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Plaintiff

Pro Se

**United States District Court**  
**Northern District of California**

ANDREW G. WATTERS,

Plaintiff

v.

ROBERT S. MUELLER III, in his  
official capacity;  
UNITED STATES DEPARTMENT OF  
JUSTICE;  
DOES 1-10;

Defendants.

Case No.

COMPLAINT FOR:

1. MANDAMUS

2. PRIVACY ACT INJUNCTION

28 U.S.C. § 1361

5 U.S.C. § 552a

Complaint Filed:  
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I.

INTRODUCTION

1. The purpose of this action is (1) to compel the performance of an official duty owed to Plaintiff: the duty to convene a review board pursuant to agency policy to hear and determine Plaintiff's appeal of an adverse personnel action; and (2) to compel compliance with the Privacy Act concerning records in the possession of the agency regarding Plaintiff.

2. The adverse personnel action is the rescission of Plaintiff's conditional offer of employment for a Special Agent position with the Federal Bureau of Investigation, a component of defendant UNITED STATES DEPARTMENT OF JUSTICE. Defendant ROBERT S. MUELLER III is the Director of the FBI, and he and Does 1-10 have the authority and duty to convene the agency review board and order compliance with the Privacy Act.

3. The Defendants are sued solely in their official capacities as officers and an agency of the United States. No real property is involved in this matter.

II.

SUBJECT MATTER JURISDICTION

4. 28 U.S.C. § 1361 states: "[t]he district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

5. This is an action in the nature of mandamus to compel officers of the United States and their employing agency to perform a duty owed to the Plaintiff.

5a. 5 U.S.C. § 552a(g) separately confers subject matter jurisdiction in this Court under the Privacy Act concerning the Privacy Act-related claims in this case.

### III.

## PERSONAL JURISDICTION

6. The Defendants are:

A. ROBERT S. MUELLER III, Director of the FBI, which is a component of the Department of Justice, which is an agency of the United States.

B. THE UNITED STATES DEPARTMENT OF JUSTICE, which is an agency of the United States.

C. DOES 1-10, who are officers and/or employees of the United States Department of Justice and whose identities and precise duties are unknown at this time. The complaint will be amended as the identities of Does 1-10 are discovered.

7. The Defendants are subject to personal jurisdiction in the District Courts of the forum state, California, in that 28 U.S.C. sec. 1361 and 28 U.S.C. sec. 1391(e) together confer personal jurisdiction over the defendants in the judicial district in which Plaintiff resides, and provide for nationwide service of process by certified mail.

IV.

**VENUE**

8. Venue in this District is proper pursuant to 28 U.S.C. § 1391(e), which states that when a civil action not involving real property is brought against an officer or employee or agency of the United States, the action may be brought in a District

1 in which the Plaintiff resides. Here, Plaintiff resides in the  
2 Northern District of California.

3 **V.**

4 **INTRADISTRICT ASSIGNMENT**

5 9. Plaintiff resides in Santa Clara County. Plaintiff  
6 resided in Santa Clara County at the time that Director Mueller  
7 was presented with a copy of Plaintiff's amended applicant appeal  
8 on May 1, 2011, and Director Mueller declined to take any action  
9 on the appeal. Therefore, the matter arises in Santa Clara  
10 County. Pursuant to Civil Local Rule 3-2(e), the matter is  
11 requested to be assigned to the San Jose Division of this Court,  
12 which encompasses Santa Clara County.

13 **VI.**

14 **STATEMENT OF FACTS**

15 **A. Inside the FBI Application Process**

16 **(1) The Online Application**

17 10. At the time Plaintiff filed his application, file no.  
18 67B-HQ-1505893, the FBI application process began with an online  
19 application at <http://www.fbijobs.gov> (since moved to  
20 <http://www.usajobs.gov>). The online application sought a variety  
21 of basic information about the applicant, such as compliance with  
22 the FBI drug policy, lack of felony convictions, and other basic  
23 qualifications. The online application is the first component of  
24 the Special Agent Selection System (SASS), a protocol documented  
25 in the FBI manual.

