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 10 LEVI STRAUSS & CO.

11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA  
 13 SAN FRANCISCO DIVISION

FOSTER Employment Law  
 3000 Lakeshore Avenue  
 Oakland, California 94610

13 JAY SHUMAN, ) Case No. CV-09-0003 WHA  
 14 Plaintiff, )  
 15 vs. ) Date Action Filed: January 2, 2009  
 16 LEVI STRAUSS & CO., ) **STIPULATION AND [PROPOSED]**  
 17 Defendant. ) **ORDER OF DISMISSAL, SUBJECT TO**  
 18 ) **REFILING OF CLAIMS IN STATE**  
 19 ) **COURT**  
 20 )

21 THE PARTIES, BY AND THROUGH THEIR ATTORNEYS OF RECORD, HEREBY  
 22 STIPULATE AS FOLLOWS:

23 WHEREAS, on or about June 23, 2008, plaintiff filed a state court lawsuit alleging state  
 24 court claims relating to his employment with defendant and the termination of said employment,  
 25 County of San Francisco Case No. CGC-08-476646 (the "State Case"); and

26 WHEREAS, on or about January 2, 2009, plaintiff filed the instant action in federal court,  
 27 alleging a federal cause of action under the Americans with Disabilities Act ("ADA") relating to the  
 28

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1 same issues and decisions regarding his employment with defendant and the termination of said  
2 employment; and

3 WHEREAS, on or about April 30, 2009, the State Case, which had been removed by  
4 defendant, was remanded back to state court; and

5 WHEREAS, given the foregoing developments, the parties mutually desire to consolidate  
6 plaintiff's state and federal claims, as presently set forth in plaintiff's operative pleadings in federal  
7 and state courts, in a single forum, in San Francisco Superior Court; and

8 WHEREAS, in order to accomplish such consolidation, plaintiff agrees to voluntarily dismiss  
9 the instant federal action, and to amend the state court complaint so as to incorporate the federal  
10 claim he has pleaded in this action, subject to defendant's agreement, and this court's order, that by  
11 so doing plaintiff's ability to plead the federal claim in state court shall not be prejudiced or  
12 adversely affected in any way, that defendant will not oppose plaintiff's amendment of his state  
13 court pleading to add the federal claim presently pleaded in this action, and that, upon plaintiff filing  
14 the amended pleading in state court that is attached hereto as Exhibit "1," to add the federal claim  
15 presently pleaded in this action, defendant will waive, and agrees not to assert, the right to remove  
16 the state court action to federal court on grounds that the amended state court pleading that is  
17 attached hereto as Exhibit "1" creates federal question jurisdiction with respect to the state court  
18 action;

19 NOW THEREFORE, THE PARTIES STIPULATE AS FOLLOWS:

20 1. Dismissal. Plaintiff hereby voluntarily dismisses the instant action, subject to the  
21 following terms and conditions, and an order of this court approving the dismissal.

22 2. Refiling/Amendment. Plaintiff shall be permitted to amend the State Case to include  
23 the federal ADA claim alleged in this case by filing in state court the amended pleading that is  
24 attached hereto as Exhibit "1." Defendant shall not oppose the filing of such amended pleading and  
25 hereby waives any and all grounds for opposition to the filing of said amended pleading. Defendant  
26 agrees to execute a stipulation for the filing of said amended pleading.

27 3. No prejudice to plaintiff. Plaintiff's ability to plead his federal ADA claim shall not  
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1 be adversely effected in any way by the transfer of his federal claims to state court through this  
2 process. Defendant shall not assert untimeliness, statute of limitations, or any other ground that  
3 would not have existed had plaintiff originally filed his federal claim in state court, and defendant  
4 hereby waives any and all such grounds.

5 4. No further removal. Upon plaintiff's filing of the proposed amended pleading that is  
6 attached hereto as Exhibit "1" defendant stipulates that it will not remove to federal court, and that it  
7 is prohibited from so removing, the state court action on the grounds that the amended pleading that  
8 is attached hereto as Exhibit "1" creates federal question jurisdiction over the state court action.  
9 Defendant further stipulates that, if plaintiff's filing of an amended pleading in state court as agreed  
10 herein is limited to adding to the pending state court action the federal ADA claim that is presently  
11 pleaded in this action by the filing of the amended pleading that is attached hereto as Exhibit "1,"  
12 defendant will not seek to remove the case on any grounds. By this agreement, defendant does not  
13 waive the right to seek removal based on any amendments to the pleadings other than those  
14 discussed herein, and should plaintiff attempt to amend his state court pleading to add any additional  
15 cause(s) of action(s) or to name additional defendant(s) that may confer federal jurisdiction over the  
16 matter, defendant reserves the right to timely seek removal of the action in response to such an  
17 amended pleading.

