

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-06-185-R
)	
LANGSTON UNIVERSITY, ex rel., THE)	
BOARD OF REGENTS FOR THE)	
OKLAHOMA STATE UNIVERSITY AND))	
AGRICULTURAL AND MECHANICAL)	
COLLEGES, a state agency,)	
)	
Defendant,)	
)	
and,)	
)	
BARBARA J. CRAIG, Ph.D.,)	
)	
Additional Party Plaintiff)	
and Intervenor.)	

**DEFENDANT’S MOTION AND BRIEF TO ENFORCE SETTLEMENT
AND REQUEST FOR A HEARING BEFORE THE COURT**

Defendant (“Langston”)¹ in the above-styled case files Motion and Brief to Enforce Settlement in this case on the basis that the parties reached a settlement of this case at a lengthy Settlement Conference conducted by the Honorable Magistrate-Judge Doyle W. Argo on February 26, 2008 which the Plaintiff is now refusing to abide by. The history of the process that reached the settlement on February 26, 2008 is as follows.

1. On September 11, 2007, there was a settlement conference before Magistrate Judge Doyle W. Argo. The parties appeared, and an apparent settlement was reached. After

¹Langston University, the decision-maker in this case, is governed by the Board of Regents. Okla. Stat. tit. 70, § 3412.

the settlement was believed to have been reached on September 11, 2007, this Court entered an administrative closing order for forty-five (45) days. (Doc. 72).

2. Following the settlement conference, Plaintiff/Intervenor Craig filed a motion to clarify and/or modify the settlement agreement. (Doc. 74).

3. On December 12, 2007, this Court entered an Order granting a request for an extension of the administrative closing order deadline sixty (60) days or until January 31, 2008. (Doc. 82). The Order also held in abeyance the motion to clarify and invited the parties to file a motion for settlement conference if they chose to do so.

4. On December 26, 2007, Plaintiff/Intervenor Craig filed a motion for a settlement conference (Doc. 83), and that request was granted by this Court on January 16, 2008. (Doc. 85). A settlement conference was scheduled for February 26, 2008 at 9:00 a.m. before Magistrate Judge Doyle W. Argo. (Doc. 86).

5. On February 26, 2008, the parties attended a second settlement conference before Magistrate-Judge Doyle W. Argo, and, as mentioned previously, a settlement was reached. Attach. A. (Doc. 89).

6. The settlement, and its terms, were announced by Magistrate-Judge Doyle W. Argo at the conclusion of the settlement conference on February 26, 2008. See Attachment A, attached. (Doc. 89).

7. Defendant Langston has been advised by Plaintiff's attorneys that Plaintiff Barbara Craig now does not agree to certain aspects of the settlement that were agreed to by her and Langston on February 26, 2008.

8. Defendant Langston contends that the settlement in this case should be enforced in a manner consistent with Attachment B, the Sworn Declaration of Michael Scott Fern, Associate General Counsel for OSU, who was present during the settlement conference on February 26, 2008 and who was present when the settlement and its terms were announced.

9. Defendant Langston believes that Magistrate-Judge Argo will agree with the material terms of the settlement set forth in Mr. Fern's Sworn Declaration, and respectfully requests that this Court inquire of Magistrate-Judge Argo of his opinion in this regard.

10. Defendant respectfully requests the Court to consider Attachments A and Attachment B and Exhibits 1-6 attached to it, when considering this Motion.

ARGUMENT

Langston contends that a settlement of all issues in this case was in fact reached on February 26, 2008. Magistrate-Judge Argo was present when the settlement was reached, and he went over with all parties in detail and while they were all together in one room all terms of the settlement. On February 29, 2008, Magistrate-Judge Argo entered an Order stating that the case had been settled. (Doc. 89). See Attachment A, attached.

The Plaintiff Craig and her attorneys and JoAnn Haysbert, President of Langston University, and Board of Regents' Associate General Counsel Scott Fern were each present at the February 26, 2008 Settlement Conference, where the parties reached a settlement. Mr. Fern has submitted a Sworn Declaration which sets forth what Defendant contends are the terms of the settlement agreement of this case. (Attach. B). Defendant requests that the

Court inquire of Judge Argo about the settlement agreement in this case, who has complete knowledge about the terms of the settlement and the discussions and proceedings that resulted in it.

