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11 Attorneys for Defendant
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

16 Plaintiff,

17 vs.

18 LUCE, FORWARD HAMILTON
& SCRIPPS, LLP,

19 Defendant.
20
21

Case No.: LA CV 00-1322 FMC (AIJx)

22 **SETTLEMENT AGREEMENT AND
ORDER DISMISSING WITH
PREJUDICE CLAIMS BY THE
UNITED STATES EQUAL
EMPLOYMENT OPPORTUNITY
COMMISSION ONLY [FRCP 41]**

Honorable Florence-Marie Cooper

23 This Settlement Agreement (hereinafter "Agreement") is entered into by
24 and between the United States Equal Employment Opportunity Commission
25 (hereinafter "EEOC") and Luce, Forward, Hamilton & Scripps LLP (hereinafter
26 "Luce Forward").

27 ///
28 ///

DOCKETED ON CM
JUN 22 2004
BY *M* 005

FILED
CLERK, U.S. DISTRICT COURT
JUN 18 2004
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY
BY *[Signature]*

SCANNED

and

LOGGED

JUN 17 PM 2:51
CLERK, U.S. DIST. OF CALIF.
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

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RECITALS

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1. On or about March 4, 1998, Donald Lagatree filed a Charge of Discrimination with the EEOC against Luce Forward in which he claimed that he was unlawfully retaliated against because he refused to sign a mandatory arbitration agreement. On May 1, 1998, the EEOC issued a Letter of Determination in which it found cause to believe that Luce Forward unlawfully retaliated against Mr. Lagatree in violation of Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Equal Pay Act and the Americans with Disabilities Act.

2. On February 7, 2000, the EEOC filed a complaint against Luce Forward in the United States District Court, Central District of California, being Case No. 00-01322 FMC (the "Complaint"). In the Complaint, the EEOC alleged that Luce Forward engaged in unlawful retaliation under Title VII of the Civil Rights Act of 1964; as amended, the Age Discrimination in Employment Act of 1967, as amended, the Equal Pay Act and the Americans with Disabilities Act when it terminated or, in the alternative, failed to hire Mr. Lagatree because he refused to sign a mandatory arbitration agreement. In the Complaint, the EEOC sought to recover monetary damages on behalf of Mr. Lagatree and prospective injunctive relief.

3. The EEOC and Luce Forward filed cross-motions for summary judgment. In an order dated November 21, 2000, the District Court concluded that all claims for monetary relief in the Complaint were barred by *res judicata* and therefore granted partial summary judgment in favor of Luce Forward to that extent. Based upon the Ninth Circuit's decision in Duffield v. Robertson Stephens & Co., 144 F.3d 182 (9th Cir. 1998), the District Court enjoined Luce Forward from requiring or requesting its employees to agree to arbitration of their Title VII claims as a condition of employment and attempting to enforce any such

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1 previously executed agreements to arbitrate Title VII claims. Judgment was
2 entered on December 11, 2000.

3 4. Both the EEOC and Luce Forward appealed that portion of the District
4 Court's order that granted injunctive relief (the "Ninth Circuit Appeal"). During
5 the Ninth Circuit Appeal, the Ninth Circuit permitted Mr. Lagatree to intervene in
6 the action.

7 5. On September 30, 2003, the United States Court of Appeals for the Ninth
8 Circuit, on rehearing en banc, rendered its opinion in the case. Equal Employment
9 Opportunity Commission v. Luce, Forward, Hamilton & Scripps LLP, 345 F.3d
10 742 (9th Cir. 2003). The Ninth Circuit overruled its prior decision in Duffield,
11 reversed the judgment of the District Court insofar as it granted the EEOC's
12 request for injunctive relief, and remanded to the District Court the issue of the
13 EEOC's request for injunctive relief based upon its retaliation theory. The Court
14 of Appeals denied rehearing. The time to petition for a writ of certiorari has
15 expired, no petition has been filed, and the Court of Appeals issued its mandate
16 vesting jurisdiction in the District Court.

17 6. The EEOC and Luce Forward desire to settle and compromise any and all
18 possible claims between them arising out of or related in any way to the
19 Determination, the Complaint or the Ninth Circuit Appeal. The parties agree and
20 understand that Mr. Lagatree is not a party to this Agreement, and that he may
21 proceed with the action to the extent he is permitted to do so by law.

