EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

JACOB E. ABILT, A PSEUDONYM, Plaintiff, v. JOHN O. BRENNAN IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY, et al., Defendants.	)	Civil Action No. 1:14-cv-1031 GBL/IDD

DECLARATION AND FORMAL CLAIM OF
STATE SECRETS PRIVILEGE AND STATUTORY PRIVILEGES
BY JOHN O. BRENNAN, DIRECTOR, CENTRAL INTELLIGENCE AGENCY

I, JOHN O. BRENNAN, hereby declare and state:

I. BACKGROUND

1. I am the Director of the Central Intelligence Agency ("CIA" or "Agency"). In my capacity as Director, I lead the CIA and manage human intelligence, covert operations, counterintelligence, liaison relationships with foreign intelligence services, and open source collection programs on behalf of the United States Government. I have held this position since March 8, 2013. Before becoming Director, I served for four years at the White House as Assistant to the

President for Homeland Security and Counterterrorism. I previously had served in the CIA for 25 years, beginning my career at the Agency in 1980 in the Directorate of Operations (now the National Clandestine Service). I joined the Directorate of Intelligence the following year, specializing in the Near East and South Asia. Beginning in the early 1990s, I directed counterterrorism analysis. I later held a variety of senior leadership positions at the CIA, including Deputy Executive Director, Chief of Staff to former Director of Central Intelligence George J. Tenet, Interim Director of the National Counterterrorism Center, Chief of Station in the Middle East, and intelligence briefer to President Bill Clinton. After retiring from the CIA in 2005, I worked in the private sector for three years.

2. As Director, I serve as the head of the CIA, pursuant to the National Security Act of 1947, as amended by § 1011 of the Intelligence Reform and Terrorism Prevention Act of 2004, 50 U.S.C. § 3036 (formerly codified at 50 U.S.C. § 403-4a). Pursuant to 50 U.S.C. § 3036(d)(1)-(4), I am charged with (1) collecting intelligence through human sources and by other appropriate means; (2) correlating and evaluating intelligence related to the national security and providing appropriate dissemination of such intelligence; (3) providing overall direction for and coordination of the collection of national

intelligence outside the United States through human sources and, in coordination with other elements of the United States Government, ensuring that the most effective use is made of authorized collection resources and that appropriate account is taken of the risks to the United States and those involved in such collection; and (4) performing such other functions and duties related to intelligence affecting the national security as the President or the Director of National Intelligence ("DNI") may direct. A more detailed statement of the authorities of the Director and the CIA is set forth in sections 1.6 and 1.7 of Executive Order 12333, as amended.[1]

3. I understand that the plaintiff alleges that while he was assigned to the CIA's National Clandestine Service,[2] the CIA discriminated against him based on his race (African-American) and alleged disability (narcolepsy), subjected him to a hostile work environment, and retaliated against him for his engagement in protected equal employment opportunity ("EEO") activities. The plaintiff further contends that any legitimate reasons proffered by the CIA for its actions are pretextual.

4. I make this declaration to formally assert and claim the state secrets privilege, as well as relevant statutory

---

[1] Executive Order 12333, as amended, 3 C.F.R. 200 (1981), *reprinted in* 50 U.S.C.A. § 401 note at 26 (West Supp. 2011), and as amended by Executive Order 13470, 73 Fed. Reg. 45,323 (July 30, 2008).

[2] The National Clandestine Service is the clandestine arm of the CIA responsible for conducting foreign intelligence and counterintelligence activities.

privileges, in order to protect from disclosure intelligence sources, methods, and activities that may be implicated by the allegations in the plaintiff's Complaint or are otherwise at risk of disclosure in this case. I make the following statements based upon personal knowledge and information made available to me in my official capacity. The judgments expressed in this declaration are my own.

5. After deliberation and personal consideration, I have determined that the complete factual basis for my privilege assertion cannot be set forth on the public record without revealing the very information that I seek to protect and without risking the very harm to U.S. national security that I seek to prevent. I have therefore separately submitted a classified in camera, ex parte declaration for the Court's review, which explains that the unauthorized disclosure of such information reasonably could be expected to result in serious, and in some cases exceptionally grave, damage to our national security.

6. Through the exercise of my official duties, I have been advised of this litigation and I have read the Complaint filed in this case. As set forth in more detail in the classified, in camera, ex parte declaration, the allegations in this case inherently risk the disclosure of classified information concerning the CIA's clandestine intelligence

programs. The plaintiff in this case, "Jacob E. Abilt," was a covert employee of the CIA's National Clandestine Service from May 2008 until he was terminated in October 2011.

7. The facts of Mr. Abilt's employment with the CIA are replete with classified information. For example, the specific National Clandestine Service operations on which he worked are classified. For the majority of his supervisors and coworkers, even the fact of their association with the CIA is classified. The nature and description of the work that they performed is classified. In some instances, particularly when traveling overseas, the location and nature of the facilities in which they worked are classified. Any exploration therefore of Mr. Abilt's employment, and that of his colleagues, will necessarily risk disclosure of highly sensitive classified details concerning the existence and nature of clandestine CIA collection programs and activities.

II. FORMAL CLAIM OF PRIVILEGES

8. State Secrets Privilege: I hereby formally assert and claim the state secrets privilege in order to protect from disclosure the classified information that is implicated by the allegations in the Complaint or are otherwise put at risk of disclosure in this case. I assert this privilege as the head of the CIA and after personal consideration of the matter in order to fulfill my duty to protect from disclosure classified and

sensitive intelligence sources, methods, and activities. My judgment in this matter necessarily rests on my knowledge of the vulnerability of our sources and methods, my experience, and the advice of other CIA professionals.

9. In unclassified terms, my assertion of the state secrets privilege encompasses the following categories of information: (a) information concerning specific CIA programs and activities on which Mr. Abilt worked; and (b) information concerning the CIA's employment of Mr. Abilt, his coworkers, and his supervisors, including, but not limited to, information that might reveal (1) the identities of CIA officers, (2) the job titles, duties, and work assignments of Mr. Abilt and other covert employees, and the criteria and reasons for making work assignments and employment decisions regarding them, (3) sources and methods used by the National Clandestine Service, including operations tradecraft and the identities of human assets, (4) the target and focus of the CIA's intelligence collection and operations, and (5) the location of CIA covert facilities. Disclosure of the above-described information reasonably could be expected to cause serious, and in some cases exceptionally grave, damage to the national security of the United States.