Defendant Langston requests that the Court enter an Order enforcing the settlement agreement in accordance with the Sworn Declaration of Mr. Fern and the statements of Magistrate-Judgment Argo. Referred to in Mr. Fern's Declaration in ¶ 21, and attached to his Declaration as Exhibit 3, is a letter Mr. Fern wrote Mr. Ward, Plaintiff's attorney, dated March 25, 2008. Attached to the March 25, 2008 letter of Mr. Fern's is a draft of a Settlement Agreement, which Langston contends accurately reflects the settlement that the parties entered into on February 26, 2008. Accordingly, Defendant Langston requests the Court issue an order requiring Plaintiff to execute that Settlement Agreement.

There is a legally binding settlement agreement between the parties and Defendant Langston respectfully requests the Court to enforce that agreement. A trial court has the power summarily to enforce a settlement agreement entered into by the litigants. United States v. Hardage, 982 F.2d 1491, 1496 (10th Cir. 1993). See also Gates Corp. v. Bando Chemical Industries, Ltd., 4 Fed. Appx. 676, 682 (10th Cir.2001) (noting that the district court has the power to summarily enforce a settlement agreement entered into by the litigants while the litigation is pending before it). The trial court's enforcement of a settlement agreement is reviewed for an abuse of discretion. Hardage, 982 F.2d at 1495. In Hardage, after the case was remanded, in United States v. Hardage, No. CIV-86-1401-W, 1994 WL

159410 (W.D.1994), the district court held a hearing on the motion to enforce settlement agreement. In the proceedings after the remand, the district court enforced the settlement agreement after hearing testimony. This enforcement of the settlement agreement by the Honorable Lee R. West of the Western District of Oklahoma was then upheld by the Tenth Circuit in United States v. Hardage, 53 F.3d 343 (10th Cir. 1995).

“Issues involving the formation and construction of a purported settlement agreement are resolved by applying state contract law,” United States v. McCall, 235 F.3d 1211, 1215 (10th Cir.2000), citing Carr v. Runyan, 89 F.3d 327, 331 (7th Cir.1996). But see Snider v. Circle K Corp., 923 F.2d 1404, 1407-08 (10th Cir.1991) (“Although Title VII settlement agreements are contracts, they are inextricably linked to Title VII,” thus trial court erred in allowing jury to decide breach of settlement agreement claim, since Title VII actions triable only to the court). See also Gates Corp. v. Bando Chemical Industries, Ltd., 4 Fed. Appx. 676, 682 (10th Cir.2001) (“Issues involving the formation and construction of a purported settlement agreement are resolved by applying state contract law,” citing United States v. McCall, supra, “even when there are federal causes of action in the underlying litigation,” citing United Com. Ins. Serv., Inc. v. Paymaster Corp., 962 F.2d 853, 856 (9th Cir.1992).

In Sheng v. Starkey Laboratories, Inc., 117 F.3d 1081, 1083 (8th Cir. 1997), the court held that an agreement settling the employee’s Title VII claims against the employer was an enforceable contract, despite the fact that there were continuing discussions on matters such as the tax treatment of the payment and other particulars, such as the wording of clauses

regarding confidentiality, disclaimers and the release of liability. The court noted that an enforceable settlement requires the parties to reach only agreement on the essential terms of the deal. Id. “Settlement agreements that do not expressly resolve ancillary issues can, nevertheless, be enforceable.” Id. The court held that an enforceable contract was formed, and that the district court erred in dismissing the action based on the settlement agreement. In Berne v. Boschulte, 296 F. Supp. 2d 625, 628-29 (D.V.I. 2004), the court granted the motion to enforce the settlement agreement holding that the corporate officers were required to comply with the settlement agreement calling for them to sell their shares to the corporation’s president even though the settlement agreement did not specify a time for performance or said that time was of the essence.

