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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

CARL BRYANT

Plaintiff,

v.

JOHN E. POTTER

Defendant.

Docket No. C 10-4112 - SBA

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

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

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

WHEREAS, Plaintiff has filed several administrative EEO complaints with the Agency and the following appeals regarding his pay that is the subject of this action: including, but not limited to, 4F940014707, 0120100975, 1020082393, 4F940002011;

WHEREAS, Plaintiff and Defendant wish to avoid any further litigation and controversy and to settle and compromise fully any and all claims and issues related to plaintiff's wages from January 1, 2007 through September 12, 2007;

NOW, THEREFORE, in consideration of the mutual promises contained in this

1 Agreement, the Parties agree as follows:

2 1. **Settlement Amount.** In full and final settlement of all claims in connection with
3 the above-captioned action, Defendant shall change the following hours of AWOL to sick
4 leave and shall pay Plaintiff a total sum of Two-Thousand Eight Hundred and Sixty One
5 Dollars and Eight Cents (\$2,861.08) dollars (“Settlement Amount”) representing sick leave
6 hours for those pay periods at an hourly pay rate of \$23.9942:

7 July 12, 2007 (pay period 15, week 1): 7.24 hours

8 July 14-July 20, 2007 (pay period 15, week 2): 32 hours

9 July 21-July 27, 2007 (pay period 16, week 1): 32 hours

10 August 11-August 17, 2007 (pay period 17, week 2): 40 hours

11 August 18, 2007 (pay period 18, week 1): 8 hours

12 Plaintiff understands that this payment will be subject to normal payroll taxes and
13 withholdings. The Plaintiff will also receive the regular earnings statement showing taxes
14 and withholdings from this Settlement Amount with the Settlement Check. The check will
15 be made payable to Plaintiff Carl Bryant, and will be mailed to Plaintiff in care of his
16 counsel, Emily Wecht. Plaintiff and his attorney have been informed that payment of the
17 Settlement Amount may take up to ninety (90) days from the Effective Date (as defined in
18 paragraph 15) of this Agreement to process. The payment will be made within ninety (90)
19 days of the Effective Date of this Agreement.

20 2. **Release.** In consideration of the payment of the Settlement Amount and the
21 other terms set forth in this Stipulation and Agreement, Plaintiff hereby releases and
22 forever discharges Defendant, the United States Postal Service, and any and all of their past
23 and present officials, agents, employees, attorneys, insurers, their successors and assigns,
24 from any and all obligations, damages, liabilities, actions, causes of actions, claims and
25 demands of any kind and nature whatsoever, including claims arising under the Age
26 Discrimination in Employment Act, 29 U.S.C. § 633a, whether suspected or unsuspected,

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1 at law or in equity, known or unknown, or omitted prior to the date he executes this
2 Agreement, which arise from his wages from January 1, 2007 through September 12, 2007.

3 3. **Attorneys' Fees.** The parties acknowledge that plaintiff has been represented
4 for settlement purposes only by pro bono counsel and agree that the Settlement Amount is
5 in full satisfaction of all claims for attorneys' fees and costs arising from work performed
6 by Plaintiff's counsel at all stages of this litigation, including, but not limited to, the
7 processing of Plaintiff's administrative and district court complaints in connection with the
8 above-captioned action.

9 4. **Dismissal.** In consideration of the payment of the Settlement Amount and the
10 other terms of this Stipulation and Agreement, Plaintiff agrees that he will within seven
11 days of this agreement, execute a Stipulation of Dismissal, which stipulation shall dismiss,
12 with prejudice, all claims asserted in this Action or any claims that could have been
13 asserted in this Action with respect to plaintiff's pay between January 1, 2007 to
14 September 12, 2007. The fully executed Stipulation of Dismissal will be held by counsel
15 for Defendant and will be filed with the Court upon mailing of the Settlement Amount to
16 Plaintiff's counsel.