10. CIA Statutory Privileges: In addition to my assertion of the state secrets privilege, I also hereby formally assert and claim two CIA statutory privileges to protect the privileged

information described in more detail in my classified in camera, ex parte declaration. See 50 U.S.C. §§ 3024(i), 3507. Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024(i)(1), provides that the Director of National Intelligence ("DNI") "shall protect intelligence sources and methods from unauthorized disclosure." In accordance with guidance from the DNI, and consistent with section 1.6(d) of Executive Order 12333,[3] the CIA is authorized to protect intelligence sources and methods from unauthorized disclosure.

11. Section 6 of the Central Intelligence Agency Act of 1949, 50 U.S.C. § 3507, provides that the CIA shall be exempted from the provisions of any other laws which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the CIA. One of the principal functions of the CIA, as set forth in section 104A(d) of the National Security Act, 50 U.S.C. § 3036(d)(4), is to perform such other functions and duties related to intelligence affecting the national security as the President or Director of National Intelligence may direct.

12. I do not assert the state secrets and statutory privileges lightly, nor do I assert these privileges to conceal

[3] Section 1.6(d) of Executive Order 12333, as amended, 3 C.F.R. 200 (1981), *reprinted in* 50 U.S.C.A. § 401 note at 26 (West Supp. 2012), and as amended by Executive Order 13470, 73 Fed. Reg. 45,323 (July 30, 2008), requires the Director of the Central Intelligence Agency to "protect intelligence sources, methods, and activities from unauthorized disclosure."

violations of law, inefficiency, or administrative error, or to prevent embarrassment to a person, organization, or agency, or to prevent or delay the release of information that does not require protection in the interest of the national security. Rather, I assert these privileges to protect and preserve vital intelligence sources, methods, and activities. Foreign intelligence collection is critically important for the security of the United States. The compromise of intelligence sources, methods, and activities reasonably could be expected to cause significant harm to U.S. national security and to endanger CIA officers and clandestine human intelligence sources around the world. I assert these privileges as the head of the CIA and after personal consideration of the matter in order to fulfill my duty to protect from disclosure classified and sensitive intelligence sources, methods, and activities. My judgment in this matter necessarily rests on my knowledge of the critical importance and vulnerability of our sources and methods, my experience, and the advice of other CIA officers.

III. THE HARM TO U.S. NATIONAL SECURITY FROM THE DISCLOSURE OF PRIVILEGED INFORMATION

13. I describe below in unclassified terms why the disclosure of the categories of information over which I am asserting the state secrets and CIA statutory privileges reasonably could be expected to cause serious, and in some cases

exceptionally grave, damage to the national security of the United States.

A. Information Concerning Specific CIA Operational Activities on Which Mr. Abilt Worked

14. The CIA is charged with foreign intelligence and counterintelligence collection and analysis. Although it is widely acknowledged that the Agency undertakes clandestine activities in support of its mission, the CIA generally cannot confirm or deny the existence of specific intelligence collection activities or disclose the targets of such activities. Intelligence operations and activities usually involve highly sensitive intelligence methods and sources through which an intelligence agency accomplishes its objectives. Exposing operations and activities reasonably could be expected to cause significant harm to national security.

15. Disclosure of CIA intelligence collection operations and activities would hamper the CIA's ability to operate effectively around the world, leading to a reduction in critical foreign intelligence necessary to defend this nation and its interests from attack. If foreign adversaries, such as foreign intelligence services or terrorist organizations, learn about specific programs and activities, they can take effective countermeasures to thwart the success of these operations and activities. Once the nature of an intelligence method or the

fact of its use in a certain situation is discovered, its usefulness in that situation is neutralized and the CIA's ability to apply that method in other situations is significantly degraded. Disclosure of CIA intelligence collection operations and activities risks exposing the CIA officers involved in them, curtailing those officers' ability to continue working clandestinely and potentially risking harm to them and their families. It also risks exposing CIA sources, again running the range of consequences from curtailing sources' usefulness, to physical harm against the sources and their families or associates. As such, the disclosure of information regarding the specific intelligence operations and activities on which Mr. Abilt worked reasonably could be expected to cause serious, and in some cases exceptionally grave, damage to the national security.

B. Information Concerning the CIA's Employment of Mr. Abilt, His Coworkers, and His Supervisors

16. Disclosure of information relating to the CIA's employment of Mr. Abilt, his coworkers, and his supervisors similarly could be expected to cause serious, and in some cases exceptionally grave, damage to national security. This includes information that might tend to reveal: (1) the identities of covert CIA officers, (2) the job titles, duties, and work assignments of Mr. Abilt and other National Clandestine Service

employees as well as the criteria and reasons for making work assignments and employment decisions regarding them, (3) sources and methods used by the National Clandestine Service, including operational tradecraft and the identities of human assets, (4) the target and focus of the CIA's intelligence collection and operations, and (5) the location of CIA covert facilities.

17. The CIA safeguards the identities of its officers to protect the fact, nature, and details of the CIA's foreign intelligence activities and the intelligence sources and methods employed to assist those activities. Disclosure of the identities of current covert employees would compromise the ability of such employees to continue to serve in a clandestine role, requiring them to abandon careers they and the U.S. Government have expended considerable resources to develop. In addition, disclosure of the identities of current and former covert employees could jeopardize their lives, as well as the lives of their family members and of acquaintances that they have met during the course of their employment, particularly while serving in overseas assignments. For the reasons described above, disclosure of this information reasonably could be expected to cause serious damage to the national security.

18. Congress, moreover, has recognized this risk and the CIA's unique need to protect from public disclosure the names of its employees. Section 6 of the Central Intelligence Agency Act

of 1949, as amended, 50 U.S.C. § 3507, protects as privileged CIA employees' names and personal identifiers (for example, employees' signatures, employee numbers, etc.) and titles, as well as CIA administrative organizational data. Disclosure of information regarding Mr. Abilt and his coworkers' positions and work assignments also could be expected to cause damage to national security. This includes information regarding: (a) job titles; (b) duties, experience, and training for such positions; (c) their specific work and travel assignments; and (d) criteria and reasons for assignment and employment decisions the Agency made.