“A contract is not void for uncertainty even though it does not enter into all the details with respect to its subject-matter, if, according to its terms, it is sufficiently definite so that it can be ascertained with a reasonable degree of certainty what the parties intended to agree to.” Webb v. Moran, 1939 OK 369, 96 P.2d 308, 312. It is well settled that settlement agreements may be oral. See Russell v. Bd of Cnty Com’rs of Carter County, 2000 OK CIV APP 21, 1 P.3d 442, 443; Phillips Pet. Co. v. Buster, 241 F.2d 178, 184 (10th Cir. 1957); Reid v. Graybeal, 437 F. Supp. 24, 27 (W.D. Okla.1977) (fact that settlement agreement is oral does not affect validity); Sheng, 117 F.3d at 1083 (settlement agreements that have not yet expressly resolved ancillary issues are enforceable); Spraggins v. Reed, No. CIV-04-1384, 2006 WL 1304958 (D. N. M. 2006) (noting that an oral agreement is enforceable).

“The fact that the parties left some details for counsel to work out during later negotiations cannot be used to abrogate an otherwise valid agreement.” Sheng, 117 F.3d at 1083.

In Watson v. Marinovich, No. CIV-98-2380, 1999 WL 450950 at *2 (D. Kan. 1999), the court sustained the plaintiffs’ motion to enforce the settlement where the defendants attempted to withdraw from the settlement and had proposed a different form of release and settlement agreement than the one that the defendants had tendered. The court noted that the defendants had communicated an offer to settle on two material terms and noted that the Kansas Supreme Court had upheld a similar settlement agreement where the only terms of the offer were the amount of money and dismissal. Id. at *3. The court found that a hearing on the plaintiffs’ motion to enforce would serve no identifiable purpose. Id. at *4.

In Pittsburgh Testing Laboratory v. Farnsworth & Chambers Company, Inc., 251 F.2d 77 10th Cir. 1958), the court held that an oral agreement between a general contractor and a subcontractor for additional compensation was enforceable, and reversed the district court’s ruling that it was not. The court noted that an agreement which compromises a bonafide dispute concerning duties and obligations under a existing contract, is supported by valid consideration and is enforceable. Id. at 79.

In In re Anderson, No. 04-29079, 2006 W L 4846387 (D. Utah 2006), the court enforced the material terms of the oral settlement agreement. The court cited the case of Russell v. Board of County Commissioners 2000 OK CIV APP 21, 1 P3d 442, in noting that the court’s review of Oklahoma law demonstrated no appreciable difference with respect to

the enforcement of oral settlement agreements. Id. at n.9.

In Wilson v. Wilson, 46 F.3d 660, 664-66 (7th Cir. 1995), the court, citing United States v. Hardage, 982 F.2d 1491 (10th Cir. 1993), the court held that the district court did not abuse its discretion in enforcing a settlement agreement even though the defendants contended that the parties never agreed on whether the plaintiffs promised to drop pending claims would take the form of mutual releases or mutual covenants not to sue.

As was noted previously, the Tenth Circuit reviews the district court's decision to enforce such an agreement for an abuse of discretion. Shoels v. Klebold, 375 F.3d 1054, 1060 (10th Cir. 2004). In Shoels, the court upheld a settlement agreement involving the Columbine Colorado murder case. The court noted that a trial court has the power to summarily enforce a settlement agreement entered into by the litigants where the litigation is pending before it. Id. Issues involving the formation and construction of a purported settlement agreement are resolved by applying state contract law. Id. at 1060.

In Malave v. Carney Hospital, 170 F.3d 217, 220 (1st Cir. 1999), the court cited Hardage, and noted that a trial court has the power to summarily enforce a settlement agreement entered into by litigants while the litigation is pending before it. The court noted that when a district court proposes to summarily to enforce a settlement, it must first ascertain whether or not a binding agreement in fact existed. Id. In Malave, the court held that there were too many unanswered questions as to the existence of the agreement; therefore, the court ought not to have granted the motion to enforce without taking evidence

in resolving disputed issues of material fact. Id. at 222-23.

In United Commercial Insurance Service, Inc. v. Paymaster Corporation, 962 F.3d 853, 856 (9th Cir. 1992), the court noted that the construction and enforcement of settlement agreements are governed by principles of local law which apply to interpretation of contracts generally. This is true even though the underlying cause of action is federal. Id. The court noted that a settlement agreement is treated as any other contract for purposes of interpretation. Id. The court noted that where factual questions are not readily ascertainable from the declarations of witnesses or questions of credibility predominate, the district court should hear oral testimony. Id. at 858. However, in this case, the admission by one of the parties left the primary issue before the court to be a legal question and what factual issues that existed were undisputed, and little purpose would be served by rule requiring oral testimony. Id. The court upheld the district court's enforcement of the settlement agreement.