17 5. **Waiver of California Civil Code § 1542.** The provisions of California Civil
18 Code Section 1542 are set forth below:

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

24 Plaintiff has been apprised of the statutory language of Civil Code Section 1542 by his
25 attorneys, and fully understanding the same, nevertheless elects to waive the benefits of
26 any and all rights he may have pursuant to the provision of that statute and any similar
27 provision of federal law. Plaintiff understands that, if the facts concerning Plaintiff's
28 claims and the liability of the government for damages pertaining thereto are found

1 hereinafter to be other than or different from the facts now believed by them to be true, this
2 Agreement shall be and remain effective notwithstanding such material difference.

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

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

11 8. **Tax Liability.** Plaintiff understands that normal taxes and withholdings shall
12 be made from the Settlement Amount.

13 9. **Enforcement Sole Remedy.** The parties agree that should any dispute arise
14 with respect to the implementation of the terms of this Agreement, Plaintiff shall not seek
15 to rescind the Agreement and pursue his original causes of action. Plaintiff's sole remedy
16 in such a dispute is an action to enforce the Agreement in the United States District Court
17 for the Northern District of California.

18 10. **Construction.** Each party hereby stipulates that it has been represented by and
19 has relied upon independent counsel in the negotiations for the preparation of this
20 Agreement, that it has had the contents of the Agreement fully explained to it by such
21 counsel, and is fully aware of and understands all of the terms of the Agreement and the
22 legal consequences thereof. For purposes of construction, this Agreement shall be deemed
23 to have been drafted by all Parties to this Agreement and shall not, therefore, be construed
24 against any Party for that reason in any subsequent dispute.

25 11. **Severability.** If any provision of this Agreement shall be invalid, illegal, or
26 unenforceable, the validity, legality, and enforceability of the remaining provision shall not

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1 in any way be affected or impaired thereby.

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

10 13. **Authority**. The signatories to this Agreement have actual authority to bind the
11 parties.

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

18 15. Once Plaintiff signs and dates this Agreement, he will have seven (7) days in
19 which to revoke his acceptance. To revoke, Plaintiff must send a written statement of
20 revocation, which should be mailed and faxed to:

21 Susan Johnson
22 Manager, EEO Compliance and Appeals
23 Pacific Area-Region 1
24 P.O. Box 880546
25 Oakland, CA 94188-0546

26 FAX: 650.577.6155
27 With a copy to Defendant's counsel, AUSA Victoria R. Carradero at 415-436-6748.

1 Plaintiff understands that if he revokes, this Agreement shall have no effect. If
2 Plaintiff does not revoke, this Agreement will become effective on the eighth (8th) day
3 (“the Effective Date”) after the date Plaintiff signs and dates this Agreement.

4 16. **Pending EEO Claim.** Plaintiff currently has EEO Claim No. 4F-940-0020-
5 11 pending, which Defendant believes appears to contain overlapping allegations relating
6 to the payment of his wages from January 1, 2007 through September 12, 2007. Plaintiff
7 expressly acknowledges that this Settlement Agreement resolves all claims and complaints
8 pertaining to the payment of his wages from January 1, 2007 through September 12, 2007.
9 As part of the settlement of this action, within seven (7) days of the Effective Date of this
10 Agreement, plaintiff agrees to send a letter to the EEO ADR Specialist and Investigator
11 handling EEO Claim No. 4F-940-0020-11 confirming that he withdraws any and all
12 allegations regarding payment of his wages from January 1, 2007 through September 12,
13 2007 from EEO Claim No. 4F-940-0020-11 and that EEO Claim No. 4F-940-0020-11 does
14 not relate to the payment of his wages for that time period. Plaintiff shall simultaneously
15 provide a copy of this letter to Defendant’s counsel, AUSA Victoria R. Carradero.

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17 DATED:

CARL BRYANT
Plaintiff

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20 DATED:

Emily Wecht
Plaintiff’s Attorney

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23 DATED:

Victoria R. Carradero
Assistant United States Attorney
Attorney for Defendant

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25 DATED:

Jennifer Angelo
Agency Representative

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _6/13/11



HON. SAUNDRA BROWN ARMSTRONG
United States District Judge