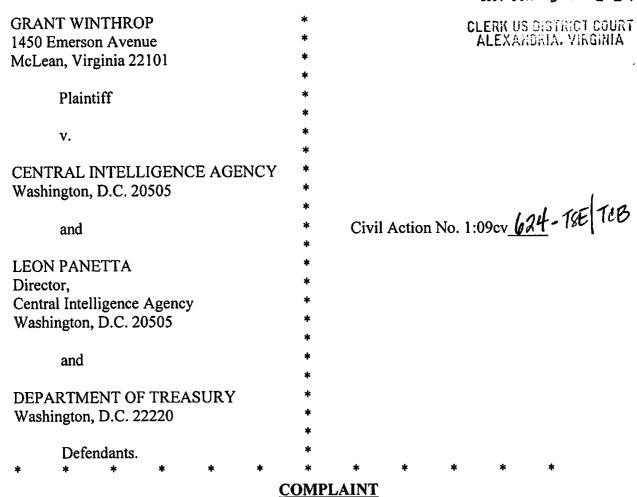
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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VIRGINIA Alexandria Division

2009 JUN -3 P 2: 29



Plaintiff Grant Winthrop ("Winthrop"), a former employee of the Central Intelligence Agency ("CIA"), pursues this action against defendants CIA, Leon Panetta, Director, CIA, and the Department of Treasury to seek a reversal of the CIA's decision regarding an alleged debt determined to be erroneously owed to the defendants, require repayment with interest of seized funds, and to enjoin current and any future collection efforts. Additionally, Winthrop seeks a declaratory judgment that the CIA's actions, which appear to be part of a pattern of practice, violated its own regulations and statutory requirements and, therefore, was illegal, unconstitutional and undertaken deliberately in bad faith.

Winthrop seeks this relief pursuant to the Administrative Procedures Act, 5 U.S.C. § 551 et. seq., The Debt Collection Improvement Act of 1996, 5 U.S.C. § 5514 ("Debt Collection Act"), the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, the All Writs Act, 28 U.S.C. § 1651 and the Fifth Amendment to the United States Constitution.

PARTIES

- 1. Plaintiff Winthrop was an employee of the CIA from February 5, 2007 to March 13, 2007.
- 2. Defendant CIA is an agency of the United States Government as defined by 5 U.S.C. §§ 552a(a)(1), 701, 5514(a)(5)(B) and was Winthrop's former employer and has taken the actions complained of in this Complaint.
- 3. Defendant Leon Panetta ("Director Panetta") is the Director of the defendant CIA, which has taken the actions complained of in this Complaint. He is named a defendant in his official capacity.
- 4. Defendant Department of Treasury is an agency of the United States Government as defined by 5 U.S.C. §§ 552a(a)(1), 701, 5514(a)(5)(B) and will be the responsible agency for actions that are sought to be enjoined by this Complaint.

JURISDICTION AND VENUE

5. Jurisdiction is proper in this Court under 5 U.S.C. § 702, and under 28 U.S.C. §§ 1331, 1346, 2201.

FACTS

6. Winthrop was employed by the CIA from February 5, 2007 until March 13, 2007. Prior to his employment, the CIA utilized and paid for a contract moving company to move Winthrop's household effects from his residence in Claremont, California to his new duty location in the Washington, D.C. area. Winthrop was employed at the CIA as a Watch Officer, GS-9, step 9, with an annual salary of \$56,822. For the entire duration of his employment, Winthrop did not receive any compensation/salary as required by law and the CIA's internal regulations. Winthrop repeatedly asked for the compensation due to him and advised he would

resign if he did not receive it. On March 13, 2007, Winthrop resigned due to lack of payment. To the best of his knowledge, the only payment he received was \$300 placed into his Federal Employee Retirement System account.