18 SO STIPULATED:

19 May 7, 2009

ROSS & MORRISON

20 By: 

21 Gary B. Ross  
22 Andrew D. Morrison  
23 Attorneys for Plaintiff

24 May 7, 2009

FOSTER EMPLOYMENT LAW

25 By: 

26 Michael W. Foster  
27 David J. Cardiff  
28 Attorneys for Defendant

FOSTER Employment Law

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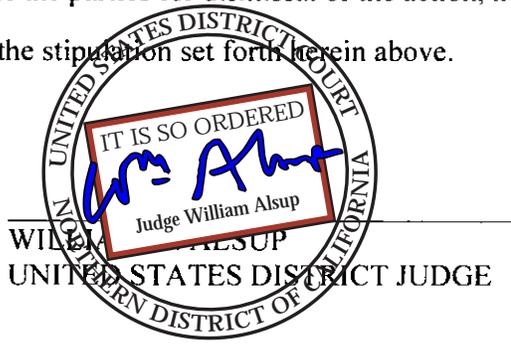
ORDER

The Court, having reviewed the stipulation of the parties for dismissal of the action, hereby orders the case dismissed according to the terms of the stipulation set forth herein above.

IT IS SO ORDERED.

Dated: May 12, 2009

By: \_\_\_\_\_



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# EXHIBIT 1

**to Stipulation**

1 **ROSS & MORRISON**  
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2 Andrew D. Morrison (SBN 144216)  
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5 Attorneys for Plaintiff  
6  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO

10 JAY SHUMAN, ) CASE NO. CGC-08-476646  
11 )  
Plaintiff, ) SECOND AMENDED COMPLAINT:  
12 v. )  
13 LEVI STRAUSS & CO.; and DOES 1- ) 1. VIOLATION OF FEHA:  
100, ) DISABILITY DISCRIMINATION;  
14 Defendants. ) FAILURE TO ACCOMMODATE;  
INTERACTIVE PROCESS  
15 ) 2. WRONGFUL TERMINATION  
16 ) 3. WRONGFUL DEMOTION  
4. INTL. INFL. OF EM. DIST.  
5. NEGL. INFL. OF EM. DIST.  
6. VIOLATION OF ADA

17 Summary. This is an action for disability discrimination,  
18 failure to accommodate and related claims. Plaintiff was  
19 employed by Levi's for nearly 25 years, attaining Senior Account  
20 Planner status. However, when plaintiff was diagnosed with  
21 severe depression, Levi's failed to accommodate or support him,  
22 resulting in a breakdown forcing him to take a leave of absence.  
23 When plaintiff returned from leave, Levi's continued to refuse  
24 accommodation, and instead summarily demoted plaintiff from his  
25 Senior Account Planner status, and cut his compensation in half.  
26 When plaintiff complained, defendant subjected him to a campaign  
27 of retaliation, obstruction, punishment and false criticism;  
28 culminating in his termination on or about June 24, 2008.

1 Plaintiff alleges:

2 IDENTIFICATION OF PARTIES

3 1. Plaintiff. Plaintiff is an individual formerly  
4 residing in Knoxville, Tennessee.

5 2. Defendant Levi's. Defendant Levi Strauss & Co.  
6 ("Levi's") is a corporation, headquartered and with its principal  
7 place of business in San Francisco County, California.