26 11. If an applicant's basic qualifications are  
27 preliminarily competitive based on the online application, the

1 applicant is invited to take the Phase I examination.

2 **(2) The Phase I Examination**

3 12. The Phase I examination consists of three parts:  
4 (1) logical reasoning, (2) biodata inventory, and (3) situational  
5 judgment. The contents are subject to a Non-Disclosure  
6 Agreement.

7 13. If the applicant scores competitively on the Phase I  
8 test, the applicant's online application and résumé are submitted  
9 to FBI Headquarters for consideration for an invitation to the  
10 Phase II component of selection.

11 **(3) The Phase II Component of Selection**

12 14. Phase II consists of a lengthy behavioral interview as  
13 well as a structured written exercise.

14 15. After the applicant completes Phase II, his grade from  
15 the Phase I examination and his grade from Phase II are combined  
16 to give the applicant a Percentile Ranking Grade. The PRG is the  
17 applicant's total score under the Special Agent Selection System,  
18 and "is utilized to rank each applicant in the program(s) under  
19 which he/she may qualify." 67-110 MIOG<sup>1</sup> § 67-17.3.7.

20 16. Applicants are ranked in order of objectively tested  
21 merit because "[a]ppointments are made on a competitive basis due  
22 to the limited number of vacancies occurring in this position."  
23 67-101 MIOG § 67-17.2.3.

24 **(4) Conditional Appointment**

25 17. Applicants who pass the Phase II component of  
26 selection and whose ranks in SASS are highly competitive receive

27 1 Manual of Investigative Operations and Guidelines.

1 a Conditional Appointment as a Special Agent in the FBI. The  
2 conditional appointment is made by way of a letter from the  
3 appointing official, who is the Chief of the Human Resources  
4 Division of the FBI.

5 18. The conditional appointment specifies the conditions  
6 required for further processing and for entrance on duty at the  
7 FBI Academy. For example, successful completion of an extensive  
8 background investigation. The appointment letter also discusses  
9 the grounds under which the appointment may be rescinded. One of  
10 the specified grounds is "suitability."

11 19. According to Supervisory Special Agent Mark A.  
12 Gant, who is Section Chief of the Initial Clearance Section,  
13 a component of the FBI's Security Division: "[o]ur background  
14 investigation is bifurcated. We do a suitability portion  
15 and we also do a security portion. The suitability standards  
16 are determined by the Office of Personnel Management (OPM).  
17 The security standards are established by the Office of  
18 the Directorate of the National Intelligence. We utilize  
19 governmental standards in order to qualify our candidates on  
20 suitability and security."<sup>2</sup>

21 **(5) Suitability and the Background Investigation**

22 20. Essentially, throughout the application process and  
23 continuing into the background investigation, the applicant's  
24 suitability for FBI employment is continuously monitored.

25 21. The applicant's suitability is monitored because

26 <sup>2</sup> Audio interview accessible at [http://www.fbi.gov/news/](http://www.fbi.gov/news/podcasts/inside/background-checks-for-new-applicants/view)  
27 [podcasts/inside/background-checks-for-new-applicants/view](http://www.fbi.gov/news/podcasts/inside/background-checks-for-new-applicants/view)  
(accessed March 30, 2012).

1 the Manual of Investigative Operations and Guidelines states,  
2 at 67-15, "[d]o not protract investigation when derogatory  
3 information developed obviously disqualifies applicant for Bureau  
4 employment." 67-15 MIOG at § 67-7.7(8). There is no point in  
5 the FBI continuing to process an applicant who is obviously not  
6 suitable for employment.

7 22. The continuous monitoring of an applicant's suitability  
8 begins with the online application, but continues with the  
9 Phase I examination, Phase II component of selection, and the  
10 submission of mandated hiring forms provided to the applicant  
11 with the conditional appointment letter. One of the provided  
12 forms is the SF-86 Questionnaire For National Security Positions.  
13 The SF-86 Cover Sheet containing FBI-specific questions and  
14 conditions is also required to be submitted with the SF-86.

