

E-Filed 9/2/11

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12 Attorney for the Plaintiff

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION
16

17
18 CONCORDIA TINDAL

19 Plaintiff,

20 v.

21 PATRICK R. DONAHOE, Postmaster
General of the United States,

22 Defendant.

No. C 09-5550 RS

**STIPULATION AND AGREEMENT OF
COMPROMISE AND SETTLEMENT
AND ~~PROPOSED~~ ORDER**

23 IT IS HEREBY STIPULATED by and between the parties, after full and open
24 discussion, that this action be settled and compromised on the following terms:

25 WHEREAS, Plaintiff filed the above-captioned action under Title VII of the Civil
26 Rights Act of 1964, 42 U.S.C. §2000e-16, as amended, and the Rehabilitation Act of 1973;

27 WHEREAS, Plaintiff has filed the following administrative EEO complaints with the
28 United States Postal Service: 1F-955-0001-06, 1F-955-0006-04, 1F-955-0006-06, 1F-955-

STIPULATION AND AGREEMENT FOR COMPROMISE AND SETTLEMENT
No. C09-5550 RS

1 0011-06, and 1F-955-0014-06.

2 WHEREAS, Plaintiff and Defendant wish to avoid any further litigation and
3 controversy and to settle and compromise fully any and all claims and issues that have been
4 raised, or could have been raised, arising out of Plaintiff's employment with Defendant, which
5 have transpired prior to the execution of this Agreement;

6 NOW, THEREFORE, in consideration of the mutual promises contained in this
7 Agreement, and other good and valuable consideration, receipt of which is hereby
8 acknowledged, the Parties agree as follows:

9 1. **Settlement Amount.** In full and final settlement of all claims in connection with the
10 above-captioned action, Defendant shall pay Plaintiff a total sum of five thousand dollars and
11 no cents (\$5000.00) ("Settlement Amount"). There shall be no withholding from this amount.
12 Plaintiff understands that this payment will be reported to the Internal Revenue Service
13 ("IRS"), and that any questions as to the tax liability, if any, as a result of this payment is a
14 matter solely between Plaintiff and the IRS. The check will be made payable to ~~Concordia~~
15 ~~Timbalant~~ J. Harmond Hughey, and will be mailed to Plaintiff in care of her counsel, J.
16 Harmond Hughey, Esq. at the following address:

17 J. HARMOND HUGHEY
18 Attorney at Law
19 3145 Geary Blvd., # 735
20 San Francisco, CA 94118

21 2. **Release.** In consideration of the payment of the Settlement Amount and the other
22 terms set forth in this Agreement, Plaintiff hereby releases and forever discharges Defendant,
23 United States Postal Service, and any and all of their past and present officials, agents,
24 employees, attorneys, insurers, their successors and assigns, from any and all obligations,
25 damages, liabilities, actions, causes of actions, claims and demands of any kind and nature
26 whatsoever, including claims arising under the Age Discrimination in Employment Act, 29
27 U.S.C. § 633a, whether suspected or unsuspected, at law or in equity, known or unknown, or
28 omitted prior to the date she executes this Agreement, which arise from or relate to her
employment with the United States Postal Service.

1 3. **Attorneys' Fees.** The parties agree that the Settlement Amount is in full
2 satisfaction of all claims for attorneys' fees and costs arising from work performed by Plaintiff's
3 counsel at all stages of litigation, including, but not limited to, the processing of Plaintiff's
4 administrative and district court complaints in connection with the above-captioned action, and
5 any other EEO administrative proceedings which are currently pending.

6 4. **Submission of Retirement Application.** Plaintiff agrees that August 27, 2011 will
7 be Plaintiff's effective date of retirement from the United States Postal Service. Plaintiff
8 further warrants and represents that she submitted her completed application for retirement on
9 August 16, 2011, by depositing it into the U.S.P.S. (by mail)
10 , and that on her application, she requested August 27, 2011 as her effective date
11 of retirement from the United States Postal Service. Plaintiff is solely responsible for ensuring
12 that her retirement application is complete and that any necessary documentation or
13 information are provided to the appropriate agency.

14 5. **Payment of Settlement Amount.** Defendant agrees to submit the Settlement
15 Amount for processing within ten (10) days after the Court "so orders" this Agreement.
16 Plaintiff has been informed that the Settlement Amount may take up to sixty (60) days or more
17 to process. The parties further agree that payment of the Settlement Amount will not be made
18 until after Plaintiff's effective date of retirement from the United States Postal Service.
19 Plaintiff has been informed that should the Settlement Amount be processed and a check issued
20 prior to Plaintiff's effective date of retirement from the United States Postal Service, the check
21 will be held by Defendant until after Plaintiff's effective date of retirement from the United
22 States Postal Service. Plaintiff has also been informed that the check will be void within one
23 year after it is issued.

24 6. **Dismissal.** In consideration of the payment of the Settlement Amount and the other
25 terms of this Agreement, Plaintiff shall immediately upon execution of this Agreement also
26 execute a Stipulation of Dismissal, a copy of which is attached hereto as Exhibit A. The
27 Stipulation of Dismissal shall dismiss, with prejudice, all claims asserted in this action, or that
28 could have been asserted in this action. The fully executed Stipulation of Dismissal will be
held by Defendant's attorney and will be filed with the Court within five (5) business days of

1 receipt by Plaintiff's attorney of the Settlement Amount.