19. To compare Mr. Abilt's performance to the performance of his colleagues would require disclosure of their job titles, duties, and the particular tasks to which they were assigned as well as the specific intelligence goals that the officers were attempting to achieve. Disclosure of the different job titles and duties of those positions and the relationship of the positions to each other would also reveal the methods for collecting, analyzing, and disseminating intelligence information. The more our adversaries learn about how CIA specifically conducts its business, the more adept they will become at discovering CIA operations and covert officers and at hindering their effectiveness.

20. Disclosure of information concerning the CIA's employment of Mr. Abilt, his coworkers, and his supervisors would also reveal methods used by the National Clandestine Service (commonly known as "tradecraft") to gather and analyze information, as well as potentially reveal information about the CIA's human assets. Intelligence methods are the means by which an intelligence agency accomplishes its objectives. They must be protected from disclosure to prevent foreign adversaries, such as a foreign intelligence service or a terrorist organization, from developing effective countermeasures against them. Likewise, the protection of intelligence sources, including human sources, is critical to the CIA's operations and ability to gather foreign intelligence. For the reasons described above, disclosure of this information reasonably could be expected to cause serious, and in some cases exceptionally grave, damage to the national security.

21. Disclosure of information regarding the operations of Mr. Abilt and his coworkers would also necessarily risk disclosure of specific CIA intelligence interests as well as the focus of intelligence collection or operational activities. When a foreign intelligence service or adversary nation learns that the CIA is targeting a particular foreign national or group for intelligence collection, it will seek to glean from the CIA's interest what information the CIA has received and,

equally important, what the CIA does not know, why the CIA is focused on that type of information, and how the CIA will seek to use that information for further intelligence collection efforts and clandestine intelligence activities. Disclosure of this information reasonably could be expected to cause serious, and in some cases exceptionally grave, damage to the national security.

22. I am also asserting the privilege over the location of covert installations which are known to Mr. Abilt or which were related to his or his coworkers' work assignments. Disclosure of the fact that the CIA maintains a covert field installation in a particular location potentially could cause the host government to publicly distance itself from the U.S. Government or the CIA, or take other measures to reduce the effectiveness of a CIA office. Additionally, public disclosure of the location of covert CIA offices potentially could lead hostile foreign intelligence services or terrorists to identify personnel working in the facility. Terrorist organizations, in particular, often seek to plan attacks in locations that U.S. Government personnel are perceived to frequent. Public disclosure that the CIA has a covert facility in any given location increases the likelihood of a terrorist attack in that location. For the reasons stated above, disclosure of this information reasonably could be expected to cause serious, and

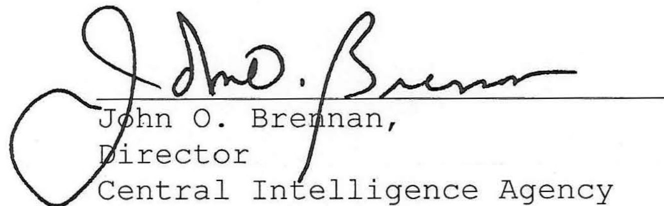
in some cases exceptionally grave, damage to the national security.

IV. CONCLUSION

23. It is my belief that this declaration and my classified in camera, ex parte declaration adequately explain why this case risks the disclosure of classified and privileged intelligence information. Should the Court require additional information concerning my claims of privilege, I respectfully request an opportunity to provide such additional information prior to the entry of any ruling regarding my privilege claims.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of December 2014.



John O. Brennan,
Director
Central Intelligence Agency

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

JACOB E. ABILT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:14-cv-01031-GBL-IDD
	)	
CENTRAL INTELLIGENCE AGENCY, et al,,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Defendants Central Intelligence Agency and John O. Brennan's ("Defendants") Motion to Dismiss (Doc. 28). This is an employment discrimination action where Plaintiff Jacob E. Abilt[1] ("Plaintiff") alleges that his former employer, the Central Intelligence Agency ("CIA"), discriminated against him on the basis of his disability and his race, subjected him to a hostile work environment, and retaliated against him for complaining of discrimination. Plaintiff alleges that his supervisors at the CIA falsely reported that he was failing to satisfactorily perform his work assignments and later terminated him based on discriminatory motives. Defendants have formally asserted the state secrets privilege claiming that further litigation of Plaintiff's claims would require the disclosure of privileged information. Defendants maintain that dismissal is the appropriate remedy as privileged information is essential to the litigation of Plaintiff's claims. The issues before the Court are (1) whether Defendants have properly invoked the state secrets privilege, and (2) whether this action can proceed without risking disclosure of privileged information.

[1] Due to the sensitive nature of Plaintiff's job duties, Plaintiff has filed this Complaint under the pseudonym of Jacob E. Abilt (Doc. 1).

The Court holds that Defendants have properly invoked the states secret privilege. After careful consideration of the public and classified pleadings, the Court holds that Plaintiff's claims must be dismissed under the state secrets privilege because (1) privileged information is at the heart of Plaintiff's claims for discrimination on the basis of disability and race, hostile work environment and retaliation, (2) Defendants cannot defend this action without relying on privileged information, and (3) further litigation of Plaintiff's claims would present an unjustifiable risk of disclosure of classified information regarding (a) the identities of CIA officers and employees, (b) the job titles, duties, work assignments of Plaintiff and other covert employees, and the criteria and reasons for making the work assignments and employment decisions regarding them, (c) sources and methods used by covert employees, including operational tradecraft and the identity of human assets; (d) the targets and focus of CIA's intelligence collection and operations, and (e) the location of CIA covert facilities. Accordingly, the Court grants Defendant's motion.