15 23. Once filled out, the SF-86 and Cover Sheet are  
16 transmitted to the Special Agent Clearance Unit at Headquarters.  
17 An intake analyst reviews all of the information. If the  
18 applicant reports disqualifying information in the SF-86 or Cover  
19 Sheet, the applicant is promptly adjudicated not suitable and  
20 receives a rejection letter.

21 24. If the applicant is still suitable after submitting  
22 the SF-86 and Cover Sheet, the applicant is given a Personnel  
23 Security Interview. The PSI form is filled out by the  
24 interviewing agent, and records more information about the  
25 applicant—both suitability (e.g., drug and alcohol use) and  
26 security (e.g., foreign influence and contacts). The PSI  
27 instruction form provided to the interviewer advises the



1 interviewer to immediately report negative information developed  
2 during the interview. The applicant is also fingerprinted after  
3 the PSI. If the applicant reports disqualifying information in  
4 the PSI or if indices checks are unfavorable, the applicant is  
5 adjudicated not suitable and receives a rejection letter.

6 25. If the applicant is still suitable after completing the  
7 PSI and the applicant passes criminal records and fingerprinting  
8 checks, the applicant is moved forward and receives a polygraph  
9 examination.

10 26. The polygraph examination asks at least two series of  
11 questions: Suitability Series I or others, and Security Series II  
12 or others. These questions deal with national security matters  
13 and details of them are not reported here out of concern for the  
14 process.

15 27. If the applicant passes the polygraph examination, the  
16 Special Agent Applicant Unit (SAAU) reviews the report generated  
17 by the examiner to determine whether the applicant's drug use,  
18 if any, and other conduct disclosed at the polygraph are within  
19 acceptable parameters. If the applicant is still suitable, SAAU  
20 writes a "CONTINUE" directive on the polygraph report indicating  
21 that the applicant should be "continued" in the application  
22 process, and the applicant's completed file is submitted to  
23 the Special Agent Clearance Unit (SACU) with a directive to  
24 initiate the substantive portion of the applicant background  
25 investigation. This includes interviews with references and  
26 former employers, for example.

27 28. The stated function of SACU, which is a component

1 of the Initial Clearance Section of which SSA Mark A. Gant is  
2 Section Chief, is to conduct investigations on applicants and  
3 approve them for security clearances, or else make suitability  
4 determinations or security denials on the applicants. In other  
5 words, SACU is stated to conduct the suitability and security  
6 phases of the background investigation. If the applicant's  
7 background investigation is not completed favorably, the  
8 applicant is adjudicated unsuitable or is denied a clearance, and  
9 the applicant receives a rejection letter.

10 29. If the applicant's background investigation is  
11 completed favorably, SACU transmits the file to the Human  
12 Resources Division, which makes final selections for the FBI  
13 Academy. Applicants who receive "The Call" to report to the  
14 Academy are those who actually enter on duty as trainees, having  
15 fulfilled all conditions of their conditional appointments.

16 30. One of the components of the background investigation  
17 is adjudication. In adjudication, the Personnel Security  
18 Specialist who is assigned to the applicant creates "leads"  
19 for SACU Special Agents to reinterview the applicant in areas  
20 covered in the background investigation. The applicant "may be  
21 reinterviewed for the purpose of procuring additional information  
22 not previously furnished by him/her or to clarify information  
23 received during investigation." 67-25 MIOG at § 67-7.8(16)(a).

24 31. A "lead" is an assignment to a Special Agent, Field  
25 Office, or other component of the FBI to conduct what amounts to  
26 a mini-investigation on the subject of the lead.

27 32. The Special Agent assigned to the lead "covers" the

1 lead and reports the results of his or her investigation to the  
2 Personnel Security Specialist (PSS) who is adjudicating the  
3 applicant's case in a FD-302 form (report of interview) signed  
4 by the Special Agent, and the PSS makes a decision with the  
5 information.