- 7. More than one year later, by letter dated April 18, 2008, the CIA suddenly notified Winthrop that he allegedly owed \$13,517.45 (Principal \$13,492.45 and Administrative Fee \$25.00) to the government for his "failure to fulfill the terms of [his] Service Obligation Agreement." It was noted that "Lump Sum Leave in the amount of \$293.37 has been withheld for application to this debt." There was no explanation as to how the principal amount of \$13,492.45 was derived, nor did the letter identify the Service Obligation Agreement or exactly what terms went unfilled. The CIA indicated that the debt would be considered delinquent if not paid by May 18, 2008, and that any request to inspect the records pertaining to the debt must be received by May 3, 2008. Furthermore, an opportunity to submit a challenge in writing, but with no hearing, was described and a deadline was set for May 18, 2008.
- 8. In an internal April 2, 2007 memorandum, later released to Winthrop as part of his "debt file", the CIA acknowledged that Winthrop, in fact, did *not* sign a Memorandum of Understanding for a domestic relocation allowance, nor did he request reimbursement for personal travel from California to the Washington, D.C. area. It is therefore unclear as to what "Service Obligation Agreement" (sometimes referred to as a "service agreement" in other documents) the CIA was alleging went unfulfilled.
- 9. Additionally, in the same April 2, 2007 memorandum the CIA also dismissed its own "service agreement" claim alleging instead that Winthrop's requirement to repay relocation costs is "statutory, not contractual, so no documentation of a signed service agreement is needed." The CIA, however, failed to reference any specific statutory authority to support its argument.
- 10. Winthrop has no recollection of ever signing a service agreement or anything resembling such an agreement. Indeed, in his Conditional Offer of Employment letter, dated February 14, 2006, no form related to relocation expenses is listed as an enclosure. The absence of any such form is notable against the numerous other standard forms enclosed. Nevertheless, allowing for a

possible lapse of memory, Winthrop twice offered to repay the CIA if it could produce a signed agreement and prove he had incurred a legal obligation. The CIA refused to produce a copy of any agreement and has consistently and deliberately avoided providing the statutory authority for its claim. At least once, on or around March 19, 2007, a CIA representative further informed Winthrop such an agreement would be "classified" and, since Winthrop had resigned he would not be able to view it.

- 11. The internal CIA memorandum dated April 2, 2007, states that Winthrop's last Earnings and Leave statement dated March 29, 2007, showed that his final payment was stopped (in the amount of \$1,536.68) and that his lump sum leave (total of 10 annual leave hours) will not be processed. Internal documents indicated the lump sum leave amounted to \$293.37. An April 9, 2008 CIA e-mail, however, indicates that \$1,004.91 was held and transferred to debt collection on May 4, 2007. The documentation also notes the \$293.37 was taken by the CIA as well. At no time was Winthrop ever advised of these offset, nor afforded an opportunity to challenge them. Additionally, upon information and belief, during his time of employment, Winthrop was actually never paid and, therefore, the CIA withheld an amount equal to or greater than \$6,194.12, including compensation for unused leave.
- 12. The CIA failed to provide Winthrop any due process in seizing funds due to him. The Debt Collection Act, 5 U.S.C. § 5514, specifically requires the CIA to have provided Winthrop written notice of the debt at least 30 days prior to the initiation of collection proceedings, an opportunity to inspect and copy all records relating to the debt, and a hearing on the existence and amount of the debt. The CIA, however, withheld Winthrop's entire salary, without providing him any notice and the amount exceeded the statutory withholding limit of 15 percent of disposable pay. At no time did Winthrop consent in writing to any withholding, much less in excess of 15 percent.
- 13. On May 19, 2008 shortly after receiving the CIA's initial notification and long after his wages had been seized Winthrop timely responded via his attorney that he disputed the alleged debt. Winthrop attempted to invoke his statutory rights to examine the documents upon

which his debt was allegedly based and to have a hearing to address the allegation. In October 2008, with the CIA's permission, Winthrop's attorney examined the CIA's "debt file", which was compiled by the CIA, but was denied access to any other documents including the alleged service agreement. By letter dated October 17, 2008, Winthrop's attorney repeated his request for access to Winthrop's personnel file which, upon information and belief, would have contained the alleged service agreement.

