

**FILED**

**MAY 18 2004**

**CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

**BY** \_\_\_\_\_  
D E C K

1 WILLIAM R. TAMAYO - #084965 (CA)  
2 JONATHAN T. PECK - #12303 (VA)  
3 MARCIA L. MITCHELL - #18122 (WA)  
4 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
5 San Francisco District Office  
6 345 Spear Street, Suite 500  
7 San Francisco, CA 94105-1687  
8 Telephone No. (415) 625-5651  
9 Fax No. (415) 625-5657

10 Attorneys for Plaintiff

11 JOHN FOX  
12 ALLEN M. KATO  
13 FENWICK & WEST LLP  
14 275 Battery Street  
15 San Francisco, CA 94111  
16 Direct: 415-875-2464  
17 Fax: 415-281-1350

18 Attorneys for Defendant

**MAY 17 2004**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

**CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

**BY** \_\_\_\_\_  
D E C K  
WBS

19 EQUAL EMPLOYMENT OPPORTUNITY )  
20 COMMISSION, )  
21 )  
22 Plaintiff, )  
23 )  
24 v. )  
25 )  
26 A. TEICHERT & SONS, )  
27 Defendant. )

CIVIL ACTION NO.  
S-03-2049 WBS KJM

STIPULATION FOR DISMISSAL WITH  
PREJUDICE AND FOR RETENTION OF  
JURISDICTION BY THE COURT AND  
ORDER


28 Plaintiff Equal Employment Opportunity Commission and Defendant, A. Teichert &  
Sons, Inc. ("Teichert") by and through their undersigned counsel, hereby stipulate to dismissal  
with prejudice of all claims against Teichert. There are no remaining issues or parties in this  
action.


Stipulation & Order for Dismissal  
S-03-2049 WBS KJM


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Pursuant to Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375-381-82 (1994) and Flanagan v. Arnaiz, 143 F.3d 540, 543-44 (9th Cir. 1998), the parties further stipulate that this Court shall retain jurisdiction of this action for the purposes of resolving any disputes that may arise in the future regarding the parties' Settlement Agreement dated 5/10/04, attached hereto as Exhibit A to this Stipulation. The parties further agree that the Court's jurisdiction over this matter shall automatically expire one calendar year and sixty days from the date of the execution of the Settlement Agreement.

This stipulation is based on Rules 41(a)(1)(ii) of the Federal Rules of Civil Procedure and has been signed by counsel for all parties who have made an appearance in this action. The EEOC and Teichert agree to bear their own attorney fees and costs.


On behalf of Plaintiff  
  
WILLIAM R. TAMAYO  
Regional Attorney

On behalf of Teichert & Sons, Inc..  
  
JOHN FOX  
ALLEN KATO  
Fenwick & West,

~~LET~~  
  
JONATHAN T. PECK  
Supervisory Trial Attorney

  
MARCIA L. MITCHELL  
Senior Trial Attorney

APPROVED AND SO ORDERED:

  
U.S. District Judge William B. Shubb

**EXHIBIT A**  
**STIPULATION FOR DISMISSAL**  
**EEOC v. A. TEICHERT & SON**  
**CIV. NO. S-03-2049 WBS KJM**

**SETTLEMENT AGREEMENT BETWEEN  
THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
AND A. TEICHERT & SONS, INC.**

The parties to this Agreement are the United States Equal Employment Opportunity Commission and A. Teichert & Sons, Inc. The United States Equal Employment Opportunity Commission is referred to hereinafter as "EEOC". A. Teichert & Sons, Inc., its agents, employees, officials, designees, and successors in interest, are referred to hereinafter as "Teichert." Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq., is referred to hereinafter as "Title VII."

The parties being aware of the risks, uncertainties and costs of continued litigation want to conclude fully and finally all claims arising out of the EEOC v. A. Teichert & Sons, Inc., Civ. No. S-03-2049 WBS KJM, U.S. District Court for the Eastern District of California without the expenditure of further resources and expenses in contested litigation. This Settlement Agreement is intended to and does fully and finally resolve any and all claims arising out of the Complaint filed by the EEOC.

The parties hereby agree as follows:

1. This matter arises from a charge of discrimination filed by George Little with EEOC, charge number 375A00017, alleging race discrimination. The EEOC issued a determination letter finding reasonable cause to believe that Mr. Little was discriminated against on the basis of race. Conciliation failed and the EEOC filed this action pursuant to Section 706(f)(1) of Title VII, 42 U.S.C. § 2000e-5(f)(1).
2. Title VII applies to Teichert because it is an employer within the meaning of 42 U.S.C. § 2000e(b).
3. The Equal Employment Opportunity Commission has authority to file suit on EEOC charge number 375-A0-0017 under Title VII, 42 U.S.C. 2000e-5 (f) (1). The EEOC has authority to issue a determination on EEOC charge number 375A00017 under Title VII, 42 U.S.C. § 2000e, et seq.
4. Teichert has denied and continues to deny all allegations of wrongdoing in the charge of discrimination and the EEOC's lawsuit.
5. This Agreement is not an adjudication or finding on the merits of this case and shall not be construed as an admission of a violation of Title VII by Defendant.
6. George Little began work as a Gradesetter in Mark Cazares' grading crew in Teichert's Turlock, California Division in about April 2004. Teichert practice will allow Mr. Little to remain in that position as long as he is performing the duties of a Gradesetter satisfactorily, until Mr. Little determines that he no longer wishes to remain in that position, or until Cazares' grading crew ceases to exist.