6 33. The final document generated in an applicant's  
7 case in the event of an adverse personnel decision is an  
8 Adjudicative Recommendation, which is prepared by the PSS. In  
9 the Adjudicative Recommendation, the PSS is supposed to consider  
10 the merits of each case on a "whole person" basis and make a  
11 decision as to whether the applicant is suitable or not suitable  
12 for employment with the FBI. The recommendation is reviewed by  
13 supervisory personnel in the Special Agent Clearance Unit and a  
14 decision letter is transmitted to the applicant and elsewhere  
15 within the FBI.

16 **B. Plaintiff's Application**

17 34. Plaintiff filed the online application on 12/2/2008 and  
18 passed.

19 35. Plaintiff was invited to and passed the Phase I  
20 examination conducted on 1/8/2009.

21 36. Plaintiff was invited to and passed the Phase II  
22 component of selection conducted on 5/1/2009.

23 37. Plaintiff received a conditional appointment as a  
24 Special Agent in the FBI on 5/6/2009, and Plaintiff accepted the  
25 appointment.

26 38. Plaintiff completed the SF-86 and Cover Sheet as  
27 required, which were transmitted to SACU on 5/22/2009.

1        39. Plaintiff's SF-86, Cover Sheet, and all attachments  
2 were reviewed by "intake analyst" Kimberly Ann Maggi, who is a  
3 Personnel Security Specialist. Plaintiff was not unsuitable, and  
4 was approved to move forward in the hiring process.

5        40. Plaintiff completed the Personnel Security Interview  
6 (PSI) on 5/28/2009 and was not unsuitable. Plaintiff completed  
7 the pre-employment Fitness For Duty medical examination and was  
8 not unsuitable. Plaintiff was fingerprinted and passed standard  
9 indices checks. Additions were made to Plaintiff's SF-86 during  
10 the PSI.

11       41. The completed PSI form and completed SF-86 were  
12 transmitted to SACU between 5/28/2009 and 6/8/2009, then again on  
13 6/15/2009. All conduct reported by the Plaintiff in the PSI, SF-  
14 86, and Cover Sheet was preliminarily adjudicated in Plaintiff's  
15 favor by Personnel Security Specialist Kimberly Ann Maggi.

16       42. Plaintiff was given a pre-employment polygraph  
17 examination on 6/9/2009. Plaintiff passed the polygraph  
18 examination and was not unsuitable. All conduct reported  
19 by Plaintiff in the polygraph had already been reported in  
20 his written application and was preliminarily adjudicated in  
21 Plaintiff's favor. The Special Agent Applicant Unit approved  
22 Plaintiff's continued processing after the polygraph examination,  
23 with a "CONTINUE" directive noted on the polygraph report.

24       43. After the polygraph, Plaintiff's completed file was  
25 transmitted to SACU on 6/15/2009 with a directive to initiate the  
26 remainder of the background investigation, and Plaintiff was not  
27 unsuitable.

1                   **C. The Special Agent Clearance Unit**

2           44. Between June 25, 2009 and June 30, 2009, a Special  
3 Agent who had graduated the Academy approximately three months  
4 earlier and who was on temporary duty at the Special Agent  
5 Clearance Unit at FBI Headquarters communicated with Plaintiff  
6 numerous times.

7           45. The purpose of the SACU Special Agent's communications  
8 with Plaintiff was to develop disqualifying information that  
9 went above and beyond Plaintiff's SF-86 and polygraph report,  
10 because the conduct previously reported to and approved by SAAU  
11 and SACU was insufficiently negative to sustain a suitability  
12 determination if appealed in the FBI's internal appeal process.<sup>3</sup>  
13 This fact is reflected in an undated email message from SACU  
14 Personnel Security Specialist Abby M. Halle to attorney Edward M.  
15 Broussard of the FBI Office of General Counsel, stating:

16           "Hi Mr. Broussard,

17           I have a question for you in-regards to a Special Agent  
18 Applicant. I was going through the process of scoping the case  
19 so that leads could be sent out and his BI could get started,  
20 when I came across an attachment he included in the SF-86 about  
21 [redacted]. I discussed this with my Supervisor and Program  
22 Manager and they thought it best to email you. This applicant  
23 is a lawyer so I want to make sure that we could potentially  
24 discontinue him for this and not have him come back to appeal  
25 it." (emphasis added).