8 3. Doe defendants. Defendants Doe 1-100 are named  
9 fictitiously. Plaintiff will amend to plead the names of such  
10 defendants when known. Each Doe defendant was responsible for  
11 the events and damages alleged herein, including, without  
12 limitation, on the following bases:

13 a. At all relevant times, one or more of the  
14 defendant(s) was the agent or employee, and/or acted under the  
15 control or supervision of, one or more of the remaining  
16 defendants and, in doing the acts alleged, acted within the  
17 course and scope of such agency and employment, and/or is  
18 otherwise liable for plaintiff's damages; and/or

19 b. At all relevant times there existed a unity of  
20 ownership and interest between two or more of the defendants,  
21 such that any individuality and separateness between said  
22 defendants has ceased, and defendants are the alter ego(s) of one  
23 another. The defendants exercised domination and control over  
24 one another, to such an extent that any individuality or  
25 separateness of defendants does not, and at all times herein  
26 mentioned did not, exist. Adherence to the fiction of separate  
27 existence of the defendants would permit abuse of the corporate  
28 privilege and would sanction fraud and promote injustice.

1           4.    "Defendant."    The named defendant(s) and Doe  
2 defendants are sometimes hereafter referred to (collectively  
3 and/or individually) as "defendant."

4                                   FACTS COMMON TO ALL CAUSES OF ACTION

5           5.    Plaintiff's hiring.    Plaintiff began work for defendant  
6 on or about September 12, 1983 in Menswear Sales, enjoying a  
7 successful career of well over 20 years, and attaining Senior  
8 Account Planner status.

9           6.    Plaintiff's disability/leave.    In or about Fall 2006,  
10 plaintiff was diagnosed as suffering a mental disability (severe  
11 depression), resulting in a breakdown forcing him to take a leave  
12 of absence in or about April 2007. Throughout this time  
13 defendant failed to accommodate plaintiff's mental disability.

14           7.    Plaintiff's return/defendant's failure to accommodate.  
15 In or about August, 2007, when plaintiff returned from leave,  
16 Levi's continued to refuse accommodation, including without  
17 limitation adjusting plaintiff's work schedule, permitting  
18 plaintiff to work from home, providing support/staffing, and/or  
19 other accommodations.

20           8.    Demotion.    Instead defendant summarily demoted  
21 plaintiff from his Senior Account Planner position, and cut  
22 his compensation roughly in half.

23           9.    Retaliation.    When plaintiff complained, defendant  
24 engaged in a campaign of retaliation, obstruction, punishment and  
25 false criticism against plaintiff.

26           10. Termination.    Defendant terminated plaintiff's  
27 employment, based on false and pretextual grounds, on or about  
28 June 24, 2008.

1 11. Motivating factor. Plaintiff's disability, request for  
2 accommodation, and/or other protected characteristic(s) were  
3 motivating factor(s) in defendant's job action(s) against him.

4 12. Economic damages. As a consequence of defendant's  
5 conduct, plaintiff has suffered and will suffer harm, including,  
6 without limitation, lost past and future income and employment  
7 benefits; and damage to career, in a sum to be proven at trial.

8 13. Non-Economic damages. As a consequence of defendant's  
9 conduct, plaintiff has suffered and will suffer psychological and  
10 emotional distress, including physical symptoms, in a sum to be  
11 proven at trial.

12 14. Punitive damages. Defendant is guilty of oppression,  
13 fraud or malice under California Civil Code Section 3294, so as  
14 to entitle plaintiff to an award of exemplary/punitive damages.

15 15. Exhaustion of administrative remedies. Prior to filing  
16 this action, plaintiff exhausted administrative remedies, by  
17 timely filing administrative complaints with the Department of  
18 Fair Employment and Housing and the Equal Employment Opportunity  
19 Commission.

20 FIRST CAUSE OF ACTION

21 Violation of FEHA, Cal. Govt. Code §§ 12900 et seq.

22 Against All Defendants

23 16. Paragraphs 1-15 are incorporated.

24 17. Plaintiff's disability and/or request for accommodation  
25 were motivating factors in defendant's decisions to terminate  
26 plaintiff, demote plaintiff, reduce his pay, refusal to  
27 accommodate, and/or taking other adverse job action(s) against  
28 plaintiff.

