding procedures.”

26 68. ATSAC Marzigliano testified in deposition that in his experience working with Mr.
27 Bowen, it would be out of character for him to use profanity.

28 69. At the conclusion of his investigation, ATSAC Marzigliano recommended verbal

1 counseling for Mr. Bowen. When he did so, ATSAC Korniloff accused him of being an “advocate
2 for a serial problem FAM.”

3 70. Rather than follow the discipline recommended by ATSAC Marzigliano, ASAC
4 Korniloff issued plaintiff the letter of counseling on April 3, 2004 – six months after the United
5 incident and nearly a year and a half after the Southwest incident.

6 71. Although ASAC Korniloff has attempted to claim that the level of discipline was
7 decided by FAMS Headquarters, he admitted in deposition that the LVFO could have sought a lesser
8 level of discipline, and that it has done so in other cases, but it chose not to do so for Mr. Bowen.

9 72. Defendant’s unwarranted discipline of plaintiff was motivated by discrimination due
10 to plaintiff’s race.

11 **Exhaustion of Remedies**

12 73. On or before November 12, 2004, plaintiff timely initiated the informal administrative
13 EEO complaints process. On or about March 7, 2005, plaintiff timely filed a formal complaint of
14 discrimination. In those submissions and the ensuing investigation of his formal complaint, plaintiff
15 timely challenged the employment actions that are the subjects of this complaint. Plaintiff requested
16 a hearing before the EEOC on or about January 31, 2006, and timely amended his complaint to
17 include subsequent adverse actions taken by the agency. Plaintiff has exhausted the administrative
18 remedies available to him because more than 180 days have elapsed since his last amendment
19 without a hearing or decision by the EEOC.

20 **COUNT I**

21 **Race Discrimination Under Title VII: Non-Selections to Permanent**

22 **ATSAC Positions (TSA-04-3298; TSA-04-3316; FAMS-06-0330)**

23 74. Plaintiff repeats the allegations contained in paragraphs 1 through 73 above, as though
24 fully set forth here.

25 75. By not selecting plaintiff for an Assistant to the Special Agent in Charge position at
26 the J-Band pay level under Vacancy Announcements TSA-04-3298, TSA-04-3316, or TSA-06-0330,
27 defendant subjected plaintiff to material and adverse employment actions.

28 76. Defendant passed over plaintiff on account of his race and instead selected FAMB.G.

1 (04-3298); FAMs B.P., C.M., and A.J. (04-3316); and FAMs D.C., S.H., and C.Mc. (06-0330), none
2 of whom is African American.

3 77. Plaintiff was better qualified for the Assistant to the Special Agent in Charge position
4 than any of the selectees.

5 78. In passing over plaintiff and instead selecting the above-named applicants, defendant
6 violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-16 (incorporating
7 by reference 42 U.S.C. §2000e-2(a)(1)).

8 79. Defendant's violation of Mr. Bowen's civil rights caused him to suffer emotional
9 pain, embarrassment, humiliation, mental anguish, inconvenience, anxiety, and loss of enjoyment
10 of life, and caused him to lose a significant amount of salary.

11 **COUNT II**

12 **Race Discrimination Under Title VII: Non-Selections to**
13 **Acting ATSAC Positions (October 5, 2005; March 9, 2006; April 20, 2006)**

14 80. Plaintiff repeats the allegations contained in paragraphs 1 through 79 above, as though
15 fully set forth here.

16 81. By not selecting plaintiff for acting ATSAC detail assignments on October 5, 2005,
17 March 9, 2006, and April 20, 2006, defendant subjected plaintiff to material and adverse
18 employment actions.

19 82. Acting ATSAC detail assignments are career-enhancing and often lead to selection
20 for permanent ATSAC positions.

21 83. Defendant passed over plaintiff on account of his race and instead selected FAMs
22 J.P., M.L., and G.Q., none of whom is African American, for the above-referenced acting ATSAC
23 assignments.

24 84. Plaintiff was better qualified for the acting ATSAC assignments than the selectees.

25 85. In passing over plaintiff and instead selecting FAMs J.P., M.L., and G.Q., defendant
26 violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-16 (incorporating
27 by reference 42 U.S.C. §2000e-2(a)(1)).