26           <sup>3</sup> The FBI has a review board, but the board did not hear  
27 Plaintiff's Applicant Appeal of February 7, 2010 or his First  
Amended Applicant Appeal of May 1, 2011.

1     **(1) The 6/25/2009 Phone Conversation with the SACU Special Agent**

2           46. Plaintiff was contacted by phone on 6/25/2009 by the  
3 SACU Special Agent described above.

4           47. The Special Agent read aloud an attachment to  
5 Plaintiffs' SF-86 containing a description of the incident  
6 referred to in PSS Halle's email to attorney Broussard. The  
7 incident in question was approved by the Special Agent Applicant  
8 Unit when it reviewed Plaintiff's polygraph report, which stated  
9 the true facts about the incident: Plaintiff was "present" in  
10 May 2008, which is now almost four years ago, when two friends  
11 from college engaged in minor unlawful activity. After reading  
12 the SF-86 attachment aloud, the SACU Special Agent simply asked  
13 Plaintiff whether the SF-86 attachment was true. Plaintiff  
14 stated it was true.

15           48. Despite Plaintiff merely adopting his prior statement  
16 indicating that he was "present" when two friends engaged in  
17 minor unlawful activity, the SACU Special Agent falsely stated  
18 in his FD-302 that Plaintiff, who is an attorney, while acting as  
19 an attorney, actively participated in the commission of a crime  
20 by "negotiating" an unlawful transaction as the attorney for  
21 the participants. This was false, and the FD-302 in question is  
22 defamatory. Of note, generating a false record of investigative  
23 activity is supposedly a firing offense in the FBI due to the  
24 "uncompromising personal integrity" allegedly required of its  
25 personnel, and is also a crime under 18 U.S.C. § 1001 (false  
26 statements to the U.S. Government). Despite this, the Special  
27 Agent in question who falsified the investigative record about

1 Plaintiff remains employed by the FBI to this day.

2 **(2) The 6/30/2009 Phone Conversation with the Special Agent**

3 49. Plaintiff had a final telephone conversation on  
4 6/30/2009 with the SACU Special Agent. This conversation is  
5 not disclosed in the Special Agent's FD-302, although factual  
6 information from the conversation appears in the FD-302, which is  
7 illegally backdated to 6/25/2009.

8 **(3) Outcome of False Statements by the SACU Special Agent**

9 50. Plaintiff was adjudicated not suitable by PSS Halle  
10 for "criminal conduct" based on the SACU Special Agent's report,  
11 and Plaintiff received a rejection letter from Acting Unit Chief  
12 Montchell Brice of SACU dated 7/1/2009 rescinding Plaintiff's  
13 conditional appointment.

14 **D. Efforts to Appeal and Correct the False Statements**

15 51. In October 2009, Plaintiff received a copy of his  
16 applicant file pursuant to the order of an Administrative Judge  
17 of the Merit Systems Protection Board, to which Plaintiff  
18 initially appealed the adverse decision (the action was later  
19 dismissed for lack of jurisdiction over the Excepted Service).

20 52. Plaintiff immediately noted the false statements in  
21 the file. The applicant file received by Plaintiff identified  
22 the FBI personnel associated with the negative suitability  
23 determination, and also showed that the FBI affords appeal  
24 rights to its applicants. For example, in response to a letter  
25 of inquiry from Plaintiff about the appeal process, Acting Unit  
26 Chief Montchell Brice of the Special Agent Clearance Unit issued  
27 a directive, produced in the applicant file, to his Program

1 Manager Kevin Benson, directing Program Manager Benson to "advise  
2 applicant of appeal process." Despite this, Plaintiff was never  
3 advised of the appeal process.