### SPECIFIC PROVISIONS

7. The parties have determined that their respective interests can be met without engaging in protracted, costly and disruptive litigation to resolve this dispute, and have therefore voluntarily entered into this Agreement whereby the parties agree to the following:
  - a. In the event that Mr. Little cannot perform the functions of a Gradesetter, he shall return to work for Teichert as an Operating Engineer operating the heavy equipment that he is certified to operate;
  - b. Thirty (30) days, six months and 12 months from the effective date of this Agreement, Teichert will give Mr. Little an appraisal of his performance as a Gradesetter. The appraisal shall be conducted by his Foreman, utilizing the performance evaluation form that Teichert currently uses to appraise its Operating Engineer. See Exhibit A, attached hereto. The appraisal will provide written suggestions for improvement as appropriate. A copy of the appraisal will be forwarded to Doug Urbick, or his successor, and a copy shall be given to Mr. Little;
  - c. Any decision to remove Mr. Little from a Gradesetter position within one-year of the effective date of this Agreement for any reason shall be made in consultation with Doug Urbick, or his successor. A seasonal shutdown or other lack of work, if any, or a temporary assignment to operate heavy equipment (or other non-gradesetting tasks), shall not be considered "removal" from a Gradesetter position as to require such consultation.
  - d. Mr. Little shall not be retaliated against or penalized in any future considerations for wage increases, promotions, transfers or other employment-related matters because of having filed EEOC charge number 375-A0-0017 or because of proceedings arising out of that charge.
  - e. Teichert will notify the undersigned counsel in writing in the event that within one-calendar year following execution of this Agreement Teichert determines that it must remove Mr. Little from his position as Grade Setter.
8. Teichert shall upon request provide the EEOC with copies of the written appraisals described in paragraph 6(c).

### OTHER PROVISIONS

9. Consistent with Title VII, §2000e-3, Teichert its officers, agents, management (including supervisory employees), successors or assigns, and all those in active concert or participation with them, agree not to engage in, implement or permit any action, policy or practice with the purpose of retaliating against any current or former employee of

Defendant or its successor corporation because he or she opposed any practice of racial discrimination made unlawful under Title VII; filed a Charge of Discrimination alleging any such practice; testified or participated in any manner in any investigation (including, without limitation, any internal investigation undertaken by Teichert) proceeding or hearing in connection with this case and/or relating to any claim of discrimination; or was identified as a possible witness in this action.

10. Teichert warrants that Mr. Little's personnel files do not contain any references to a charge of discrimination against Defendant and this lawsuit.
11. A signatory to this document in a representative capacity for either party represents that he or she is authorized to bind that party to this Agreement.
12. This Settlement Agreement shall terminate within one year and sixty (60) days from the date of execution of this Agreement, unless the EEOC petitions this court for an extension of the Agreement because of noncompliance by Teichert. If the EEOC determines that Teichert has not complied with the Settlement Agreement, the EEOC will provide written notification of the alleged breach to Teichert and will not petition the court for enforcement sooner than thirty (30) days after providing written notification. The thirty-day period following written notice shall be used by the parties for good faith efforts to resolve the issue. If the EEOC petitions the court and the court finds Teichert in substantial violation of the terms of the Agreement, the court may extend this Settlement Agreement.
13. U.S. District Judge William B. Shubb shall retain jurisdiction over this action for the purposes of enforcing the provisions of this Settlement Agreement pursuant to Kokkenen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 381-82 (1994) and Flanagan v. Arnaiz, 143 F.3d 540, 543-44 (9th Cir. 1998) as discussed in the Stipulation and Order of Dismissal.

\*\*\*Agreement Continues On Next Page \*\*\*

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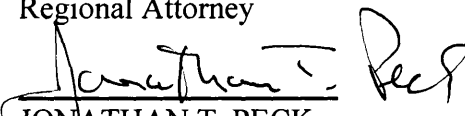
EFFECTIVE DATE

14. The effective date of this Agreement is the date of the last signature below. This agreement will expire on June 10, 2005.

