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E-FILED on 9/29/2008

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KENNETH FLOYD,
Plaintiff,
vs.
BERNARD "SKIP" WHALEN AREA
LOCAL, AMERICAN POSTAL WORKER
UNION LOCAL #71,
Defendants.

Case No. C-07-05993-RMW
ORDER DISMISSING CASE PURSUANT
TO SETTLEMENT

On August 8, 2008 this case was settled subject to approval of the Executive Board of the Union. The settlement was put on the record of the court and the parties specifically agreed that the settlement could be enforced by use of the transcript, if necessary.

THE COURT: Do you contemplate that there will be a written agreement?

MR. SAMUELSON: Yes.

THE COURT: Okay. If perchance the agreement isn't signed for whatever reason, do you both intend that this settlement, which you're putting on the record, shall be binding nonetheless?

MR. SMITH: Yes.

MR. SAMUELSON: Yes.

THE COURT: Okay. And by that I mean nobody is legally entitled to change their mind; and even if the agreement doesn't get signed for whatever reason, parties seeking to enforce the settlement may use the transcript of this hearing for that purpose. Do you understand that?

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MR. SAMUELSON: Yes.

MR. SMITH: Yes. Still being conditional on the approval of the Executive Board.

The plaintiff and the President of the Local Union specifically agreed to the settlement on the record on August 8, 2008.

On August 24, 2008 the Executive Board of the Union agreed in writing to "the terms of the [settlement] which are spelled out in the . . . transcript of proceedings of the official electronic sound recording" of the August 8, 2008 settlement hearing.

The parties now both insist the case has been settled per the settlement placed upon the record but are unable to agree on a written form of the settlement agreement. Therefore, the court hereby enforces the settlement as follows:

1. Bernard "Skip" Whalen Area Local American Postal Workers Union Local 71 will pay to Kenneth Floyd the sum of \$17,000 within two weeks (the court understands this payment has been made);
2. All administrative charges against the prior administration (Kenneth Floyd, Darryl Samuelsen, and Refugio Ramirez) are withdrawn;
3. Bernard "Skip" Whalen Area Local American Postal Workers Union Local 71 and Kenneth Floyd, for good consideration, the receipt of which is hereby acknowledged, each hereby forever release, discharge, acquit and forgive each other from any and all claims, actions, suits, demands, agreements, liabilities, judgments, and proceedings both at law and in equity arising from the beginning of time to the date of these presents including, but not limited to, those claims set forth in the action entitled *Floyd v. Bernard "Skip" Whalen Area Local*, Case No. C-07-05993 RMW brought in the United States District Court for the Northern District of California. This release shall be binding upon and inure to the benefit of the parties, their successors, assigns and personal representatives. The parties expressly waive the protection of California Civil Code Section 1542 which provides:

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

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debtor.

and:

4. The action entitled *Floyd v. Bernard "Skip" Whalen Area Local*, Case No. C-07-05993

RMW brought in the United States District Court for the Northern District of California

is hereby dismissed with prejudice with each side bearing his or its own costs and attorney's fees.

The Clerk shall close the file.

Dated: 9/26/2008



RONALD M. WHYTE
United States District Judge

1 **Notice of this documents has been electronically sent to:**

2 **Counsel for Plaintiff:**

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4 Counsel for Defendant:

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7 Counsel are responsible for distributing copies of this document to co-counsel that have not
8 registered for e-filing under the court's CM/ECF program

9 **Dated:** 9/26/2008

TSF
Chambers of Judge Whyte

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