22 **AGREEMENT**

23 7. Arbitration Agreement. If Luce Forward requires new hires or current
24 employees to sign a pre-dispute arbitration agreement, the agreement must comply
25 at a minimum with the standards set forth under applicable California and federal
26 law. Attached to this Agreement as Exhibit "A" is the pre-dispute arbitration
27 agreement that Luce Forward will implement if it requires new hires or current
28 employees to sign the pre-dispute arbitration agreements. Luce Forward will take

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1 steps to ensure that employees are informed that the JAMS Employment
2 Arbitration Rules and Procedures are available at www.jamsadr.com. Luce
3 Forward may make changes to its pre-dispute arbitration agreement in the future
4 to conform the agreement to the then-applicable standards under California and
5 federal law. If there is any conflict among them, (1) applicable law supercedes
6 this Settlement Agreement, the attached Arbitration Agreement, and the JAMS
7 Employment Arbitration Rules and Procedures, and (2) this Settlement Agreement
8 and the attached Arbitration Agreement supercede the JAMS Employment
9 Arbitration Rules and Procedures.

10 8. Notice to Employees. Luce Forward agrees to display in a conspicuous
11 location at each of its offices a notice to all employees stating that despite an
12 employee's individual agreement to arbitrate claims with an employer, the EEOC
13 has the independent right to file cases in the public interest pursuant to Equal
14 Employment Opportunity Commission v. Waffle House, Inc., 534 U.S. 279
15 (2002), and seek relief available under federal civil rights laws including victim-
16 specific remedies.

17 9. Release. The Parties agree that this Settlement Agreement resolves all claims
18 between them arising out of or relating to EEOC Charge No. 340980694, and the
19 complaint filed in this action, and constitutes a complete resolution of all claims
20 that were made or could have been made by the Commission in this action. The
21 Settlement Agreement does not, however, resolve any future charges or any other
22 charges that may be pending with the Commission other than the charge
23 specifically referred to in this paragraph.

24 10. Dismissal With Prejudice of Case and Jurisdiction. The EEOC will dismiss
25 with prejudice its claims against Luce Forward in this case Equal Employment
26 Opportunity Commission v. Luce, Forward, Hamilton & Scripps LLP, LA CV 00-
27 1322 FMC (AIJx). The parties agree that the Court shall retain jurisdiction to
28 enforce the provisions of this agreement for a period of three years unless for good

1 cause the Court extends the jurisdiction beyond the three years.

2 11. Entire Agreement. The parties declare and represent that no promise,
3 inducement or agreement not herein expressed has been made to them and that
4 this Agreement contains the full and entire agreement between and among the
5 parties, and that the terms of this Agreement are contractual and not a mere recital.

6 12. Costs and Attorneys' Fees. The EEOC and Luce Forward will bear their
7 own costs and attorneys' fees incurred in connection with all proceedings between
8 them in this matter.

9 13. Complete Defense. This Agreement may be pleaded as a full and complete
10 defense against any action, suit or proceeding that may be prosecuted, instituted or
11 attempted by either party in breach thereof.

12 14. Severability. If any provision of this Agreement, or part thereof, is held
13 invalid, void or voidable as against public policy or otherwise, the invalidity shall
14 not affect other provisions, or parts thereof, which may be given effect without the
15 invalid provision or part. To this extent, the provisions, and parts thereof, of this
16 Agreement are declared to be severable.

17 15. No Admission of Liability. It is understood that this Agreement is not an
18 admission of any liability by Luce Forward.

19 16. Successors and Assigns. This Agreement shall be binding upon and inure
20 to the benefit of the parties hereto and their respective heirs, legal representatives,
21 successors and assigns.


22 17. Counterparts. This Agreement may be signed in counterparts. A facsimile
23 signature shall have the same force and effect of an original signature or copy
24 thereof.

25 The EEOC and Luce Forward have read this Agreement and know its contents
26 and fully understand it. The parties acknowledge that they fully understand the
27 consequences of this Agreement. No party is being influenced by any statement
28 made by or on behalf of any of the other party to this Agreement. The parties have

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1 relied and are relying solely upon their own judgment, belief and knowledge of the
2 nature, extent, effect and consequences relating to this Agreement concerning the
3 consequences of this Agreement.

