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7 Attorneys for Defendant

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

12 HOU HSU,  
 13 Plaintiff,  
 14 v.  
 15 PATRICK R. DONAHOE, POSTMASTER  
 GENERAL, U.S. POSTAL SERVICE,  
 16 Defendant.

Docket No. C 13-2253 PSG  
 STIPULATION AND AGREEMENT OF  
 COMPROMISE AND SETTLEMENT AND  
~~PROPOSED~~ ORDER DISMISSAL WITH  
 PREJUDICE

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

19 WHEREAS, Plaintiff filed the above-captioned action under Title VII of the Civil Rights Act of  
 20 1964 and other federal statutes concerning his employment with U.S. Postal Service.

21 WHEREAS, Plaintiff retired from the U.S. Postal Service in April 2014.

22 WHEREAS, the parties participated in a settlement conference before Hon. Nathanael M.  
 23 Cousins on November 25, 2014. This settlement conference was held after Defendant's motion to  
 24 dismiss Plaintiff's First Amended Complaint was heard, but before said motion was adjudicated. Both  
 25 parties were represented by counsel at the settlement conference. The settlement conference was  
 26 successful and resulted in a comprehensive settlement of all of Plaintiff's claims relating to his  
 27 employment with U.S. Postal Service, except as otherwise stated herein.  
 28

1 WHEREAS, Plaintiff and Defendant wish to avoid any further litigation and controversy and to  
2 settle and compromise fully any and all claims and issues that have been raised, or could have been  
3 raised, arising out of Plaintiff's employment with U.S. Postal Service, except as otherwise stated herein;

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

7 1. Settlement Amount. In full and final settlement of all claims related to Plaintiff's employment  
8 with U.S. Postal Service, including but not limited to all claims that are the subject of this action, except  
9 as otherwise stated herein, Defendant shall pay Plaintiff a total sum of \$20,000.

10 There shall be no withholding from this amount. Plaintiff understands that this payment may be  
11 reported to the Internal Revenue Service ("IRS"), and that any questions as to the tax liability, if any, as  
12 a result of this payment is a matter solely between Plaintiff and the IRS. The check will be made  
13 payable to Hou Hsu, and defense counsel will send the check via Federal Express to Plaintiff. Plaintiff  
14 and his settlement attorney have been informed that payment of the Settlement Amount may take sixty  
15 (60) days or more to process.

16 2. Release and Exception. In consideration of the payment of the Settlement Amount and the  
17 other terms set forth in this Stipulation and Agreement, Plaintiff hereby releases and forever discharges  
18 Defendant Donahoe, the U.S. Postal Service, and any and all of its past and present officials, agents,  
19 employees, attorneys, insurers, their successors and assigns, from any and all obligations, damages,  
20 liabilities, actions, causes of actions, claims and demands of any kind and nature whatsoever, including  
21 claims arising under Title VII of the Civil Rights Act of 1964, whether suspected or unsuspected, at law  
22 or in equity, known or unknown, or omitted prior to the date he executes this Agreement, which arise  
23 from or relate to his employment with U.S. Postal Service. This settlement, however, is without  
24 prejudice to any of Plaintiff's claims (including without limitation Plaintiff's disability discrimination  
25 claims, disability harassment claims, and claims relating to lost benefits) that currently or prospectively  
26 fall within a pending class action complaint entitled *McConnell v. Potter*, Agency No. 4B-140-0062-06  
27 ("*McConnell*"). Thus, this settlement agreement covers *all* claims or potential claims (except  
28 *McConnell*) arising out of Plaintiff's employment with U.S. Postal Service.

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

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

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

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

17 9. No Admission of Liability. This is a compromise settlement of disputed claims and demands,  
18 which settlement does not constitute an admission of liability or fault on the part of the Defendant or any  
19 of its past and present officials, agents, employees, attorneys, or insurers on account of the events  
20 described in Plaintiff's complaints in these actions.

21 10. Tax Liability. If any withholding or income tax liability is imposed upon Plaintiff based on  
22 payment of the settlement sum received herein, Plaintiff shall be solely responsible for paying any such  
23 determined liability from any government agency thereof. Plaintiff will indemnify and hold harmless  
24 Defendant from any liability it incurs from any government agency arising out of any failure by Plaintiff  
25 to pay for any liability she might incur from any government agency.