28 86. Defendant's violation of Mr. Bowen's civil rights caused him to suffer emotional

1 pain, embarrassment, humiliation, mental anguish, inconvenience, anxiety, and loss of enjoyment
2 of life, and materially harmed his chances at promotion.

3 **COUNT III**

4 **Race Discrimination Under Title VII: Non-Selection to**

5 **JTTF Assignment (November 15, 2004)**

6 87. Plaintiff repeats the allegations contained in paragraphs 1 through 86 above, as though
7 fully set forth here.

8 88. By not selecting plaintiff for the Joint Terrorism Task Force detail assignment,
9 defendant subjected plaintiff to a material and adverse employment action.

10 89. JTTF assignments are career-enhancing and often lead to selection for permanent
11 ATSAAC positions.

12 90. Defendant passed over plaintiff on account of his race and instead selected FAM
13 M.M., who is not African American.

14 91. Plaintiff was better qualified for the JTTF detail assignment than FAM M.M.

15 92. In passing over plaintiff and instead selecting FAM M.M., defendant violated Title
16 VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-16 (incorporating by reference
17 42 U.S.C. §2000e-2(a)(1)).

18 93. Defendant's violation of Mr. Bowen's civil rights caused him to suffer emotional
19 pain, embarrassment, humiliation, mental anguish, inconvenience, anxiety, and loss of enjoyment
20 of life, and materially harmed his chances at promotion.

21 **COUNT IV**

22 **Race Discrimination Under Title VII: Letter of Counseling (April 3, 2004)**

23 94. Plaintiff repeats the allegations contained in paragraphs 1 through 93 above, as though
24 fully set forth here.

25 95. Defendant's issuance to plaintiff of a letter of counseling on April 3, 2004 was
26 unwarranted and contrary to the disciplinary recommendation of the managers who had investigated
27 the allegations of unprofessional conduct that supposedly formed the basis of the letter.

28 96. Defendant forwarded the letter of counseling with its recommendation of plaintiff for

1 Vacancy TSA-04-3316, which had a negative impact on plaintiff's candidacy for the position.
2 Accordingly, the letter of counseling was a material and adverse employment action.

3 97. Defendant did not forward information about prior disciplinary action when it
4 provided references for promotional opportunities for one or more non-African American FAMs
5 from the LVFO.

6 98. In issuing plaintiff the letter of counseling and forwarding it to the selecting officials
7 in TSA 04-3316, defendant treated plaintiff disparately on account of his race and violated Title VII
8 of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-16 (incorporating by reference 42
9 U.S.C. §2000e-2(a)(1)).

10 99. Defendant's violation of Mr. Bowen's civil rights caused him to suffer emotional
11 pain, embarrassment, humiliation, mental anguish, inconvenience, anxiety, and loss of enjoyment
12 of life, and materially harmed his chances at promotion.

13 **COUNT V**

14 **Reprisal Under Title VII: Non-Selections to Permanent**

15 **ATSAC Positions (TSA-04-3316; FAMS-06-0330)**

16 100. Plaintiff repeats the allegations contained in paragraphs 1 through 99 above, as though
17 fully set forth here.

18 101. Defendant passed over plaintiff for the ATSAC positions advertised under TSA 04-
19 3316 and FAMS-06-0030 and instead selected FAMs B.P., C.M., and A.J. (04-3316); and FAMs
20 D.C., S.H., and C.Mc. (06-0330).

21 102. By not selecting plaintiff for an Assistant to the Special Agent in Charge position at
22 the J-Band pay level under Vacancy Announcements TSA-04-3316, or TSA-06-0330, defendant
23 subjected plaintiff to materially adverse employment actions.

24 103. On information and belief, none of the successful candidates for the ATSAC positions
25 had engaged in protected EEO activity prior to their selection.

26 104. Plaintiff was better qualified for the ATSAC positions than the selectees.

27 105. Plaintiff engaged in activity that is protected under Title VII of the Civil Rights Act
28 of 1964, as amended, 42 U.S.C. §2000e-16 (incorporating 42 U.S.C. §2000e-3), when he initiated

1 the administrative EEO complaints process and filed a formal EEO complaint.