BACKGROUND

Plaintiff Jacob Abilt, an African-American male, was employed in the CIA's National Clandestine Service[2] as an Applications Director and Technical Operations Officer from May 2008 until his termination in October 2011 (Docs. 1; 29-1). Plaintiff asserts that at or around the time he was hired, he informed his supervisors of his medically diagnosed condition, narcolepsy (Doc. 1). In 2009, Plaintiff began to experience symptoms of his disability in the workplace. *Id.* His supervisors agreed to grant Plaintiff an accommodation of his disability and allow him to take brief naps at his desk provided that Plaintiff account for the missing time by working through a lunch break or working beyond his scheduled tour of duty. *Id.* Despite this

[2] According to Defendant Brennan, the National Clandestine Service is the organization within the CIA responsible for conducting CIA's foreign intelligence and counter intelligence activities (Docs. 29; 29-1).

accommodation, Plaintiff claims his supervisors would harass him whenever they witnessed him taking naps at his desk. *Id.*

In February 2011, Plaintiff's supervisors placed him on an Advanced Work Plan requiring Plaintiff to submit weekly progress reports and attend weekly meetings to discuss his work performance, despite Plaintiff having consistently received positive performance evaluations, praise on his work ethic and approval of his Student Repayment Letter (Doc. 1). Plaintiff claims that none of his similarly situated colleagues were required to submit weekly reports and attend weekly meetings with supervisors. *Id.* Plaintiff alleges that his supervisors used the weekly meetings as a forum to harass him about his disability and to falsely accuse his work performance as falling below standards. *Id.*

In March and April 2011, Plaintiff worked on a project overseas in which he received accolades for "demonstrating skills that will enable greater efficiency in several operations" (Doc. 1). Despite this praise, Plaintiff was required to resume his weekly reporting and meetings once he returned from his overseas assignment. *Id.* In May 2011, Plaintiff's supervisors recommended that Plaintiff undergo a Fitness for Duty Evaluation to be conducted by the Office of Medical Services. *Id.* Plaintiff submitted to the evaluation and was rendered fit to perform his duties with the agreed upon accommodations. *Id.* Plaintiff claims that between February and July 2011, Plaintiff was subjected to a continuous pattern of harassment calculated to lead to his termination. The harassment included the submission of weekly reports, attendance at weekly meetings with supervisors, false accusations of poor work performance, harassment about his disability and accommodations, confronting Plaintiff with complaints solicited from co-workers and communicating with Plaintiff in a demeaning manner. *Id.* Consequently, Plaintiff filed a formal administrative complaint with the CIA alleging that his supervisors at the CIA

discriminated against him on the basis of his disability and race, subjected him to a hostile work environment, and retaliated against him for having engaged in previous Equal Employment Opportunity activity (Doc. 1). The CIA issued a final decision rejecting Plaintiff's claims, and Plaintiff ultimately appealed the decision to the Equal Employment Opportunity Commission ("EEOC") (Doc. 29). The EEOC affirmed the CIA's final decision and denied Plaintiff's request for reconsideration. *Id.* Plaintiff was ultimately terminated from his position in a decision by the Personnel Evaluation Board in October 2011 (Doc. 1).

Plaintiff now brings this suit against Defendants Brennan and the CIA alleging the following: (1) disability discrimination and failure to accommodate in violation of Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. § 791, *et seq.* ("Rehabilitation Act") (Count One); retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (Title VII) (Count Two); race discrimination in violation of Title VII (Count Three); and hostile work environment in violation of the Rehabilitation Act and Title VII (Count Four) (Doc. 1).

This matter is now before the Court on Defendant's Motion to Dismiss. Defendants have invoked the state secrets privilege claiming that privileged information regarding (a) the identities of CIA officers and employees, (b) the job titles, duties, work assignments of Plaintiff and other covert employees, and the criteria and reasons for making the work assignments and employment decisions regarding them, (c) sources and methods used by covert employees, including operational tradecraft and the identity of human assets, (d) the targets and focus of CIA's intelligence collection and operations, and (e) the location of CIA covert facilities is at the core of Plaintiff's discrimination claims (Doc. 29). Defendants maintain that Plaintiff cannot

establish his claims, and Defendants cannot defend this action without relying on privileged state secrets information. *Id.* Therefore, Defendants argue, Plaintiff's action must be dismissed. *Id.*

Plaintiff acknowledges that classified information is relevant to his claims. Plaintiff, however, maintains that the Court can reach an informed decision about whether he was terminated because of discriminatory bias, or instead, because of his alleged poor performance without considering classified information related to Plaintiff's job duties, work performance and assignments (Doc. 45). Instead, Plaintiff suggests that the Court can use pseudonyms and protective orders to protect national security interests, and other accommodations to protect national security interests. *Id.*

STANDARD OF REVIEW

While it is not expressly stated in their motion, Defendants presumably move to dismiss this action pursuant to Federal Rule of Civil Procedure 12(b)(6). Defendants, however, attached a public Declaration and Formal Claim of State Secrets Privilege and Statutory Privileges by Defendant Brennan (Doc. 29-1) to their motion, and submitted a classified *in camera*, *ex parte* declaration for the Court's consideration. Where the parties present matters outside of the pleadings and the court considers those matters, as here, the motion is treated as one for summary judgment. *See* Fed.R.Civ.P. 12(d); *Gadsby by Gadsby v. Grasmick*, 109 F.3d 940, 949 (4th Cir.1997). "There are two requirements for a proper Rule 12(d) conversion." *Greater Baltimore Center for Pregnancy Concerns, Inc. v. Mayor and City Council of Baltimore*, 721 F.3d 264, 281 (4th Cir.2013). First, all parties must "be given some indication by the court that it is treating the 12(b)(6) motion as a motion for summary judgment," which can be satisfied when a party is "aware that material outside the pleadings is before the court." *Gay v. Wall*, 761 F.2d 175, 177 (4th Cir.1985); *see also Laughlin v. Metro. Washington Airports Auth.*, 149 F.3d

253, 261 (4th Cir.1998) (commenting that a court has no obligation "to notify parties of the obvious"). "[T]he second requirement for proper conversion of a Rule 12(b)(6) motion is that the parties first 'be afforded a reasonable opportunity for discovery.'" *Greater Baltimore*, 721 F.3d at 281.

Here, the parties had adequate notice that Defendants' motion would be treated as a motion for summary judgment as evidenced by the Court's February 2, 2015 Order (Doc. 48). The Court recognizes the dangers in allowing discovery to proceed in this action where Defendants contend that the very core of Plaintiff's claims implicate classified information. Therefore, the Court declined to allow any discovery in this action.