- 14. In a letter dated November 3, 2008, CIA Assistant General Counsel Daniel Pines ("Pines") again rejected Winthrop's attorney's request to view additional documents stating only that "Your client's 'personnel file' is not part of the debt file and is not related to the <u>debt</u> your client owes to the CIA. As such, you and your client are not entitled to review of that file, or any other documents, except for those documents already provided to you as part of your client's debt file." (emphasis original). Thus, the CIA refused to allow Winthrop or his counsel to examine any files that contained the purported service agreement, which according to internal CIA documents served as the initial basis for the root of his alleged debt.
- 15. In a letter dated November 5, 2008, Winthrop's attorney reiterated his request to view relevant employment documents, which would have included the alleged service agreement.
- 16. In a letter dated November 7, 2008, the CIA informed Winthrop that his alleged debt, incurred as a result of his failure to "fulfill the terms of his Service Obligation Agreement," was now delinquent and would be referred to the U.S. Treasury for collection in sixty days if not paid. The CIA noted that Winthrop's name would be entered into a national debtor database, and that his identity may be published or publicly disseminated. Additionally, his name would be entered into the Treasury Offset Program for an "indefinite period of time," which would allow the federal salaries, tax refunds, retirement benefits, social security payments, other types of federal/state payments and any other payment authorized by law to be offset. Furthermore, debtors with outstanding loans will not qualify for future loans.
- 17. A few days later, on November 13, 2008, Pines responded to Winthrop's attorney's most recent request to view the service agreement and seemingly contradicted his prior assertions that

a service agreement exists. He reverted back to the CIA's unspecified statutory justification and wrote that the "debt that your client owes to the CIA is based on a statutory obligation, not a contractual one. Indeed, your client, as an at-will employee with the CIA, had no 'employment contract' or comparable employment agreement with the CIA. Therefore, there is no such contract for you to inspect." Thus, it appears the CIA admitted the authority on which it had originally based Winthrop's alleged debt, according to its own documentation, did not exist. Having conceded no agreement exists, Pines failed to identify the "statutory obligation" on which CIA now relied.

- 18. On November 18, 2008, Pines and Winthrop's attorney conversed via telephone. Winthrop's attorney memorialized the conversation in a letter dated November 21, 2008, and noted Winthrop would exhaust all administrative remedies to contest the alleged debt, including again requesting a debt hearing pursuant to the Debt Collection Act, 5 U.S.C. § 5514.
- 19. In a letter dated December 3, 2008, Pines repeated that "Your client is not entitled to review of any additional documents, nor to an official hearing on his debt." Pines' assertion failed to cite to or identify any statutory or internal regulatory authority to support that premise which directly contradicts the provisions of the Debt Collection Act, 5 U.S.C. § 5514, which are applicable to federal agencies including the CIA. Paragraph (a)(2)(B) provides an alleged debtor an opportunity to inspect and copy records relating to the debt, and paragraph (a)(2)(D) provides an alleged debtor an opportunity for a hearing on the determination of the agency concerning the existence or the amount of the debt.
- 20. Thus, not only had CIA failed to provide such notice and hearing before garnishing/failing to pay Winthrop's wages, it denied him statutory rights even *after* doing so. Upon information and belief, this is a persistent pattern of practice of the CIA and, in fact, was the subject of similar litigation in <u>Pyle v. CIA et al.</u>, Civil Action No. DKC-03-2759 (D.Md).
- 21. It is also worth noting that a prior CIA letter, which was dated June 11, 2008, that was sent to Winthrop on the same matter cited 5 U.S.C. § 5514 (although the provision was mistakenly referenced in the letter as 15 U.S.C. § 5514) in reference to a statutory time period.

Upon information and belief, the CIA was referring to the Debt Collection Act. In its letter of November 7, 2008, the CIA specifically cited the Debt Collection Act in reference to the Department of Treasury's authority. Thus, the CIA is aware of the Debt Collection Act and apparently seeks to rely upon selective provisions only when it would appear to serve its own self-interests. Such discretionary, inconsistent, and self-serving reliance on the law constitutes bad faith.

- 22. In addition to the existence of the alleged debt, Winthrop also challenged the amount as excessive. The CIA has failed to document exactly why it paid more than \$13,000 in costs to move a single individual out of an apartment. Upon information and belief, comparable relocation costs for federal government employees have historically been significantly less ranging from, as an example, \$5,000 for relocation of a single non-homeowner to \$20,000 for a multi-person household.
- 23. Despite its refusal to grant Winthrop a hearing or opportunity to inspect all documents relating to the debt, the CIA agreed, as noted in the letter from Pines dates December 3, 2008, to conduct an internal review of the debt. No indication was given as to the identity or official position of the individual who would be designated the reviewing official.
- 24. By letter dated January 12, 2009, Winthrop's attorney submitted materials to the CIA's Reviewing Official to contest the debt. He specifically challenged the CIA's failure to produce for inspection or copying the alleged service agreement, its failure to identify or permit inspection of any relevant internal regulations, its failure to allow Winthrop to participate in a hearing, as well as to challenge the amount of the debt.
- 25. By letter dated March 16, 2009, the CIA informed Winthrop that a reviewing officer, whose identity or official position was not referenced, had determined his debt "is and remains a valid debt." The letter noted that the review was based on Winthrop's "debt collection file" and Winthrop's attorney's most recent letter dated January 12, 2009. The balance of the debt was now listed as \$13,708.96 (Principal \$13,224.08, Administrative Fee \$25.00, Penalty \$264.48 and Interest Fee \$220.40). The CIA additionally informed Winthrop that, if unpaid, the debt would