4 53. The FBI has an internal policy that gives  
5 its applicants the right to appeal negative suitability  
6 determinations. Appeals are supposed to be heard and determined  
7 by an independent review board that has the power to reverse  
8 decisions made by personnel in the Initial Clearance Section,  
9 including SAAU and SACU. The review board is referred to in this  
10 complaint as the Adjudication Review Board, for lack of a better  
11 term.

12 54. When an applicant appeal is received, the FBI official  
13 who receives it has a non-discretionary duty to refer the appeal  
14 to the Adjudication Review Board for a decision.

15 55. Here, after consulting with his Applicant Coordinator  
16 in the San Francisco Field Office, Plaintiff prepared and filed  
17 a properly formatted, well-supported Applicant Appeal with the  
18 FBI on February 7, 2010. In accordance with the Applicant  
19 Coordinator's instructions, the appeal was addressed to Acting  
20 Unit Chief Montchell Brice of the Special Agent Clearance Unit,  
21 who approved the decision to rescind Plaintiff's conditional  
22 offer of employment. The appeal disputed the veracity of the  
23 information in the FBI file.

24 56. Rather than convene the Adjudication Review Board,  
25 Acting Unit Chief Brice referred the appeal to his supervisor,  
26 Section Chief Mark A. Gant of the Initial Clearance Section.

27 57. Section Chief Gant had a non-discretionary duty, upon



1 receiving the appeal, to convene the Adjudication Review Board  
2 to hear and determine the appeal, and to comply with the Privacy  
3 Act's requirement to add the appeal to the applicant file and  
4 make appropriate annotations concerning disputed information.

5 58. In violation of these duties, Section Chief Gant wrote  
6 to Plaintiff on February 26, 2010 and stated that Plaintiff  
7 had "exhausted" his "administrative options" "regarding" the  
8 appeal of Plaintiff's case, and said nothing about augmenting,  
9 annotating, or correcting the file. Section Chief Gant and  
10 Acting Unit Chief Brice never convened the Adjudication Review  
11 Board to hear and determine Plaintiff's appeal, and Plaintiff's  
12 appeal was never heard and determined by the Adjudication Review  
13 Board. A copy of Plaintiff's appeal was never added to his  
14 applicant file, and no notations that the FD-302 or suitability  
15 determination were disputed were added to the applicant file, in  
16 violation of the Privacy Act.

17 59. Between February 26, 2010 and May 1, 2011, Plaintiff  
18 revised his appeal with additional evidentiary support and  
19 analysis, and prepared to send it higher in the FBI chain of  
20 command in the hopes of obtaining a review board hearing. Of  
21 note, Plaintiff obtained and included in his appeal a declaration  
22 under penalty of perjury from one of the two eyewitnesses to the  
23 disqualifying incident that directly refuted the SACU Special  
24 Agent's account of the incident. Plaintiff also obtained  
25 permission from the two witnesses to include their contact  
26 information in the appeal and note their willingness to be  
27 interviewed by the FBI concerning the incident.

1           60. On May 1, 2011, Plaintiff sent his First Amended  
2 Applicant Appeal to Director Robert S. Mueller III of the FBI  
3 with a request that it be heard and determined by the review  
4 board in accordance with FBI policy. Proposed orders were  
5 included for Director Mueller's convenience. There was no  
6 response from Director Mueller or anyone else in the FBI.

7           61. Plaintiff subsequently transmitted a copy of the First  
8 Amended Appeal to his Applicant Coordinator at the San Francisco  
9 Field Office with a request under the Privacy Act that the First  
10 Amended Applicant Appeal be added to Plaintiff's permanent  
11 applicant file so that any future potential Federal employers  
12 would receive a copy of the appeal when requesting Plaintiff's  
13 FBI file. There was no response. In light of the fact that,  
14 like the initial appeal, the First Amended Applicant Appeal also  
15 disputed the veracity of information in Plaintiff's applicant  
16 file, the FBI had a duty under the Privacy Act to add the amended  
17 appeal to the file and note in the suitability determination and  
18 the SACU Special Agent's FD-302 that the veracity of information  
19 contained in those documents was disputed. As with the initial  
20 appeal, a copy of the amended appeal and the notations required  
21 by the Privacy Act were not added to Plaintiff's file.

