

E-filed 7/16/07

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

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

12 **Plaintiff,**

13 **JOSEPH MICHAEL LOWE**

14 **Plaintiff-Intervener**

15 v.

17 **MONTEREY COLLISION FRAME AND**
 18 **AUTO BODY, INC.,**

19 **Defendant.**

Civil Action No. C-06-6032-JF

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

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

21 Plaintiff Equal Employment Opportunity Commission (EEOC) hereby requests
 22 relief from the Order of Dismissal which was entered in this case on May 23, 2007. This
 23 request, which is supported by the accompanying certifying declaration of Sanya Hill
 24 Maxion, is made because the settlement which the parties agreed to in their April 30,
 25 2007 settlement mediation which gave rise to the Court's Order of Dismissal, is not yet
 26 final, and the consideration for that settlement, a Consent Decree which provides for
 27 monetary damages and injunctive relief, has not been executed by the parties or

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1 submitted to the Court for approval. This request is being made within the ninety days
2 provided for in the Order of Dismissal.

3 Plaintiff EEOC requests that the date for requesting relief from the Order of
4 Dismissal be extended one month to September 23, 2007, to allow the parties to finalize
5 their Consent Decree settlement agreement and lodge it with the Court. In the
6 alternative, Plaintiff EEOC requests that the Order of Dismissal be vacated and the case
7 restored to the Court's calendar.

8 Dated: June 28, 2007

/s/ Sanya Hill Maxion
Attorney for Plaintiff EEOC

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

11 I, Sanya Hill Maxion, declare:

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

15 2. On , April 30, 2007 the parties to this case (Plaintiff EEOC, Plaintiff-
16 Intervener Robert Michael Lowe and Defendant Monterey Collision participated in
17 mediation under the Northern District of California's Alternative Dispute Resolution
18 (ADR) program, with Mediator Robert Epstein. I was present at that mediation
19 representing Plaintiff EEOC. At that mediation, the parties agreed that the case would
20 be settled through a Consent Decree. The parties agreed on a monetary damages
21 figure, various injunctive provisions which would be included in the Decree, the
22 duration of the Decree (three years), and other matters related to settlement of the case.
23 The parties did not write the exact language of the Consent Decree at that mediation,
24 but did reduce to writing an agreement addressing the basic settlement terms.

25 3. On May 21, 2007, the mediator filed a Certification of ADR Session with
26 this Court stating that the mediation had taken place, checking that the case had settled
27 and that the ADR process was completed.

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1 4. On May 23, 2007, this Court entered an Order of Dismissal Upon
2 Settlement. This Order of Dismissal provides that the case is “dismissed with
3 prejudice,” but further provides:

4 However, that if any party hereto certifies to this court, within ninety days
5 with proof of service of a copy thereof, that the agreed consideration for
6 said settlement has not been delivered over, the foregoing order shall
stand vacated and this cause shall forthwith be restored to the calendar to
be set for trial.

7 (NDCA Docket No. 35)

8 Said ninety days will end on August 21, 2007.

9 5. Although the parties have exchanged drafts of the Consent Decree and
10 related settlement documents, they have not yet finalized these documents and it is
11 unclear whether the Consent Decree can be lodged with the Court prior to August 21,
12 2007.

13 6. Plaintiff EEOC therefore hereby requests that the Court either extend for
14 one month (September 21, 2007) the deadline for the parties to submit certification to
15 the Court that settlement has not occurred or, in the alternative, that the Court vacate
16 the Order of Dismissal Upon Settlement and restore this matter to the Court’s calendar.

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

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

21 Executed this twenty-eighth day of June, 2007, at San Francisco, California.

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_____/S/ Sanya Hill Maxion_____
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ORDER


Plaintiff having certified that settlement has not in fact occurred:

IT IS HEREBY ORDERED that either party shall have until September 21, 2007 to certify to the Court, with proof of service on opposing counsel, that settlement has not in fact occurred. Upon proper certification, the Order of Dismissal filed May 23, 2007, 2007 shall be vacated and the cause shall forthwith be restored to the Court's calendar.

[or in the alternative]

~~IT IS HEREBY ORDERED that the Order of Dismissal issued by this Court on May 23, 2007 is hereby vacated and the action is restored to the Court's calendar.~~

Dated: 7/16/07


United States District Court Judge
Jeremy Fogel