be forwarded to the Cross-Servicing Program at the Department of Treasury on June 16, 2009 for collection.

26. Upon information and belief, no further communications have taken place between the defendants and Winthrop or his counsel.

FIRST CAUSE OF ACTION (VIOLATION OF ADMINISTRATIVE PROCEDURE ACT – PRIOR OFFSET OF SALARY AND OTHER PAYMENTS)

- 27. Winthrop realleges the facts in paragraphs 1 through 26 as if fully set forth in this Count.
- 28. The CIA's actions to seize Winthrop's funds without proper due process violates, among other provisions, the Debt Collection Act, 5 U.S.C. § 5514, and the CIA's internal policies and regulations.
- 29. Under the Debt Collection Act, the CIA must provide (1) "a minimum of thirty days written notice, informing such individual of the nature and amount of the indebtedness determined by such agency to be due, the intention of the agency to initiate proceedings to collect the debt through deductions from pay, and an explanation of the rights of the individual under this subsection," (2) "an opportunity to inspect and copy Government records relating to the debt,: and (3) "an opportunity for a hearing on the determination of the agency concerning the existence or the amount of the debt".
- 30. Notwithstanding Winthrop's timely dispute of his debt, including a request for inspection of all relevant records and a hearing, the CIA illegally and prematurely seized funds lawfully belonging to him. Indeed, the CIA seized/failed to pay Winthrop's funds even before issuing written notice of the alleged debt.
- 31. An internal CIA memorandum dated April 2, 2007, states that Winthrop's last Earnings and Leave statement dated March 29, 2007, showed that his final payment was stopped (in the amount of \$1,536.68) and that his lump sum leave (total of 10 annual leave hours) will not be processed. Internal documents indicated the lump sum leave amounted to \$293.37. An April 9, 2008 CIA e-mail, however, indicates that \$1,004.91 was held and transferred to debt collection

- on May 4, 2007. Additionally, upon information and belief, during his time of employment, Winthrop was actually never paid and, therefore, the CIA withheld an amount equal to or greater than \$6,194.12, including compensation for unused leave.
- 32. Additionally, given comparable and historical relocation costs as well as a statutory 15 percent salary collection cap the CIA seized an amount in excess of what would have been lawfully permitted had the collection of the debt actually been justified. At no time did Winthrop consent in writing, or in any manner, to this withholding.
- 33. The actions of the CIA have caused significant financial harm to Winthrop, thereby entitling him to relief.
- 34. The CIA's failure to follow federal law and/or CIA regulations creates a legal wrong against Winthrop, and he is entitled to seek review and reversal of the CIA's actions under the Administrative Procedure Act, 5 U.S.C. § 702, and to recover any previously seized funds as well as to enjoin the defendants from any future collection of funds.

SECOND CAUSE OF ACTION (VIOLATION OF ADMINISTRATIVE PROCEDURE ACT – FAILURE TO PROVIDE COPIES OF DOCUMENTS AND PERMIT HEARING ON DEBT)

- 35 Winthrop realleges the facts in paragraphs 1 through 26 as if fully set forth in this Count.
- 36. The CIA's actions to seize Winthrop's funds without proper due process violates, among other provisions, the Debt Collection Act, 5 U.S.C. § 5514, as well as the CIA's internal policies and regulations.
- 37. The Debt Collection Act, 5 U.S.C. § 5514, specifically requires the CIA to have provided Winthrop an opportunity to inspect and copy all records relating to the debt as well as a hearing on the existence and amount of the debt. The CIA refused to provide Winthrop access to or a copy of an alleged service agreement, as well as other personnel documents, that was relied upon by the CIA to justify the debt. Although the CIA later claimed the debt was statutory, numerous CIA documents refer to the debt as based on Winthrop's alleged failure to complete the terms of his Service Obligation Agreement.

