

**Second Declaration Of Denise M. Hulett In
Support Of Plaintiffs' Motion For Enforcement**

EXHIBIT 6



U.S. Department of Justice
Civil Division, Federal Programs Branch

Via First-Class Mail Via Overnight Delivery
P.O. Box 883, Rm. 7146 20 Massachusetts Ave., NW
Washington, D.C. 20044 Room 7146
Washington, D.C. 20530

Susan K. Ullman
Senior Counsel

Tel: (202) 616-0680
Fax: (202) 616-8202

December 6, 2006

VIA ELECTRONIC MAIL

Denise Hulett
The Legal Aid Society - Employment Law Center
600 Harrison Street, Suite 120
San Francisco, CA 94107

Re: *Brionez v. United States Department of Agriculture*

Dear Ms. Hulett:

I am responding to your letter of December 4, 2006.

1. I am enclosing Dr. Erath's curriculum vitae, including the information you requested.

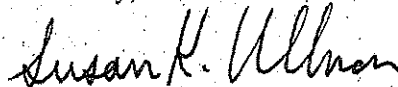
2. Under the HSA, the Region is only required to provide you with a "monitoring report" and information as outlined in HSA § VI.D.1.-3. Nonetheless, the Region offered you the underlying data in electronic format because we recognize that the review of the Region's data by an outside expert undermined the arguments in Plaintiffs' Motion for Enforcement, especially those that were based on applicant flow data. Accordingly, as we offered, I am attaching a Zip file which consists of one Word document and twelve Excel files¹ which contain the applicant flow data the Region provided to Dr.

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1. App_Data_AFS_Announcements.xls (AFS)
 2. App_Data_AFS_Applications.xls (AFS)
 3. App_Data_AVUE_2004_Announcements.xls (AVUE for FY 2004)
 4. App_Data_AVUE_2004_Applications.xls (AVUE for FY 2004)
 5. App_Data_AVUE_2005_1_Announcements.xls (AVUE for the first half (Oct-Mar) of FY 2005)
 6. App_Data_AVUE_2005_1_Applications.xls (AVUE for the first half (Oct-Mar) of FY 2005)
 7. App_Data_AVUE_2005_2_Announcements.xls (AVUE for the second half (Apr-Sep) of FY 2005)
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Erath and he used in his Declaration (with personally-identifying information removed). As you requested, the data includes *inter alia* "RSNO, occupational series, and external versus internal applicants," even though Dr. Erath did not use all of that information in his Declaration.

3. Your letter implies that the Region has been remiss in providing information to you and the Monitor. This is false. The parties agreed that the Region would provide semi-annual reports of certain data, including applicant flow data. HSA § VI.D. The Region's semi-annual report was due on December 1, 2006, as agreed by the parties and the Monitor, and as ordered by the Court. The Region is in full compliance with its duties.

Sincerely,

A handwritten signature in black ink that reads "Susan K. Ullman". The signature is written in a cursive style with a large, prominent "S" at the beginning.

Susan K. Ullman

cc: Marci Seville



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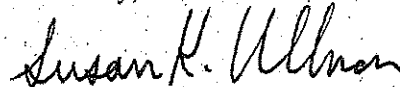
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Susan K. Ullman

cc: Marci Seville



U.S. Department of Justice

Civil Division
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Washington, DC 20530

Susan K. Ullman
Senior Counsel

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December 18, 2006

Via Electronic Mail Only

Marci Seville
Monitor, Hispanic Settlement Agreement
Golden Gate University School of Law
536 Mission Street
San Francisco, CA 94105-2968

Re: Brionez v. USDA, USDC N.D. Cal.,
Civil Action No. C 01 3969 CW

Dear Ms. Seville:

This letter is to confirm that at our meeting on Friday, December 15, 2006, we responded to your letter of December 8, 2006. Your letter presented six questions about the data that our expert, Dr. Chris Erath, utilized and which I provided to you on December 6, 2006. For the benefit of Plaintiffs, we are affirming our responses in writing:

1. The Non-AVUE (*i.e.*, AFS) applicant flow spreadsheets cover selections made during the entire period of Fiscal Years 2004, 2005, and 2006, *i.e.*, from October 1, 2003, through September 30, 2006. While the applicant file does not contain a selection date, the announcement file does contain such a date, and the selection date can therefore be identified through a cross-reference to the announcement file.

2. An applicant number (such as number 832 in your example) refers to one individual. In counting the number of applicants, the data will count as an application all of the instances in which an individual applies for a position. Note that it is possible that an individual can apply more than one time on any single announcement number (by, for example, applying at different grade levels), and all such transactions will be counted as separate applications. This method of counting applies to all applicants, regardless of whether they are Hispanic.

3. As noted, the data count as an application each time any individual applies for a position. If that individual uses different race and national origin (RNO) identifiers on each application, the application data will reflect whatever RNO designation the individual makes on each application. The Forest Service relies on individuals' self-identification. The Region has no independent method to determine the race and national origin of applicants.

4. As with respect to applicants discussed above, each selection is also a separate action. No alteration of the data is made. Dr. Erath has confirmed that this method of counting selections has no effect upon his conclusions.

5. An individual can be assessed by the AVUE system as "qualified" or "highly qualified," based on the applicant's self-assessment. However, when a Human Resources Specialist manually reviews the application, s/he will make the determination whether the individual is qualified to be on the referral list.

In answer to the second part of your question, AVUE assesses "basic qualifications" separately from "qualified" or "highly qualified," based on responses to different questions. Accordingly, there are situations in which an applicant is rated "qualified" or "highly qualified." based on the applicant's self-assessment when applying through the AVUE system. However, a manual review of an applicant's education and experience by a Human Resources Specialist may result in a determination that the applicant does not actually meet the "basic" OPM qualifications.

6. Applicants coded "U" were eliminated from the data because "U" means that the race and national origin of the applicant are unknown. The code "UY" means that while race is not identified, ethnicity is reflected as non-Hispanic. Applicants coded "UY" were retained in the database by Dr. Erath because, while their race is still unknown, their national origin (*i.e.*, Hispanic or non-Hispanic) is identified and hence the record has information relevant to the inquiry of the percentage of Hispanics in Region 5's selections and applicant pool.

Sincerely,

/s/

Susan K. Ullman

cc: Denise Hulett



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December 20, 2006

VIA ELECTRONIC MAIL

Denise Hulett
The Legal Aid Society - Employment Law Center
600 Harrison Street, Suite 120
San Francisco, CA 94107

Re: *Brionez v. United States Department of Agriculture*

Dear Ms. Hulett:

I am responding to your e-mail of last night.

I am attaching a spreadsheet containing the information relied upon by Defendants' expert, specifically the grade and RNO information for every current Forestry Technician in Region 5. Each line on the spreadsheet represents a different individual. Personally-identifying information has been replaced with a unique number for each individual.

Sincerely,

/s/

Susan K. Ullman

cc: Marci Seville