1 18. Defendant's conduct, as alleged, violated the  
2 California Fair Employment and Housing Act, Cal. Govt. Code §§  
3 12900, et seq. ("FEHA") and defendant committed unlawful  
4 employment practice(s), including, without limitation, by the  
5 following, separate bases for liability:

- 6 a. Terminating, barring, discharging, refusing to  
7 transfer, retain, hire, select, train, and/or  
8 employ; and/or otherwise discriminating against  
9 plaintiff, based, in whole or in part, on his  
10 mental disability or other protected  
11 characteristic, in violation of Cal. Govt. Code §  
12 12940(a).
- 13 b. Failing to accommodate plaintiff's disability,  
14 including, without limitation, by failure to  
15 modify plaintiff's work conditions/schedule; or  
16 other reasonable accommodation(s), in violation of  
17 Cal. Govt. Code § 12940(m).
- 18 c. Failing to engage in a timely, good faith  
19 interactive process to determine reasonable  
20 accommodation, in violation of Cal. Govt. Code §  
21 12940(n).
- 22 d. Failing to take all reasonable steps to prevent  
23 discrimination, in violation of Cal. Govt. Code §  
24 12940(k).
- 25 e. Harassing plaintiff based on his mental  
26 disability, in violation of Cal. Govt. Code §  
27 12940(j).
- 28 f. Retaliating against plaintiff for seeking to

1 exercise rights guaranteed under the FEHA,  
2 including right of reasonable accommodation,  
3 interactive process, and requesting leave, in  
4 violation of Cal. Govt. Code § 12940(h).

5 g. Failing to provide plaintiff with requisite  
6 statutory leave; violating notice and/or other  
7 procedural requisites of leave; and/or retaliating  
8 against plaintiff for taking leave, in violation  
9 of Cal. Govt. Code § 12945.2.

10 SECOND CAUSE OF ACTION

11 Wrongful Termination in Violation of Public Policy

12 Against All Defendants

13 19. Paragraphs 1-18 are incorporated.

14 20. Public policy of the State of California (as evinced,  
15 inter alia, in the FEHA) prohibits job discrimination on the  
16 basis of an employee's disability, request for accommodation,  
17 interactive process, and/or taking leave; and prohibits  
18 retaliation against employees who exercise such rights.

19 21. Defendant's termination of plaintiff's employment  
20 violated said policy(ies) of the State of California.

21 THIRD CAUSE OF ACTION

22 Wrongful Demotion in Violation of Public Policy

23 Against All Defendants

24 22. Paragraphs 1-21 are incorporated.

25 23. Public policy of the State of California (as evinced,  
26 inter alia, in the FEHA) prohibits job discrimination on the  
27 basis of an employee's disability, request for accommodation,  
28 interactive process, and/or taking leave; and prohibits

1 retaliation against employees who exercise such rights.

2 24. Defendant's demotion of plaintiff, and/or other adverse  
3 job action(s) against him, violated said policy(ies) of the State  
4 of California.

5 FOURTH CAUSE OF ACTION

6 Intentional Infliction of Emotional Distress

7 Against All Defendants

8 25. Paragraphs 1-24 are incorporated.

9 26. Defendant was aware that treating plaintiff in the  
10 manner alleged above, including depriving and/or substantial  
11 impairing his livelihood, while treating/recuperating from severe  
12 depression, would devastate plaintiff and cause extreme hardship  
13 and aggravate his emotional condition.

14 27. Defendant's conduct, as described above, was extreme  
15 and outrageous and was done with the intent of, and effect of,  
16 causing plaintiff to suffer emotional distress.

17 FIFTH CAUSE OF ACTION

18 Negligent Infliction of Emotional Distress

19 Against All Defendants

20 28. Paragraphs 1-27 are incorporated.

21 29. In the alternative, defendant's conduct, as alleged  
22 above, was done in a careless or negligent manner, without  
23 consideration for the effect such conduct would have upon  
24 plaintiff's person, including upon plaintiff's emotional/physical  
25 well-being.

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- c. Harassing plaintiff based on his mental disability, in violation of the ADA.
- d. Retaliating against plaintiff for seeking to exercise rights guaranteed under the ADA, including right of reasonable accommodation in violation of 42 U.S.C. § 12203.

PRAYER

WHEREFORE, plaintiff prays for judgment as follows:

- 1. For compensatory economic and non-economic damages, in an amount to be proven at trial;
- 2. For punitive damages, according to proof;
- 3. For prejudgment interest;
- 4. For injunctive relief against defendants;
- 5. For costs of suit, including reasonable attorneys' fees;
- 6. For such other relief the Court deems proper.

May 7, 2009

ROSS & MORRISON

By:

\_\_\_\_\_  
Gary B. Ross  
Andrew D. Morrison  
Attorneys for Plaintiff