- 38. Despite repeated requests by Winthrop for the opportunity to exercise his statutory right to inspect all documents related to the alleged debt, as well as a hearing, the CIA denied Winthrop these rights in full or in part in direct contravention of the Debt Collection Act, 5 U.S.C. § 5514.
- 39. By letter dated March 16, 2009, the CIA informed Winthrop that a reviewing officer, whose identity or official position was not referenced, had determined his debt "is and remains a valid debt." The letter noted that the review was based on Winthrop's "debt collection file" and Winthrop's attorney's most recent letter dated January 12, 2009. The balance of the debt was now listed as \$13,708.96 (Principal \$13,224.08, Administrative Fee \$25.00, Penalty \$264.48 and Interest Fee \$220.40). The CIA additionally informed Winthrop that, if unpaid, the debt would be forwarded to the Cross-Servicing Program at the Department of Treasury on June 16, 2009 for collection. This constitutes the CIA's final decision on the dispute.
- 40. Upon information and belief, on some date subsequent to June 16, 2009, the defendant Department of Treasury will initiate debt collection proceedings against Winthrop. His name will be entered into a national debtor database, and his identity may be published or publicly disseminated. Additionally, his name will also be entered into the Treasury Offset Program for an "indefinite period of time," which would allow federal salaries, tax refunds, retirement benefits, social security payments, other types of federal/state payments and any other payment authorized by law to be offset. Furthermore, debtors with outstanding loans will not qualify for future loans.
- 41. The actions of the CIA have caused significant and continue to cause financial harm to Winthrop, as well as potentially jeopardizing future financial and employment opportunities, thereby entitling him to relief, including but not limited to enjoining the defendants from any future collection of funds.
- 42. The CIA's failure to follow federal law and its regulations creates a legal wrong.

 Winthrop is entitled to seek review of the CIA's actions under the Administrative Procedure Act,
 5 U.S.C. § 702, as well as to enjoin the defendants from any future collection of funds.

THIRD CAUSE OF ACTION (VIOLATION OF ADMINISTRATIVE PROCEDURE ACT – ARBITRARY AND CAPRICIOUS DETERMINATION OF CIA REVIEWING OFFICIAL)

- 43. Winthrop realleges the facts in paragraphs 1 through 26 as if fully set forth in this Count.
- 44. By letter dated March 16, 2009, the CIA informed Winthrop that a reviewing officer, whose identity or official position was not referenced, had determined his debt "is and remains a valid debt." The letter noted that the review was based on Winthrop's "debt collection file" and Winthrop's attorney's most recent letter dated January 12, 2009. The balance of the debt was now listed as \$13,708.96 (Principal \$13,224.08, Administrative Fee \$25.00, Penalty \$264.48 and Interest Fee \$220.40). The CIA additionally informed Winthrop that, if unpaid, the debt would be forwarded to the Cross-Servicing Program at the Department of Treasury on June 16, 2009 for collection.
- 45. The decision of the reviewing officer, which was adopted as a final decision by the CIA, was arbitrary and capricious and was conducted improperly. No opportunity was permitted to meet with the reviewing officer, and the decision was based in incomplete information.
- 46. The CIA failed to provide any explanation for the reviewing officer's decision, stating only that "the reviewing officer has determined that the debt against [Winthrop] is and remains a valid debt in full." No statement of reasons or factual evidence was provided.
- 47. The March 16, 2009 decision of the reviewing officer constituted a final agency decision for purposes of the Administrative Procedures Act.
- 48. The findings and conclusions of the CIA's reviewing officer were incomplete, arbitrary and/or capricious, or otherwise not in accordance with law, issued contrary to constitutional right, power or privilege, unsupported by substantial evidence and/or unwarranted by the facts.
- 49. The reviewing officer's decision, which was adopted by the CIA, constituted a legal wrong against Winthrop, who is entitled to seek review and reversal of the CIA's actions under the Administrative Procedure Act, 5 U.S.C. § 702, as well as to enjoin the defendants from any future collection of funds.