Under Federal Rule of Civil Procedure 56, the Court must grant summary judgment if the moving party demonstrates that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In reviewing a motion for summary judgment, the Court views the facts in a light most favorable to the non-moving party. *Anderson v. Liberty Lobby*, Inc., 477 U.S. 242, 255 (1986). Once a motion for summary judgment is properly made and supported, the opposing party has the burden of showing that a genuine dispute exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). "[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson*, 477 U.S. 242-48. A "material fact" is a fact that might affect the outcome of a party's case. *Id.* at 248; *JFK Holding Co. v. Wash. Sports Ventures, Inc.*, 264 F.3d 459, 465 (4th Cir. 2001). Whether a fact is considered to be "material" is determined by the substantive law, and "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry

of summary judgment." *Anderson,* 477 U.S. at 248; *Hooven-Lewis v. Caldera*, 249 F.3d 259, 265 (4th Cir. 2001). A "genuine" issue concerning a "material" fact arises when the evidence is sufficient to allow a reasonable jury to return a verdict in the nonmoving party's favor. *Anderson,* 477 U.S. at 248. Rule 56(e) requires the nonmoving party to go beyond the pleadings and by its own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

ANALYSIS

I. The State Secrets Privilege

The Court holds that there is no genuine issue of material fact that Defendants have properly invoked the states secret privilege, and that the privileged information is at the heart of Plaintiff's claims for discrimination on the basis of disability and race, hostile work environment and retaliation. After careful consideration of the public and classified pleadings, the Court holds that Plaintiff's claims must be dismissed under the state secrets privilege. Plaintiff cannot establish his Title VII and Rehabilitation Act claims, nor can Defendant defend this action without reliance on evidence that is protected by the state secrets privilege. Additionally, further litigation of Plaintiff's claims would present an unjustifiable risk of disclosure of classified information regarding specific CIA programs or activities on which Plaintiff worked and information concerning the CIA's employment of Plaintiff, his colleagues, and his supervisors. Accordingly, the Court grants Defendant's Motion for Summary Judgment.

Created by federal common law, the state secrets doctrine bars litigation of an action entirely or excludes certain evidence because the case or evidence risks disclosure of "state secrets"—that is, "matters which, in the interest of national security, should not be divulged."

United States v. Reynolds, 345 U.S. 1, 10 (1953). Although developed at common law, the state secrets doctrine also "performs a function of constitutional significance, because it allows the executive branch to protect information whose secrecy is necessary to its military and foreign-affairs responsibilities." *El–Masri v. United States*, 479 F.3d 296, 303 (4th Cir.2007). At the same time, the state secrets doctrine does not represent an abdication of judicial control over access to the courts, as the judiciary is ultimately tasked with deciding whether the doctrine properly applies to a particular case. *Id.* at 312. The state secrets doctrine thus attempts to strike a difficult balance between the Executive's duty to protect national security information and the judiciary's obligation to preserve judicial transparency in its search for the truth. *Id.* at 303–305.

An analysis of claims under the state secrets privilege involves three steps. First, the court must ascertain whether the procedural requirements for invoking the privilege, consisting of a formal claim by the government, have been satisfied. *Mohamed v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070, 1080 (9th Cir. 2010). Second, the court must independently determine whether the information is privileged. *Id.* Third, the court must determine how the case should proceed in light of the successful privilege claim. *Id.* Once the privilege is properly invoked, and the court is satisfied as to the danger of disclosing state secrets, the privilege is absolute. *See Reynolds*, 345 U.S. at 11, ("[E]ven the most compelling necessity cannot overcome the claim of privilege if the court is ultimately satisfied that [state] secrets are at stake."); *In re United States*, 872 F.2d 472, 476 (D.C.Cir.1989) ("No competing public or private interest can be advanced to compel disclosure [of privileged information]." (citation and quotes omitted)). This is because, in determining whether the privilege applies to a particular case, "the balance has already been struck in favor of protecting secrets of state over the interest of a particular litigant." *In re United States*, 872 F.2d at 476 (citation and quotes omitted). The Supreme Court has therefore cautioned

that the privilege "is not to be lightly invoked," and must be applied no more often or extensively than necessary. *Reynolds*, 345 U.S. at 7–8.

A. Procedural Requirements for Invoking the States Secret Privilege

The Court finds that Defendants have properly complied with the procedural requirements for the assertion of the state secrets privilege. The state secrets privilege may only be asserted by the government, and a private party can neither claim nor waive the privilege. *Reynolds*, 345 U.S. at 7. The procedural requirements for invoking the state secrets privilege are threefold: (1) there must be a "formal claim of privilege;" (2) the claim must be "lodged by the head of the department which has control over the matter;" and (3) the claims must be made "after actual personal consideration by that officer." *Reynolds*, 345 U.S. at 7–8, *El-Masri*, 479 F.3d at 304.

There is no dispute that Defendants have properly invoked the state secrets privilege. Defendants have made a formal assertion of the state secrets privilege by submitting a public declaration by Defendant Brennan in his capacity as the Director of the CIA (Doc. 29-1). Defendant Brennan asserted the state secrets privilege after personal consideration of Plaintiff's claims and determined that the disclosure of information relating to "intelligence sources, methods, and activities that may be implicated in the plaintiff's complaint or are otherwise at risk of disclosure in this case." *Id.* Additionally, Defendant Brennan's classified declaration describes in great detail the information subject to the state secrets privilege and explains how disclosure of that information could reasonably result in damage to the national security of the United States of America. Lastly, Defendants assert that the Attorney General has reviewed and approved of the assertion of the state secrets privilege pursuant to the procedures established by the Department of Justice to ensure a thorough consideration of the assertion of the privilege.

See Doc. 29. Accordingly, the Court holds that Defendants have satisfied the procedural requirements for invoking the state secrets privilege.

B. Evaluation of the Privilege Claim

After a thorough review of the public and classified declarations filed by Defendant Brennan in support of the invocation of the state secrets privilege, the Court holds that the information Defendants seek to protect is, in fact, protected from disclosure by the state secrets privilege, for this information, if revealed, may pose a substantial risk to the security of the United States.

"After a court has confirmed that the *Reynolds* procedural requirements are satisfied, it must determine whether the information that the United States seeks to shield is a state secret, and thus privileged from disclosure." *El-Masri*, 479 F.3d at 304. The court must "sustain a claim of privilege when it is satisfied, 'from all the circumstances of the case, that there is a reasonable danger that compulsion of the evidence will expose ... matters which, in the interest of national security, should not be divulged.'" *Jeppesen Dataplan, Inc.*, 614 F.3d at 1081 (quoting *Reynolds*, 345 U.S. at 10). "This inquiry is a difficult one, for it pits the judiciary's search for truth against the Executive's duty to maintain the nation's security." *El–Masri*, 479 F.3d at 304. "The Executive bears the burden of satisfying a reviewing court that the *Reynolds* reasonable-danger standard is met." *Id.* at 305.