22           62. Now, almost a year after the First Amended Applicant  
23 Appeal was filed in May 2011, Plaintiff has grown weary of the  
24 FBI's failure to act in accordance with its own policy affording  
25 applicants the right of appeal, as well as the Privacy Act.  
26 Plaintiff seeks the Court's assistance in compelling Director  
27 Mueller, Does 1-10, and/or the Department of Justice to convene

1 the Adjudication Review Board to hear and determine Plaintiff's  
2 First Amended Applicant Appeal filed May 1, 2011, and to make  
3 the required corrections and additions to the applicant file.  
4 Needless to say, Plaintiff has exhausted his administrative  
5 remedies and no alternatives to mandamus review are available.

6 **VII.**

7 **FIRST CLAIM — MANDAMUS**

8 63. Director Mueller, as well as the Department of Justice  
9 and Does 1-10, have a non-discretionary duty to convene the  
10 Adjudication Review Board of the FBI when an applicant appeal  
11 such as Plaintiff's is received. This function is delegated to  
12 the Section Chief of the Initial Clearance Section, in this case  
13 Supervisory Special Agent Mark A. Gant.

14 64. Section Chief Gant failed to convene the Adjudication  
15 Review Board when Plaintiff's initial appeal was received  
16 in February 2010. Section Chief Gant failed to convene the  
17 Adjudication Review Board when Plaintiff's First Amended  
18 Applicant Appeal was received in May 2011. Director Mueller  
19 failed to convene the Adjudication Review Board when Plaintiff's  
20 First Amended Applicant Appeal was received in May 2011. The  
21 Department of Justice failed to convene the Adjudication Review  
22 Board when either of Plaintiff's appeals were received in 2010  
23 and 2011. Director Mueller and the Department of Justice, as  
24 well as Does 1-10, bear the ultimate responsibility for these  
25 failures.

26 65. The Defendants' failures to convene the Adjudication  
27 Review Board in response to Plaintiff's appeals, particularly the

1 First Amended Applicant Appeal sent to the Director of the FBI  
2 with a detailed letter summarizing the situation, violated the  
3 Defendants' duty to have applicant appeals heard and determined  
4 by the Adjudication Review Board in accordance with FBI policy.

5 66. Plaintiff prays for an order, judgment, or writ  
6 compelling Director Mueller, the Department of Justice, and Does  
7 1-10 to perform their duties in accordance with FBI policy to  
8 convene the Adjudication Review Board and hear and determine  
9 Plaintiff's First Amended Applicant Appeal dated May 1, 2011.

10 **VIII.**

11 **SECOND CLAIM - PRIVACY ACT INJUNCTION**

12 67. The FBI failed to add a copy of Plaintiff's First  
13 Amended Applicant Appeal to Plaintiff's permanent FBI applicant  
14 file upon request. The FBI failed to make notations in its file  
15 that the information relied upon in discontinuing Plaintiff's  
16 application for employment was disputed.

17 67a. The FBI has failed to maintain records concerning  
18 Plaintiff "with such accuracy, relevance, timeliness, and  
19 completeness as is necessary to assure fairness in any  
20 determination relating to the qualifications, character,  
21 rights, or opportunities of, or benefits to the individual that  
22 may be made on the basis of such record," and consequently a  
23 determination was made that is adverse to Plaintiff--the negative  
24 suitability determination discontinuing Plaintiff's application  
25 for employment.