FOURTH CAUSE OF ACTION (VIOLATION OF PROCEDURAL DUE PROCESS UNDER FIFTH AMENDMENT)

- 50. Winthrop realleges the facts in paragraphs 1 through 26 as if fully set forth in this Count.
- 51. Winthrop had a property interest in the funds already withheld by the CIA, and those which are sought to be collected in the near future.
- 52. The internal regulations and policies of the CIA and the statutory provisions that govern debt collection, to include but not limited to the Debt Collection Act, 5 U.S.C. § 5514, required the CIA to provide procedural due process before any collection of the debt commenced.
- 53. The CIA failed to afford Winthrop sufficient or full procedural due process protections, despite his attempt to exercise those protections, and therefore acted unconstitutionally.
- 54. The actions of the CIA caused significant financial harm to Winthrop, thereby entitling him to relief, including but not limited to enjoining the defendants from any future collection of funds.

FIFTH CAUSE OF ACTION (VIOLATION OF SUBSTANTIVE DUE PROCESS UNDER FIFTH AMENDMENT)

- 55. Winthrop realleges the facts in paragraphs 1 through 26 as if fully set forth in this Count.
- 56. Winthrop had a property interest in the funds already withheld by the CIA, and those which are sought to be collected in the near future
- 57. The internal regulations and policies of the CIA and the statutory provisions that govern debt collection required the CIA to provide certain substantive due process before any collection of the debt commenced. Additionally, the CIA seized an amount in excess of what would have been lawfully permitted had the collection of the debt been justified.
- 58. By failing to follow its own regulations, policies and statutory provisions, the CIA has failed to afford Winthrop sufficient or full substantive due process protection and therefore has acted unconstitutionally.
- 59. The actions of the CIA have caused significant financial harm to Winthrop, thereby entitling him to relief, including but not limited to enjoining the defendants from any future collection of funds.

SIXTH CAUSE OF ACTION (UNCONSTITUTIONAL TAKING UNDER FIFTH AMENDMENT)

- 60. Winthrop realleges the facts in paragraphs 1 through 26 as if fully set forth in this Count.
- 61. The CIA may not take private property for public use without just compensation.
- 62. Winthrop had a property interest in the funds withheld by the CIA.
- 63. No formal adjudication in accordance with all lawful provisions and constitutional protections had been undertaken by the CIA to justify offset or permit collection of any alleged debt at the time the CIA collected the debt. Additionally, the CIA seized an amount in excess of what would have been lawfully permitted had the offset or collection of the debt been justified.
- 64. CIA's actions to collect an alleged debt in violation of its internal regulations and policies and the statutory provisions that govern debt collection thereby convert its withholding of Winthrop's funds into an unconstitutional taking of private property.
- 65. The actions of the CIA have caused significant financial harm to Winthrop, thereby entitling him to relief, including repayment of the funds unconstitutionally seized from him as well as enjoining the defendants from any future collection of funds.

WHEREFORE, Grant Winthrop respectfully asks this Court to:

- A. Vacate any CIA decision, including but not limited to that of its reviewing officer referenced by letter dated March 16, 2009, and determine that no debt exists;
- B. Order the CIA to immediately refund all monies, with interest, taken improperly from Winthrop;
 - C. Enjoin the defendants from seizing any additional funds from Winthrop;
- D. Find and declare that CIA's internal debt review process was both incomplete and unlawful;
- E. Find and declare that CIA acted in bad faith, as a pattern of practice, by intentionally and knowingly misapplying the relevant statutory authority, including but not limited to the Debt Collection Act, concerning debt collection from its employees, and report any CIA officials who acted in bad faith to their respective bar associations and/or disciplinary authorities;

- F. Find and declare that the CIA violated Winthrop's procedural and substantive due process rights by prematurely seizing his financial property, as well as collecting an amount in excess of what is permitted even if the debt were justified;
- G. Find and declare that the CIA's actions of premature collection constituted an illegal taking;
- H. Find and declare that the CIA improperly withheld and/or offset Winthrop's salary and other earnings in an amount not less than \$6,194.12, and order the CIA to repay that the determined amount plus interest; and
- I. Award Winthrop his costs and attorneys' fees under the Equal Access to Justice Act, or any other applicable statute or regulation, as well as any other relief this Court may find appropriate.

Date: June 3, 2009

Respectfully submitted,

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