2 7. **Waiver of California Civil Code § 1542.** The provisions of California Civil Code
3 Section 1542 are set forth below:

4 "A general release does not extend to claims which the creditor
5 does not know or suspect to exist in his or her favor at the time
6 of executing the release, which if known by him or her must have
7 materially affected his or her settlement with the debtor."

8 Plaintiff has been apprised of the statutory language of Civil Code Section 1542 by her
9 attorney, and fully understanding the same, nevertheless elects to waive the benefits of any and
10 all rights he may have pursuant to the provision of that statute and any similar provision of
11 federal law. Plaintiff understands that, if the facts concerning Plaintiff's claims and the liability
12 of the government for damages pertaining thereto are found hereinafter to be other than or
13 different from the facts now believed by them to be true, this Agreement shall be and remain
14 effective notwithstanding such material difference.

15 8. **Agreement as a Complete Defense.** This Agreement may be pleaded as a full and
16 complete defense to any subsequent action or other proceeding involving any person or party
17 which arises out of the claims released and discharged by the Agreement.

18 9. **No Admission of Liability.** This is a compromise settlement of a disputed claim
19 and demand, which settlement does not constitute an admission of liability or fault on the part
20 of the Defendant, the United States Postal Service, or any of their past and present officials,
21 agents, employees, attorneys, or insurers on account of the events described in Plaintiff's
22 complaints in these actions.

23 10. **Tax Liability.** If any withholding or income tax liability is imposed upon Plaintiff
24 or Plaintiff's counsel based on payment of the settlement sum received herein, Plaintiff or
25 Plaintiff's counsel shall be solely responsible for paying any such determined liability from any
26 government agency thereof.

27 11. **Enforcement Sole Remedy.** The parties agree that should any dispute arise with
28 respect to the implementation of the terms of this Agreement, Plaintiff shall not seek to rescind
the Agreement and pursue her original causes of action. Plaintiff's sole remedy in such a

1 dispute is an action to enforce the Agreement in the United States District Court for the
2 Northern District of California.

3 12. **Construction.** Each party hereby stipulates that it has been represented by and has
4 relied upon independent counsel in the negotiations for the preparation of this Agreement, that
5 it has had the contents of the Agreement fully explained to it by such counsel, and is fully
6 aware of and understands all of the terms of the Agreement and the legal consequences thereof.
7 For purposes of construction, this Agreement shall be deemed to have been drafted by all
8 Parties to this Agreement and shall not, therefore, be construed against any Party for that reason
9 in any subsequent dispute.

10 13. **Severability.** If any provision of this Agreement shall be invalid, illegal, or
11 unenforceable, the validity, legality, and enforceability of the remaining provision shall not in
12 any way be affected or impaired thereby.

13 14. **Integration.** This instrument shall constitute the entire Agreement between the
14 parties, and it is expressly understood and agreed that the Agreement has been freely and
15 voluntarily entered into by the parties hereto with the advice of counsel, who have explained
16 the legal effect of this Agreement. The parties further acknowledge that no warranties or
17 representations have been made on any subject other than as set forth in this Agreement. This
18 Agreement may not be altered, modified or otherwise changed in any respect except by writing,
19 duly executed by all of the parties or their authorized representatives.

20 15. **Authority.** The signatories to this Agreement have actual authority to bind the
21 parties.

22 16. **Knowing and Voluntary Waiver of Remedies Under Age Discrimination in**
23 **Employment Act.** Plaintiff acknowledges that she has up to twenty-one (21) calendar days
24 from the date she receives this Agreement to review and consider this Agreement, discuss it
25 with an attorney of her choice, and decide to sign it or not sign it, although she may accept or
26 return it to Defendant's counsel at any time within those twenty-one (21) days. Plaintiff is
27 advised to consult her attorney about the Agreement.

28 17. Once Plaintiff signs and dates this Agreement, she will have seven (7) days in

1 which to revoke his acceptance. To revoke, Plaintiff must send a written statement of
2 revocation, which should be mailed and faxed to:

3 Jennifer S Wang
4 Assistant United States Attorney
450 Golden Gate Avenue, Box 36055
5 San Francisco, CA 94102-3495
Fax: 415 436-6748

6 Plaintiff understands that if she revokes, this Agreement shall have no effect. If
7 Plaintiff does not revoke, this Agreement will become effective on the eighth (8th) day ("the
8 Effective Date") after the date Plaintiff signs and dates this Agreement.

9
10 DATED: 8-20-2011 Concordia D. Tindal
Plaintiff
11
12 DATED: 8/20/2011 [Signature]
Plaintiff's Attorney
13
14 DATED: 8/26/2011 [Signature]
Assistant United States Attorney
Attorney for Defendant
15
16 DATED: _____
Agency Representative
17
18

19 PURSUANT TO STIPULATION, IT IS SO ORDERED.

20 Dated: 9/2/11 _____ Richard Seeborg
21 HON. RICHARD SEEBORG
United States District Judge
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2 revocation, which should be mailed and faxed to:

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4 Assistant United States Attorney
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6 Plaintiff understands that if she revokes, this Agreement shall have no effect. If
7 Plaintiff does not revoke, this Agreement will become effective on the eighth (8th) day ("the
8 Effective Date") after the date Plaintiff signs and dates this Agreement.

9
10 DATED:

Plaintiff

11
12 DATED:

Plaintiff's Attorney

13 DATED:

Assistant United States Attorney
Attorney for Defendant

14
15 DATED: 9/1/11

Agency Representative

16
17
18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19
20 Dated: _____

HON. RICHARD SEEBORG
United States District Judge