26 68. Plaintiff has the right to have the amended appeal  
27 added to his permanent applicant file and notations made

1 concerning the disputed information so that other potential  
2 Federal employers will provided with Plaintiff's amended appeal  
3 along with the annotated FBI file and make their own decisions  
4 concerning the veracity of the false and defamatory information  
5 that disqualified Plaintiff from employment with the FBI.

6 69. Plaintiff prays for a permanent injunction compelling  
7 the Department of Justice, Director Mueller, and/or Does 1-10  
8 to add a complete copy of Plaintiff's First Amended Applicant  
9 Appeal dated May 1, 2011 to Plaintiff's permanent applicant  
10 file, which is file no. 67B-HQ-1505893, and produce it to all  
11 Federal agencies that lawfully request information on Plaintiff's  
12 discontinuation and/or any other aspects of Plaintiff's  
13 application for employment with the FBI. Plaintiff further prays  
14 that his applicant file, the suitability determination, and  
15 the SACU Special Agent's FD-302 be unambiguously marked to (1)  
16 indicate that their veracity is disputed and (2) make reference  
17 to Plaintiff's First Amended Applicant Appeal for details of the  
18 disputed facts. Plaintiff further prays pursuant to 5 U.S.C.  
19 § 552a(g)(2)(A) that the FD-302 and suitability determination  
20 be determined by this Court to be inaccurate records within  
21 the meaning of the Privacy Act, and that they be stricken from  
22 Plaintiff's applicant file and the case reinvestigated pursuant  
23 to this Court's authority to order same.

24 **IX.**

25 **PRAYER**

26 A. A trial to the Court.

27 B. An order, judgment, or writ compelling Director

1 Mueller, Does 1-10, and the Department of Justice to:

2 1. Convene the Adjudication Review Board for the  
3 purpose of hearing and determining Plaintiff's First Amended  
4 Applicant Appeal dated May 1, 2011, including all of its  
5 supporting exhibits and enclosures (consisting of a total of  
6 seventy-five pages of material previously submitted to the FBI  
7 and not reproduced here due to the privacy and sensitivity of the  
8 information).

9 2. Actually hear and determine the First Amended  
10 Applicant Appeal in accordance with FBI policy.

11 3. Hear and determine the First Amended Applicant  
12 Appeal within thirty days of the date that the order or judgment  
13 in this action issues.

14 4. Promptly notify Plaintiff of the results of the  
15 hearing by providing (a) a copy of the actual decision of the  
16 Adjudication Review Board without redactions, (b) a copy of any  
17 deliberative notes, testimony, statements by FBI personnel, and  
18 other materials informing or indicating the basis for the Board's  
19 decision, (c) a Statement of Decision with findings of fact and  
20 conclusions of law, and (d) a copy of the FBI's policy concerning  
21 applicant appeals.

22 C. A permanent injunction compelling the Department of  
23 Justice, Director Mueller, and/or Does 1-10, and their successors  
24 in interest to add a complete copy of Plaintiff's First Amended  
25 Applicant Appeal dated May 1, 2011 to Plaintiff's permanent  
26 applicant file, which is file no. 67B-HQ-1505893, and produce the  
27 appeal to all Federal agencies that lawfully request information

1 on Plaintiff's discontinuation and/or any other aspects of  
2 Plaintiff's application for employment with the FBI. Further,  
3 that Plaintiff's applicant file, the suitability determination,  
4 and the SACU Special Agent's FD-302 be unambiguously annotated  
5 to (1) indicate that their veracity is disputed and (2) make  
6 reference to Plaintiff's First Amended Applicant Appeal for  
7 details of the dispute.

8 D. A decree and/or injunction, pursuant to 5 U.S.C. §  
9 552a(g)(2)(A), that the FD-302 and suitability determination are  
10 inaccurate records within the meaning of the Privacy Act, and  
11 that they be stricken from Plaintiff's applicant file and the  
12 matter reinvestigated pursuant to this Court's authority to order  
13 same. *Fees and costs. Agw*

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15 Respectfully Submitted By:

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17 Date: April 7, 2012

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20 Andrew G. Watters  
21 Plaintiff  
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