

1 WILLIAM R. TAMAYO (CA Bar No. 084965)
 JONATHAN T. PECK (VA Bar No. 12303)
 2 SANYA HILL MAXION (WA Bar No. 18739)
 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
 3 San Francisco District Office
 350 The Embarcadero, Suite 500
 4 San Francisco, CA 94105
 Telephone No. (415) 625-5650
 5 Facsimile No. (415) 625-5657

6 Attorneys for Plaintiff
 Equal Employment Opportunity Commission
 7

8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**

10 **EQUAL EMPLOYMENT OPPORTUNITY**
 11 **COMMISSION,**

12 **Plaintiff,**

13 v.

14 **COMMUNITY DENTAL SERVICES, INC.,**
 15 **dba SMILECARE ,**

16 **Defendant.**

17

ALL RELATED ACTIONS.

Civil Action No. C-07-04950-CRB

**REQUEST FOR RELIEF FROM
 ORDER OF DISMISSAL;
 CERTIFYING DECLARATION OF
 SANYA HILL MAXION IN
 SUPPORT THEREOF;
 -[proposed] ORDER**

18 **REQUEST FOR RELIEF FROM ORDER OF DISMISSAL**

19
 20
 21 Plaintiff Equal Employment Opportunity Commission (EEOC) hereby requests
 22 relief from the Conditional Order of Dismissal which was entered in this case on
 23 November 10, 2008. This request, which is supported by the accompanying certifying
 24 declaration of Sanya Hill Maxion, is made because the settlement which the parties
 25 agreed to in their October 22, 2008 settlement mediation which gave rise to the Court's
 26 Order of Dismissal, was not finalized until December 16, 2008, and the consideration for
 27 that settlement, a Consent Decree which provides for monetary damages and injunctive
 28 relief, was submitted to the Court for approval on December 16, 2008.

1 Plaintiff EEOC requests relief from the Conditional Order of Dismissal, to allow
2 the parties lodge their finalized Consent Decree with the Court. In the alternative,
3 Plaintiff EEOC requests that the Order of Dismissal be vacated and the case restored to
4 the Court's calendar.

5 Dated: December 16, 2008

/S/ Sanya Hill Maxion
Attorney for Plaintiff EEOC

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

1 **CERTIFYING DECLARATION OF SANYA HILL MAXION IN SUPPORT OF**
2 **REQUEST FOR RELIEF FROM ORDER OF DISMISSAL**

3 I, Sanya Hill Maxion, declare:

4 1. I am an attorney at law, licensed to practice in the State of Washington, a
5 senior trial attorney with Plaintiff EEOC, and an attorney of record for Plaintiff EEOC in
6 the above-captioned case.

7 2. On October 22, 2008 the parties to this case participated in mediation
8 under the Northern District of California’s Alternative Dispute Resolution (ADR)
9 program, with Mediator John Barg. I was present at that mediation representing
10 Plaintiff EEOC. At that mediation, the parties agreed that the case would be settled
11 through a Consent Decree. The parties agreed on a monetary damages figure, various
12 injunctive provisions which would be included in the Decree, the duration of the Decree
13 (three years), and other matters related to settlement of the case. The parties did not
14 write the exact language of the Consent Decree at that mediation, but did reduce to
15 writing an agreement addressing the basic settlement terms.

16 3. On October 24, 2008, the mediator filed a Certification of ADR Session
17 with this Court stating that the mediation had taken place, checking that the case had
18 settled and that the ADR process was completed.

19 4. On November 10, 2008, this Court entered an Order of Dismissal This
20 Order of Dismissal provides that the case is “dismissed without prejudice,” but further
21 provides:

22 [H]owever, that if any party hereto certifies to this court, within thirty
23 days with proof of service of a copy thereof, that the agreed consideration
24 for said settlement has not been delivered over, the foregoing order shall
25 stand vacated and this cause shall forthwith be restored to the calendar to
26 be set for trial.

27 (NDCA Docket No. 59)

28 5. Although the parties had exchanged drafts of the Consent Decree and
related settlement documents prior to December 16, 2008, they did not finalize those
documents until that date.

1 6. Plaintiff EEOC therefore hereby requests relief from the Dismissal Order
2 so that the parties can lodge the Consent Decree with the Court for approval or, in the
3 alternative, that the Court vacate the Order of Dismissal Upon Settlement and restore
4 this matter to the Court's calendar.

5 7. As counsel for Plaintiff EEOC, pursuant to the provisions of the Order of
6 Dismissal Upon Settlement, I hereby certify to the Court, with proof of service of a copy
7 on opposing counsel, that settlement has not in fact occurred.

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

9 Executed this sixteenth day of December, 2008, at San Francisco, California.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

_____/S/ Sanya Hill Maxion_____

ORDER

IT IS HEREBY ORDERED that the Order of Dismissal issued by this Court on
November 10, 2008 is hereby vacated and the action is restored to the Court's calendar
in order to allow the parties to lodge their Consent Decree with the Court for approval.

Dated: December 18, 2008