26 11. Construction. Each party hereby stipulates that it has been represented by and has relied  
27 upon independent counsel in the negotiations for the preparation of this Agreement, that it has had the  
28 contents of the Agreement fully explained to it by such counsel, and is fully aware of and understands  
all of the terms of the Agreement and the legal consequences thereof. For purposes of construction, this  
Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not,

1  
2 3. Attorneys' Fees. The parties agree that the cash amount described in Paragraph 1, above, is in  
3 exchange for Plaintiff releasing and dismissing all claims for compensatory and special damages, back  
4 pay, front pay, interest, attorneys' fees, costs, restitution, reinstatement and any other form of legal or  
5 equitable recovery relating to his employment with U.S. Postal Service. The parties understand that this  
6 amount includes full satisfaction of all claims for attorneys' fees and costs arising from work performed  
7 by Plaintiff's counsel or others at all stages of litigation, including, but not limited to, the processing of  
8 Plaintiff's administrative and district court complaints in connection with Plaintiff's employment with  
9 U.S. Postal Service, and any other EEO administrative proceedings, other than *McConnell*.

10 4. Dismissal with prejudice. In consideration of the payment of the Settlement Amount and the  
11 other terms of this Stipulation and Agreement, Plaintiff agrees that he will, ~~within seven days of this~~  
12 ~~agreement, execute a Stipulation of Dismissal, which stipulation shall herein dismisses,~~ with prejudice,  
13 all claims asserted in this Action or any claims that could have been asserted in this Action. ~~The fully~~  
14 ~~executed Stipulation of Dismissal will be held by counsel for Defendant and will be filed with the Court~~  
15 ~~upon receipt by Plaintiff of the Settlement Amount.~~ The settlement judge, Magistrate Judge Cousins,  
16 retains jurisdiction to enforce the settlement agreement until payment is made.

17 5. EEO Cases. ~~Upon receipt by Plaintiff of the execution of this Settlement Agreement Amount,~~  
18 Plaintiff authorizes U.S. Postal Service to dismiss all of Plaintiff's pending EEO cases, other than  
19 *McConnell*. Plaintiff further agrees not to initiate any new EEO proceedings concerning or relating to  
20 his employment with U.S. Postal Service. The EEO Cases covered by this settlement agreement  
21 include, but are not limited to, Agency Case Nos. 4F-940-0017-11, 4F-940-0075-07, 4F-940-0011-08,  
22 4F-940-0092-08, 4F-940-0213-08, 4F-940-0088-09, 4F-940-0016-11, 4F-940-0081-11, and 4F-940-  
23 0109-10, 4F-940-0042-14, and 4F-940-0007-11.

24 6. Application for Future Employment. Plaintiff agrees that he will never again apply for  
25 employment at the U.S. Postal Service. If plaintiff violates this provision and applies for future  
26 employment with the U.S. Postal Service, the U.S. Postal Service is authorized to deny his application  
27 pursuant to this Agreement, and may assert this Agreement as a full and complete defense to any  
28 proceeding or action concerning its decision to deny Plaintiff's employment application.

1 therefore, be construed against any Party for that reason in any subsequent dispute. It is acknowledged  
2 that the parties hereto have, through their respective counsel, mutually participated in the preparation of  
3 this Agreement, and it is agreed that no provision hereof shall be construed against any party hereto by  
4 virtue of the activities of that party or its attorney.


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

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

15 14. Authority. The signatories to this Agreement have actual authority to bind the parties.

16  
17 DATED: ~~October 16~~ November 25, 2014

Hou Hsu  
Plaintiff

  
2357 ARGUELLO PL  
Santa Clara CA 95050

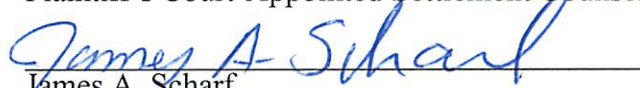
18  
19 DATED: ~~October 16~~ November 25, 2014

Robert Artuz  
Plaintiff's Court-Appointed Settlement Counsel



20  
21 DATED: ~~October 16~~ November 25, 2014

James A. Scharf  
Assistant United States Attorney  
Attorney for Defendant



22  
23  
24 ~~PURSUANT TO STIPULATION, IT IS SO ORDERED.~~

25 I have witnessed this agreement as the settlement judge and agree that the parties may proceed with the  
26 terms and conditions set forth in this agreement. With the agreement of the parties, I retain jurisdiction  
27 to enforce the settlement agreement until payment is made.

28 Dated: ~~October 16~~ November 25, 2014

United States District Court Magistrate Judge

  
Nathaniel M. Courby

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