Defendants assert the state secrets privilege over the following categories of information: (a) the identities of CIA officers and employees; (b) the job titles, duties, work assignments of Plaintiff and other covert employees, and the criteria and reasons for making the work assignments and employment decisions regarding them; (c) sources and methods used by covert employees, including operational tradecraft and the identity of human assets; (d) the targets and

focus of CIA's intelligence collection and operations; and (e) the location of CIA covert facilities.

Defendants maintain that the disclosure of the identities of current covert employees would compromise the ability of such employees to continue to serve in a clandestine role, at the very least requiring the CIA to find, vet, and train new employees to fill such roles (Docs. 29; 29-1). Defendants contend that the exposure of CIA methods and targets give those targets the ability to frustrate CIA's intelligence gathering methods and thus diminishes the CIA's effectiveness. *Id.* Furthermore, Defendants argue that disclosure of the location of CIA covert facilities would have a number of ramifications, including (1) it could increase the likelihood of a terrorist attack at the covert facility, and (2) official acknowledgment of overseas facilities could cause the foreign government to publicly distance itself from the United States Government or take other measures to reduce the effectiveness of a CIA office. *Id.* These categories of information are indisputably covered by the state secrets privilege. *See Sterling v. Tenet*, 416 F.3d 338, 346 ("information that would result in . . . 'disclosure of intelligence gathering methods or capabilities, and disruption of diplomatic relations with foreign governments' falls squarely within the definition of state secrets.") (quoting *Molerio v. FBI*, 749 F.2d 815, 820-21 (D.C. Cir. 1984)); *Jeppesen Dataplan, Inc.*, 614 F.3d at 1086 (holding that "information concerning CIA clandestine intelligence operations that would tend to reveal intelligence activities, sources or methods" is protected by state secrets privilege; *Al-Haramain Islamic Found. v. Bush*, 507 F.2d 1190, 1204 (9th Cir. 2007) (applying the state secrets privilege to "the means, sources and methods of intelligence gathering"); *Blazy v. Tenet*, 979 F.Supp. 10, 23-4 (D.D.C. 1997) (CIA properly withheld the location of covert facilities in a FOIA case); *Earth Pledge Found. v. CIA*, 988 F.Supp. 623, 627-8 (S.D.N.Y. 1996), *aff'd per curiam*, 128 F.3d 788

(2d Cir. 1997) (CIA properly refused to confirm or deny the existence of an overseas CIA station).

Based upon a review of the public and classified declarations, the Court finds that the disclosure of (a) the identities of CIA officers and employees, (b) the job titles, duties, work assignments of Plaintiff and other covert employees, and the criteria and reasons for making the work assignments and employment decisions regarding them, (c) sources and methods used by covert employees, including operational tradecraft and the identity of human assets; (d) the targets and focus of CIA's intelligence collection and operations, and (e) the location of CIA covert facilities is protected by the state secrets privilege, as the disclosure of this information could reasonably be expected to cause significant harm to national security. Thus, information related to the aforementioned categories shall be protected from disclosure. *See El-Masri*, 479 F.3d at 306 ("a court's determination that a piece of evidence is a privileged state secret removes it from the proceedings entirely.") (citing *Reynolds*, 345 U.S. at 11).

C. How the Case Should Proceed

The Court holds that dismissal of this action is appropriate because Plaintiff cannot establish his claims, nor can Defendant defend this action without the presentation of privileged information, and further litigation of Plaintiff's claims would present an unjustifiable risk of disclosure of classified information.

If a court sustains a claim of privilege, "the ultimate question to be resolved is how the matter should proceed in light of the successful privilege claim." *El-Masri*, 479 F.3d at 304. "If a proceeding involving state secrets can be fairly litigated without resort to privileged information, it may continue. But if "'the circumstances make clear that sensitive military secrets will be so central to the subject matter of litigation that any attempt to proceed will

threaten the disclosure of the privileged matters,' dismissal is the proper remedy. *Id.* at 306 (quoting *Sterling*, 416 F.3d at 348). Courts have found three circumstances in which a case implicating privileged state secrets should be dismissed: (1) if the privilege deprives the plaintiff of evidence necessary to prove his claims; (2) if the privilege deprives the defendant of evidence that would support a valid defense; and (3) if litigating the claim to judgment on the merits would present an unacceptable risk of revealing state secrets, even if the claims and defenses might theoretically be established without the privileged evidence. *See Sterling*, 416 F.3d at 348; *El-Masri*, 479 F.2d at 308-10; *Trulock v. Lee*, 66 Fed. App'x 472, 476 (4th Cir. 2003); *Jeppesen Dataplan, Inc.*, 614 F.3d at 1083.

As described fully below, this action falls into all three categories.

1. Privileged Information is at the Core of Plaintiff's Case

As described below, state secrets are critical to the resolution of Plaintiff's discrimination and hostile work environment claims.

A plaintiff may establish a claim for discrimination in one of two ways. First, she may do so by demonstrating through direct or circumstantial evidence that discrimination against her because of her protected characteristic motivated the defendant's adverse employment action. *Hill v. Lockheed Martin Logistics Mgmt., Inc.*, 354 F.3d 277, 284 (4th Cir. 2004). Second, a plaintiff may proceed under the *McDonnell Douglas* burden-shifting framework, whereby the plaintiff, after establishing a prima facie case of discrimination, "demonstrates that the employer's proffered permissible reason for taking an adverse employment action is actually a pretext for discrimination." *Id.* at 285 (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 807 (1973); *Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 252-53 (1981)).

The *McDonnell Douglas* burden-shifting framework has been used to evaluate discrimination and retaliation claims under both Title VII and the Rehabilitation Act. *See Ennis v. National Ass'n of Business & Educ. Radio, Inc.*, 53 F.3d 55, 57–58 (4th Cir.1995). First, the plaintiff must prove by a preponderance of the evidence a prima facie case. *Burdine*, 450 U.S. at 252-53. Establishing a prima facie case "in effect creates a presumption that the employer unlawfully discriminated against the employee." *Id.* at 254.