4 IN WITNESS WHEREOF, the undersigned have executed this Agreement on
5 the dates shown below.

6
7 Respectfully submitted,
8 Dated: June 17, 2004 U.S. EQUAL EMPLOYMENT
9 OPPORTUNITY COMMISSION
10 ANNA Y. PARK
11 PETER LAURA
12 By: 
13 Anna Y. Park
14 Peter F. Laura

15 Attorneys for Plaintiff
16 Dated: June __, 2004 LUCE, FORWARD, HAMILTON &
17 SCRIPPS, LLP
18 CHARLES A. BIRD
19 KELLY CAPEN DOUGLAS
20 By: _____
21 Charles A. Bird
22 Kelly Capen Douglas
23 Attorneys for Defendant

ORDER

24 The Commission's claims in this lawsuit are hereby dismissed with
25 prejudice. This Court shall retain continuing jurisdiction to enforce the settlement
26 of this lawsuit for a period of three years unless for good cause the Court extends
27 the jurisdiction beyond the three years.

28 Dated: 6/18/04

FLORENCE-MARIE COOPER
United States District Judge

SEALING

1 relied and are relying solely upon their own judgment, belief and knowledge of the
2 nature, extent, effect and consequences relating to this Agreement concerning the
3 consequences of this Agreement.

4 IN WITNESS WHEREOF, the undersigned have executed this Agreement on
5 the dates shown below.

6
7 Respectfully submitted,
8 Dated: June __, 2004 U.S. EQUAL EMPLOYMENT
9 OPPORTUNITY COMMISSION
10 ANNA Y. PARK
11 PETER LAURA
12 By: _____
13 Anna Y. Park
14 Peter F. Laura

15 Dated: June 17, 2004 Attorneys for Plaintiff
16 LUCE, FORWARD, HAMILTON &
17 SCRIPPS, LLP
18 CHARLES A. BIRD
19 KELLY CAPEN DOUGLAS
20 By: _____
21 Charles A. Bird
22 Kelly Capen Douglas
23 Attorneys for Defendant

ORDER

24 The Commission's claims in this lawsuit are hereby dismissed with
25 prejudice. This Court shall retain continuing jurisdiction to enforce the settlement
26 of this lawsuit for a period of three years unless for good cause the Court extends
27 the jurisdiction beyond the three years.

28 Dated: _____
FLORENCE-MARIE COOPER
United States District Judge

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DECLARATION OF MAILING

I am, and was at the time the herein mentioned mailing took place, a citizen of the United States, over the age of eighteen (18) years and not a party to the above-entitled cause.

I am employed in the Legal Unit of the Los Angeles District Office of the United States Equal Employment Opportunity Commission.

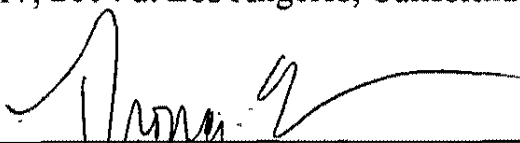
My business address is Equal Employment Opportunity Commission, Los Angeles District Office, 255 East Temple Street, Fourth Floor, Los Angeles, CA 90012.

On the date that this declaration was executed, as shown below, I served the foregoing **SETTLEMENT AGREEMENT AND ORDER DISMISSING WITH PREJUDICE CLAIMS BY THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ONLY [FRCP 41]** by mail in sealed envelopes with postage therein fully prepaid, in regular mail at Los Angeles, County of Los Angeles, State of California, which were addressed as follows:

Cliff Palefsky
McGUINN, HILLSMAN & PALEFSKY
535 Pacific Avenue
San Francisco, CA 94133

Kelly Capen Douglas
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
600 West Broadway, Suite 2600
San Diego, CA 92101

I declare under penalty of perjury that the foregoing is true and correct.
Executed on June 17, 2004 at Los Angeles, California.