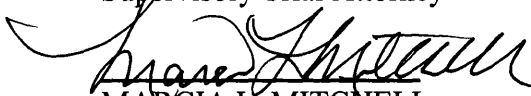
Dated: 5/13/04

  
\_\_\_\_\_  
WILLIAM R. TAMAYO  
Regional Attorney

Dated: 5/13/04

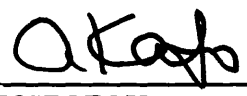
  
\_\_\_\_\_  
JONATHAN T. PECK  
Supervisory Trial Attorney

Dated: 5/13/04

  
\_\_\_\_\_  
MARCIA L. MITCHELL  
Senior Trial Attorney

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

Dated: 5/10/04

  
\_\_\_\_\_  
JOHN FOX  
ALLEN M. KATO  
FENWICK & WEST LLP  
Attorneys for Defendant

**EXHIBIT A**  
**to SETTLEMENT AGREEMENT**  
**EEOC v. A.TEICHERT & SON**



**TEICHERT CONSTRUCTION ~ EMPLOYEE PERFORMANCE EVALUATION**

EMPLOYEE: \_\_\_\_\_ BADGE #: \_\_\_\_\_ POSITION: \_\_\_\_\_

DISTRICT: \_\_\_\_\_ FOREMAN: \_\_\_\_\_ SUPERINTENDENT: \_\_\_\_\_

~~~~~  
 Successful job performance requires the following factors. Rate the employee's performance for each category based on the criteria 1 - 4.

RATING:      1 = **EXCEEDS EXPECTATIONS**    2 = **MEETS EXPECTATIONS**    3 = **NEEDS IMPROVEMENT**    4 = **DOES NOT MEET EXPECTATIONS**

\_\_\_\_\_ **ATTENDANCE**  
*Maintains good attendance and is punctual; seldom absent or tardy; reports absence or tardiness in advance; dependable.*  
*comments:* \_\_\_\_\_

\_\_\_\_\_ **COMPLIANCE WITH RULES**  
*Understands and follows all Company policies and procedures as outlined in the Company's Employee Handbook.*  
*comments:* \_\_\_\_\_

\_\_\_\_\_ **SAFETY PRACTICES**  
*Knows and understands safety rules, performs tasks in a safe manner, enforces safety rules in the performance of duties, demonstrates awareness and cooperation with the Company safety program.*  
*comments:* \_\_\_\_\_

\_\_\_\_\_ **JOB KNOWLEDGE**  
*Has demonstrated an understanding and knowledge of present job, the duties involved, and the use of related tools, materials, practices and techniques of the trade.*  
*comments:* \_\_\_\_\_

\_\_\_\_\_ **QUALITY OF WORK**  
*Performs job functions with attention to detail and quality, maintains positive customer service while working.*  
*comments:* \_\_\_\_\_

\_\_\_\_\_ **QUANTITY OF WORK**  
*Consistently works to meet production goals; maintains stamina and endurance to finish jobs in timely manner.*  
*comments:* \_\_\_\_\_

\_\_\_\_\_ **COOPERATION WITH CO-WORKERS**  
*Demonstrated willingness to assist others, maintains a positive work environment; is respectful of co-workers.*  
*comments:* \_\_\_\_\_

\_\_\_\_\_ **COOPERATION WITH SUPERVISOR**  
*Accepts direction and evaluation from supervisor, willing to assist in all areas to accomplish Company goals.*  
*comments:* \_\_\_\_\_

**WORK RELATED GOALS & ADDITIONAL COMMENTS:**  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I have reviewed this evaluation and have discussed the contents with my foreman. My signature means that I have been advised of my performance and does not necessarily imply that I agree with this evaluation.

\_\_\_\_\_  
 EMPLOYEE SIGNATURE / DATE

\_\_\_\_\_  
 FOREMAN SIGNATURE / DATE

\_\_\_\_\_  
 SUPERINTENDENT SIGNATURE / DATE

United States District Court  
for the  
Eastern District of California  
May 18, 2004

\* \* CERTIFICATE OF SERVICE \* \*

2:03-cv-02049

US Equal Employment

v.

Teichert and Son Inc

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on May 18, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Marcia L Mitchell  
Equal Employment Opportunity Commission  
San Francisco District Office  
350 Embarcadero Street  
Suite 500  
San Francisco, CA 94105-1687

SH/WBS

CF/KJM

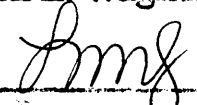
JDP/VDRP

John C Fox  
Fenwick and West LLP  
275 Battery Street  
Suite 1500  
San Francisco, CA 94111

Jehan N Jayakumar  
Fenwick and West LLP  
275 Battery Street  
Suite 1500  
San Francisco, CA 94111

Terry A Wigen  
Cook Brown LLP  
555 Capitol Mall  
Suite 425  
Sacramento, CA 95814

**Jack L. Wagner, Clerk**

  
\_\_\_\_\_  
Jack L. Wagner, Clerk