Second, if the plaintiff succeeds in establishing a prima facie case, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the decision to terminate the plaintiff. *Burdine*, 450 U.S. at 253 (citing *McDonnell Douglas*, 411 U.S. at 802); *Lockheed*, 354 F.3d 277, 298 (4th Cir. 2004). The defendant's burden is one of production, not persuasion. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 142 (2000). It can involve no credibility assessment, that is, the defendant does not need to persuade the court that it was actually motivated by the proffered reasons as long as those reasons, if believed by the jury, would be legally sufficient to justify a judgment for the defendant. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 509 (1993). If the defendant meets its burden of production, the presumption raised by the prima facie case is rebutted. *Burdine*, 450 U.S. at 255.

Third, if the defendant satisfies its burden of production, the burden shifts back to the plaintiff to "prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination." *Burdine*, 450 U.S. at 253 (citing *McDonnell Douglas*, 411 U.S. at 804). This burden merges with the plaintiff's ultimate burden of persuading the court that she was a victim of intentional discrimination. *Id.* at 256.

a. Disability Discrimination and Failure to Accommodate (Count One)

In order to establish a violation of the Rehabilitation Act for disparate treatment, a plaintiff must prove: (1) that he has a disability; (2) that he is otherwise qualified for the employment or benefit in question; and (3) that he was excluded from the employment or benefit due to discrimination on the basis of the disability. *Doe v. Univ. of Md. Med. Sys. Corp.*, 50 F.3d 1261, 1264-5 (4th Cir. 1995). Plaintiff would have to establish that he was "qualified" for his covert position such that he could "perform the essential functions of the . . . position." 42 U.S.C. §§ 12111(8), 12112(a).

Plaintiff alleges that despite the fact that he was qualified to perform his covert position as a Technical Operations Officer, the CIA failed to reasonably accommodate his disability, narcolepsy (Doc. 1). Plaintiff maintains that the CIA, by failing to comply with the agreed upon accommodation for his disability, and for criticizing him when he did take naps as his desk pursuant to his accommodation, unreasonably interfered with his ability to perform his job duties. *Id.* As Defendants correctly point out, among the factors used to determine the essential functions of the covert position at issue would be the CIA's judgment as to which functions are essential, the work experience of past employees in the position, the current work experience of current employees in the position. To show that Plaintiff was excluded from employment because of his disability, Plaintiff would likely introduce evidence as to the performance standards for Plaintiff's position, Plaintiff's performance evaluations and any information that may rebut his supervisor's assessment of Plaintiff's alleged poor work performance. This information, as the Court has noted above, it protected from disclosure by the state secrets privilege.

b. Retaliation (Count Two)

In order to succeed on a claim of retaliation, a plaintiff must show that (1) he engaged in a protected activity, (2) the defendant took adverse action against the plaintiff, and (3) there was a causal nexus between the protected activity and the adverse action. *Laing v. Fed Express Corp.*, 703 F.3d 713 (4th Cir. 2012).

Plaintiff claims that the CIA retaliated against him because of his prior EEO activity (Doc. 1). Specifically, Plaintiff claims that he was subjected to criticism for taking naps at his desk, he was required to submit weekly reports and attend weekly meetings with his supervisors to discuss his work performance, required to submit to a Fitness for duty evaluation, given poor performance ratings on his performance evaluations, addressed in a demeaning manner and ultimately terminated from his position because his supervisors were aware of his prior discrimination claims. *Id.* In order to establish a claim for retaliation, Plaintiff would need to establish a causal connection between the adverse employment actions and his protected activity, which would require a consideration of the essential functions of Plaintiff's covert position, performance standards for his position, his performance evaluations, and any evidence that would tend to rebut his supervisors' assessment of his work performance. This information, along with the identities of Plaintiff's former supervisors and colleagues, is protected by the state secrets privilege.

c. Racial Discrimination (Count Three)

In order to establish a claim of disparate treatment, a plaintiff must show "(1) membership in a protected class; (2) satisfactory job performance; (3) adverse employment

action; and (4) different treatment from similarly situated employees outside the protected class." *Coleman v. Md. Court of Appeals*, 626 F.3d 187, 190 (4th Cir.2010).

Plaintiff alleges that, as an African-American, he was subjected to different terms and conditions of his employment than similarly situated coworkers (Doc. 1). Plaintiff alleges that he was deprived of opportunities for advancement because of his race. *Id.* In order to demonstrate that Plaintiff was treated differently than similarly situated coworkers, Plaintiff would surely seek to introduce evidence that he was performing his job duties satisfactorily and that he received positive performance evaluations and praise for his performance. Additionally, Plaintiff would likely introduce evidence that other similarly situated coworkers were not placed on a performance plan or subjected to weekly progress meetings with their supervisors. This evidence would necessarily implicate the identity, job titles and duties of his coworkers, the details of the assignments given to Plaintiff and his coworkers and how those assignments were evaluated in performance evaluations, and the training and experience required for different assignments. As noted above, the Court has determined that this information is protected from disclosure by the state secrets privilege.

d. Hostile Work Environment (Count Four)

A Title VII harassment claim under the "hostile work environment" theory is established upon proof that "the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993). The "severe or pervasive" element of a hostile work environment claim "has both subjective and objective components." *Ocheltree v. Scollon Prod., Inc.*, 335 F.3d 324, 333 (4th Cir. 2003). First, the plaintiff must show that he "subjectively perceive[d] the environment to be

abusive." *Harris*, 510 U.S. at 21 –22. Next, the plaintiff must show that "a reasonable person in the plaintiff's position" would have found the environment objectively hostile or abusive. *Oncale v. Sundowner Offshore Serv.'s, Inc.*, 523 U.S. 75, 81 –82 (1998).

Plaintiff alleges that as a result of his protected status and engagement in prior protected activity he was subjected to a hostile work environment when his supervisors routinely harassed and humiliated him by requiring him to submit weekly reports, attend weekly meetings with supervisors, falsely accused him of poor work performance, harassed him about his disability and accommodations, confronted him with complaints solicited from co-workers and communicated with Plaintiff in a demeaning manner (Doc. 1). In order to establish his claims, Plaintiff would need to demonstrate that the reasons he faced a hostile work environment were because of his race, disability or protected status rather than poor work performance. Such evidence would implicate the identity, duties and responsibilities of his colleagues' positions, as well as his own, performance standards for that position, the substance of Plaintiff's prior performance evaluations, and any evidence Plaintiff may seek to introduce to rebut his supervisors' evaluations of his work performance. Again, the details of Plaintiff's work performance, his supervisors' evaluations of Plaintiff's work performance, and the identity of his supervisors and colleagues are protected by the state secrets privilege.