2 106. In not selecting plaintiff for promotion to the position of Assistant to the Special
3 Agent in Charge on account of his prior protected EEO activity, defendant took materially adverse
4 action against Mr. Bowen that would dissuade a reasonable worker from making or supporting a
5 charge of discrimination.

6 107. In taking the foregoing actions, defendant retaliated against plaintiff on account of
7 his participation in protected EEO activity and violated the “participation clause” of Title VII of the
8 Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-16 (incorporating 42 U.S.C. §2000e-3(a)).

9 108. Defendant’s violation of plaintiff’s civil rights caused him to suffer emotional pain,
10 embarrassment, humiliation, mental anguish, inconvenience, anxiety, loss of enjoyment of life, and
11 caused him to lose a significant amount of salary.

12 **COUNT VI**

13 **Reprisal Under Title VII: Non-Selections to**

14 **Acting ATSAC Positions (October 5, 2005; March 9, 2006; April 20, 2006)**

15 109. Plaintiff repeats the allegations contained in paragraphs 1 through 108 above, as
16 though fully set forth here.

17 110. By not selecting plaintiff for career-enhancing acting ATSAC assignments on October
18 5, 2005, March 9, 2006, and April 20, 2006, defendant subjected plaintiff to materially adverse
19 employment actions.

20 111. Plaintiff was better qualified for the acting ATSAC assignments than any of the
21 selectees.

22 102. On information and belief, none of the successful candidates for the acting ATSAC
23 assignments had engaged in protected EEO activity prior to their selection.

24 103. Plaintiff engaged in activity that is protected under Title VII of the Civil Rights Act
25 of 1964, as amended, 42 U.S.C. §2000e-16 (incorporating 42 U.S.C. §2000e-3), when he initiated
26 the administrative EEO complaints process and filed a formal EEO complaint.

27 104. In not selecting plaintiff for the acting ATSAC assignments on account of his prior
28 protected EEO activity, defendant took materially adverse action against Mr. Bowen that would

1 dissuade a reasonable worker from making or supporting a charge of discrimination.

2 105. In taking the foregoing actions, defendant retaliated against plaintiff on account of
3 his participation in protected EEO activity and violated the “participation clause” of Title VII of the
4 Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-16 (incorporating 42 U.S.C. §2000e-3(a)).

5 106. Defendant’s violation of plaintiff’s civil rights caused him to suffer emotional pain,
6 embarrassment, humiliation, mental anguish, inconvenience, anxiety, loss of enjoyment of life, and
7 materially harmed his chances at promotion.

8 **Prayer for Relief**

9 WHEREFORE, plaintiff MARCUS BOWEN respectfully requests that the Court enter
10 judgment in his favor and award him the following relief:

11 A. An Order declaring that defendant violated plaintiff’s civil rights under Title VII of
12 the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-16, and restraining and enjoining
13 defendant from further such violations.

14 B. An Order promoting plaintiff to Assistant to the Special Agent in Charge, SV-1801,
15 at the top of the J-Band level in Phoenix, Arizona.

16 C. Backpay and other benefits lost as a result of being unlawfully denied promotion since
17 approximately October 7, 2004.

18 D. Compensatory damages in an amount to be determined at trial to compensate plaintiff
19 for the emotional pain, embarrassment, humiliation, mental anguish, inconvenience, career loss, loss
20 of professional reputation, and loss of enjoyment of life caused by defendant’s unlawful actions.

21 E. Record correction.

22 F. The attorneys’ fees and costs incurred by plaintiff.

23 G. Such other relief as may be just and appropriate.

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURY DEMAND

Plaintiff requests a trial by jury of all issues so triable.

Respectfully submitted,

ROBERT C. SELDON & ASSOCIATES, P.C.

By: Molly E. Buie, Esq. (Pro Hac Vice Pending)

1319 F. Street, NW, Suite 200
Washington, DC 20004

LAW OFFICES OF ROBERT P. SPRETNAK

By: /s/ Robert P. Spretnak
Robert P. Spretnak, Esq. (Bar No. 5135)

8275 S. Eastern Avenue, Suite 200
Las Vegas, Nevada 89123

Attorneys for Plaintiff