

**** E-filed October 25, 2011 ****

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7 Attorneys for Defendant

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN JOSE DIVISION

12 ANGELENE LOMAX,
 13 Plaintiff,
 14 v.
 15 UNITED STATES DEPARTMENT OF
 16 VETERANS AFFAIRS,
 17 Defendant.

Docket No. C 10-4445 HRL

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

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

20 WHEREAS, Plaintiff filed the above-captioned action under the Age Discrimination in
 21 Employment Act; Title VII of the Civil Rights Act of 1964; the American with Disabilities
 22 Act; and the Fourteenth Amendment of the United States Constitution.

23 WHEREAS, the parties participated in a mediation before Linda McPharlin on
 24 September 14, 2011. This mediation was held after Defendant's motion for summary judgment
 25 was filed and fully briefed but before said motion was heard. Both parties were represented by
 26 counsel at the mediation. The mediation was successful and resulted in the settlement of this
 27 case in its entirety.

28
 STIPULATION AND AGREEMENT FOR COMPROMISE AND SETTLEMENT
 No. C 10-4445 HRL

1 counsel at all stages of litigation, including, but not limited to, the processing of Plaintiff's
2 administrative and district court complaints in connection with the above-captioned action, and
3 any other EEO administrative proceedings which are currently pending.

4 4. **Dismissal.** In consideration of the payment of the Settlement Amount and the other
5 terms of this Stipulation and Agreement, Plaintiff agrees that she will within seven days of this
6 agreement, execute a Stipulation of Dismissal, which stipulation shall dismiss, with prejudice,
7 all claims asserted in this Action or any claims that could have been asserted in this Action.
8 The fully executed Stipulation of Dismissal will be held by counsel for Defendant and will be
9 filed with the Court upon receipt by Plaintiff's counsel of the Settlement Amount and the
10 revised Standard Form 50 and neutral letter of reference described in paragraph 14 below.

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

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

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

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

27 7. **No Admission of Liability.** This is a compromise settlement of a disputed claim
28 and demand, which settlement does not constitute an admission of liability or fault on the part
of the Defendant or any of its past and present officials, agents, employees, attorneys, or

1 insurers on account of the events described in Plaintiff's complaints in these actions.

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

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

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

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

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

28 13. **Authority.** The signatories to this Agreement have actual authority to bind the

1 parties.

2 14. **Expungement of Personnel Records**. In addition to the terms described in
3 paragraph 1 above, Defendant agrees to the following:

4 (A) Defendant shall expunge from the plaintiff's Official Personnel Folder ("OPF") all
5 records of her termination, and replace such records with a Standard Form 50 reflecting that
6 plaintiff voluntarily resigned on June 30, 2009. Plaintiff will be deemed to have been on Leave
7 Without Pay between June 6, 2009, and June 30, 2009. Defendant shall provide Plaintiff with
8 a copy of the revised Standard Form 50.

9 (B) Defendant shall provide Plaintiff with a neutral letter of reference, which contains
10 only the following information: Plaintiff's name, salary, dates of service with the agency,
11 position, grade (GS-11-Step-10), job duties, and that she voluntarily resigned for personal
12 reasons.

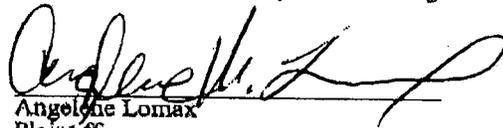
13 (C) Plaintiff also agrees that in making future applications for employment with any
14 prospective employer, she will direct all inquiries about her employment status and history with
15 VAPAHCS only to the Chief, Human Resources Management Service, VAPAHCS, at the VA
16 Palo Alto Medical Center. Defendant shall provide Plaintiff with the phone number of the
17 Chief, Human Resources Management Service, VAPAHCS, so she can list it on employment
18 applications. In response to such inquiries made to the Chief of Human Resources
19 Management Service for VAPAHCS regarding Plaintiff, the Chief of Human Resources
20 Management Service, on behalf of VAPAHCS, agrees to provide an employment reference
21 regarding Plaintiff that is limited to Plaintiff's name, salary, dates of service with the agency,
22 position, grade (GS-11-Step-10), job duties, and that she voluntarily resigned for personal
23 reasons. The parties specifically acknowledge and agree that the VAPAHCS is unable to
24 control communications from prospective employers to the agency, other than communications
25 with the Chief of Human Resources; that Plaintiff bears the risk of communications with
26 prospective employers; and, that Plaintiff will not attempt to hold the VAPAHCS liable or in
27 breach of this Settlement Agreement for responses to communications except for prospective
28 employer communications with the Chief of Human Resources.

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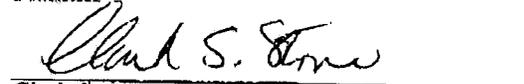
15. Application for Future Employment. Plaintiff agrees that she will not apply for employment at the VAPAHCS for a period of five years following the date she signs this Agreement. However, nothing in this Agreement shall preclude plaintiff from applying to any other federal agencies, or from applying to the VAPAHCS after five years following the date she signs this Agreement.

16. Knowing and Voluntary Waiver of Remedies Under Age Discrimination in Employment Act. Plaintiff acknowledges that she has been given a reasonable period of time to consider this Agreement. Plaintiff is advised to consult her attorney about this Agreement.

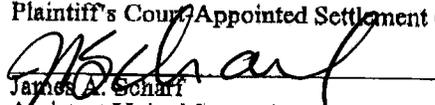
DATED: October 7, 2011


Angelique Lomax
Plaintiff

DATED: October 7, 2011

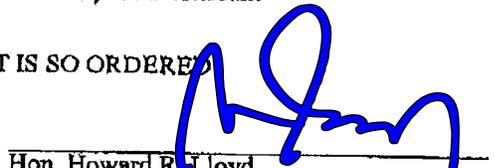

Clark Stone
Plaintiff's Court Appointed Settlement Counsel

DATED: October 11, 2011


James A. Scharf
Assistant United States Attorney
Attorney for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED

Dated: October 25, 2011


Hon. Howard R. Lloyd
United States District Court Magistrate Judge