2. Privileged Information is Necessary for the Defense of this Action

In the event that Plaintiff could establish claims for discrimination on the basis of disability and race, hostile work environment and retaliation without reference to privileged information, Defendants, undoubtedly, would need to rely on privileged information to articulate a legitimate, nondiscriminatory reason for terminating Plaintiff's position. Plaintiff's claims in this action focus on his work performance as a covert operations officer for the CIA, his

supervisor's constant criticism of his work performance and manufactured negative reviews, and ultimately his termination. As Defendants correctly point out, in order to explain the basis for its decisions regarding Plaintiff's employment, the CIA would be required to disclose privileged information regarding the work assignments of Plaintiff and his colleagues, as well as details regarding their job performance and the criteria used by the CIA to evaluate their performance and make assignments. Not only is this information protected from disclosure by the state secrets privilege, disclosure of this information may possibly reveal other privileged information such as intelligence gathering techniques which could endanger ongoing intelligence operations and operatives in the field.

3. Further Litigation of this Case Would Impose an Unjustifiable Risk of Disclosing State Secrets

Dismissal of this action is required because, even if Plaintiff's claims or the defense thereto may theoretically be established without relying on privileged information, the Court is convinced that further litigation of Plaintiff's claims would impose an unjustifiable risk of disclosing state secrets.

In *Sterling v. Tenet*, 416 F.3d 338 (4th Cir. 2005), a case that is strikingly similar to the present action, the Fourth Circuit Court of Appeals affirmed this Court's dismissal of a Title VII action initiated by an African-American former CIA agent alleging race discrimination, disparate treatment and retaliation against the CIA. In the underlying action, Mr. Tenet, the then-Director of the CIA invoked the state secrets privilege arguing that further litigation of Mr. Sterling's claims would reveal CIA intelligence sources and intelligence gathering techniques that would endanger ongoing operations and operatives in the field. *Sterling v. Tenet*, Case No. 1:03-cv-00329, Doc. 52, (E.D.Va. Mar. 3, 2004). To further support his invocation of the state secrets privilege, Mr. Tenet submitted both public and classified documents explaining that given Mr.

Sterling's role as a CIA officer, information regarding the very nature of his employment, the location of his employment, and the identity of his supervisors and colleagues is classified. *Id.* After a thorough evaluation of the public and classified declarations submitted by Mr. Tenet, this Court concluded that any information related to the nature and location of Mr. Sterling's employment, as well at the employment of his supervisors and colleagues was protected by the state secrets privilege. *Id.* In dismissing the action, this Court ultimately determined that state secrets were critical to the resolution of Mr. Sterling's discrimination claims, and that any special accommodations to litigate the action without reference to classified documents would risk inadvertent disclosure of classified information. *Id.*

The Fourth Circuit Court of Appeal's ruling in *Sterling* directly refutes Plaintiff's argument that, even if the claim of state secrets privilege is sustained, "protective measures" should be adopted to allow the case to proceed. *Sterling*, 416 F.3d at 348. As the *Sterling* Court explained:

> Inadvertent disclosure during the course of a trial - or even in camera - is precisely the sort of risk that *Reynolds* attempts to avoid. At best, special accommodations give rise to added opportunity for leaked information. At worst, that information would become public, placing covert agents and intelligence sources alike at grave personal risk.

416 F.3d at 348.

As in *Sterling*, this Court finds that the very subject matter of this action is a state secret. Litigation surrounding (a) the identities of CIA officers and employees, (b) the job titles, duties, work assignments of Plaintiff and other covert employees, and the criteria and reasons for making the work assignments and employment decisions regarding them, (c) sources and methods used by covert employees, including operational tradecraft and the identity of human assets; (d) the targets and focus of CIA's intelligence collection and operations, and (e) the

location of CIA covert facilities are protected by the state secret privilege. As the Court explained above, Plaintiff cannot establish his Title VII and Rehabilitation Act claims, nor can Defendants defend this action without presenting evidence that the Court has determined are state secrets. Accordingly, this action must be dismissed. See *Sterling*, *supra*, at 248; *see also El-Masri*, 479 F.3d at 313 (dismissing claims of unlawful detention and interrogation because "privileged state secrets are sufficiently central to the matter"); *Fitzgerald v. Penthouse Int'l, Ltd.*, 776 F.2d 1236, 1244 (4th Cir. 1985) (affirming dismissal of suit "only when no amount of effort and care on the part of the court and the parties will safeguard privileged material is dismissal [on state secrets grounds] warranted."); *Edmonds v. Department of Justice*, 323 F. Supp. 2d 65, 81-82 (D.D.C. 2004) (dismissing FBI employee's First Amendment and other claims based upon the state secrets privilege).

CONCLUSION

The Court GRANTS Defendants' Motion for Summary Judgment (Doc. 28). There is no genuine issue of material fact that Defendants have properly invoked the states secret privilege. After careful consideration of the public and classified pleadings, the Court holds that Plaintiff's claims must be dismissed under the state secrets privilege because (1) privileged information is at the heart of Plaintiff's claims for discrimination on the basis of disability and race, hostile work environment and retaliation, (2) Defendants cannot defend this action without relying on privileged information, and (3) further litigation of Plaintiff's claims would present an unjustifiable risk of disclosure of classified information regarding (a) the identities of CIA officers and employees, (b) the job titles, duties, work assignments of Plaintiff and other covert employees, and the criteria and reasons for making the work assignments and employment decisions regarding them, (c) sources and methods used by covert employees, including

operational tradecraft and the identity of human assets; (d) the targets and focus of CIA's intelligence collection and operations, and (e) the location of CIA covert facilities. Accordingly, the Court grants Defendant's Motion for Summary Judgment.

Accordingly, **IT IS HEREBY ORDERED** that Defendant's Motion for Summary Judgment (Doc. 28) is **GRANTED**, and this action is **DISMISSED without prejudice**.

IT IS SO ORDERED.

ENTERED this 10th day of February, 2015.

Alexandria, Virginia
2/10/2015

/s/
Gerald Bruce Lee
United States District Judge