Thomas E. Profit

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ARBITRATION AGREEMENT

It is hereby mutually agreed between the undersigned Employee and Luce, Forward, Hamilton & Scripps LLP ("Luce Forward") that any and all disputes between them, including but not limited to disputes arising out of or relating to Employee's employment or the termination of Employee's employment, will be subject to resolution only through final and binding arbitration in accordance with the applicable employment arbitration rules and procedures of JAMS (also known as Judicial Arbitration and Mediation Services), as modified by applicable law and the terms of this Agreement. JAMS' employment rules and procedures are available at www.jamsadr.com. The claims covered by this Agreement include, but are not limited to: contract claims; tort claims; wrongful termination claims; claims of discrimination, harassment or retaliation; wage claims; and claims for violation of any public policy, federal, state or other governmental law, statute, regulation or ordinance.

Nothing in this Agreement is intended to prohibit Employee from filing a claim or communicating with the United States Equal Employment Opportunity Commission ("EEOC") or the California Department of Fair Employment and Housing ("DFEH"). There are time limitations to file a claim with the EEOC and the DFEH. This is not intended to provide legal advice; however, in most cases, in order to pursue a claim with the EEOC for discrimination under the federal civil rights laws, Employee must file a claim within 300 days of the last act of discrimination. In order to pursue a claim with the DFEH under the California Fair Employment and Housing Act, Employee must file, in most circumstances, within one year of the alleged unlawful practice.

1. Arbitration Procedure. A demand for arbitration giving notice of any claim sought to be arbitrated must be filed with JAMS within the limitations period established by applicable state law, or if the dispute raises issues that would support federal jurisdiction, by applicable federal law. A neutral arbitrator will conduct the arbitration and will be selected in accordance with the JAMS employment arbitration rules and procedures. The arbitration generally will take place in the city where Employee was last employed by Luce Forward. Employee may initiate an arbitration in the city where Employee resides at the time of the request for arbitration, provided, however, that the Employee resides in a state where Luce Forward maintains an office and the arbitrator has the authority to consider a motion by either party to change the venue of the arbitration and/or arbitration proceedings. The arbitrator has authority to resolve all or portions of the dispute through a summary judgment motion and related proceeding(s). The arbitrator must allow the parties discovery sufficient to adequately arbitrate their claims and defenses, even if the JAMS rules and procedures are more restrictive. The arbitrator must render a written arbitration decision that reveals the essential findings and conclusions on which the decision is based. A party's right to appeal the decision is limited to grounds provided under applicable state law or, if the dispute raises issues that would support federal jurisdiction, under applicable federal law.

2. Fees and Costs. In no event will Employee be required to pay administrative fees in excess of the fees (if any) which would have been incurred by Employee had the dispute(s) arbitrated under this Agreement been litigated in state court or, if the dispute raises issues that would support federal jurisdiction, in federal court. Luce Forward will be responsible for all administrative fees exceeding such amount. Luce Forward also will be responsible for paying the arbitrator's hourly fees. The types of costs (as limited herein) for which Employee may be responsible include without limitation filing fees, deposition costs, service of process costs, witness fees and transcript costs. The prevailing party in the arbitration is entitled to recover such actual costs that the prevailing party would be entitled to recover in state court or, if the dispute raises issues that would support federal jurisdiction, in federal court.

3. Remedies. The arbitrator has authority to order all remedies that would be available to the parties if the dispute between them was litigated in state court or, if the dispute raises issues that would support federal jurisdiction, in federal court. Attorneys' fees may be recovered by either party when authorized by contract, statute or law. In statutory claims of discrimination, the arbitrator may award reasonable attorneys' fees (including expert fees) to either party as the prevailing party if it would be entitled to recover such fees in accordance with applicable legal standards in state court or, if the dispute raises issues that would support federal jurisdiction, in federal court. Any such award against the employee must comply with the legal standards in Christiansburg Garment Co. v. EEOC, 434 U.S. 412 (1978).

4. Severability/Entire Agreement. Should any portion of this Agreement be found to be unenforceable, such portion will be severed from this Agreement, and the remaining portions shall continue to be enforceable in order to give effect to the parties' intent to resolve all disputes between them exclusively through arbitration. This Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter of this Agreement and is subject to modification only through a written instrument executed by both parties.

EMPLOYEE AND LUCE FORWARD HEREBY KNOWINGLY AND VOLUNTARILY WAIVE THEIR LEGAL RIGHTS TO HAVE ANY DISPUTE BETWEEN THEM DECIDED BY A COURT OR PRESENTED TO A JURY.

Employee's Signature

Date

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

By: Robert J. Bell, Managing Partner

Date