Defendant also requests the Court to order a hearing in this matter if the Court believes that this is necessary.

CONCLUSION

Defendant Langston respectfully requests that the Court enforce the settlement agreement reached between the parties before Magistrate-Judge Argo on February 26, 2008. Langston requests the Court to order the parties to execute the written agreement referred to in the letter of Mr. Fern referred in Attachment B, ¶ 21, Exhibit 3. And, if the Court deems it necessary, Langston also requests a hearing on this matter before the Court.

Respectfully submitted,

/s/David W. Lee

David W. Lee, OBA #5333

Ambre C. Gooch, OBA #16586

LEE & GOOCH, P.C.

6011 N. Robinson Avenue

Oklahoma City, OK 73118-7425

(405) 848-1983/Fax: (405) 848-4978

Email address: leelawok@swbell.net

Michael Scott Fern

Oklahoma State University

Student Union Building, Room 220

Stillwater, OK 74078

(405) 744-6494/Fax: (405) 744-7998

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2008, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Stanley M. Ward
Woodrow K. Glass
Scott F. Brockman
Ward & Glass, L.L.P.
1821 E. Imhoff Road, Suite 102
Norman, OK 73071

Wan J. Kim, Asst. Attorney General, Civil Rights Division
David J. Palmer, Chief, Employment Litigation Section
Christine M. Roth
Charles E. Leggott
United States Department of Justice
Civil Rights Division
Employment Litigation Section, PHB
950 Constitution Avenue N.W.
Washington, DC 20530

/s/David W. Lee

David W. Lee

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-06-185-R
)	
LANGSTON UNIVERSITY, ex rel., THE)	
BOARD OF REGENTS FOR THE)	
OKLAHOMA STATE UNIVERSITY AND))	
AGRICULTURAL AND MECHANICAL)	
COLLEGES, a state agency,)	
)	
Defendant,)	
)	
and,)	
)	
BARBARA J. CRAIG, Ph.D.,)	
)	
Additional Party Plaintiff)	
and Intervenor.)	

DECLARATION OF MICHAEL SCOTT FERN

I, Michael Scott Fern, being first duly sworn, depose and say:

1. I currently serve as Associate General Counsel for the Board of Regents for Oklahoma State University and the Agricultural and Mechanical Colleges. In such capacity, I provide legal advice, assistance, and representation to the Board of Regents and to officials of the various institutions of higher education governed by the Board of Regents, one of which is Langston University. I have provided such legal services to the Board and its institutional officials continuously since December 10, 1990.

2. On February 26, 2008, I personally attended a Settlement Conference

conducted in this matter under the supervision of the Honorable Doyle Argo, United States Magistrate. Also in attendance were my co-counsel in this matter, Mr. David Lee, representing Langston University; Dr. JoAnn Haysbert, President of Langston University; Ms. Lou Watkins, Chairperson for the Board of Regents; Ms. Linda Brown, Assistant Attorney General, representing the Oklahoma Department of Central Services; Ms. Ann Allison, representing the excess insurance carrier for the State of Oklahoma; the Plaintiff; and her attorneys, Stanley M. Ward and Scott Brockman. This was not the first Settlement Conference held in this matter. A prior Settlement Conference was conducted in this matter on September 11, 2007, at which time Defendant earlier had believed that this matter was settled by the parties.

3. After several hours of negotiation, the parties came to an agreement regarding the resolution of this matter, together with a number of related matters regarding not only the Plaintiff, Dr. Barbara Craig, an employee of Langston University, but also her husband, Dr. Philip Schapiro, who also is an employee of Langston University.

4. At the conclusion of the Settlement Conference, Judge Argo read through his notes reflecting the various terms and conditions agreed to by the parties in this matter. Judge Argo stated that affirmation of agreement with those statements would constitute a full and final resolution of the matters referenced therein. He then asked each individual in the room to personally affirm that they agreed to the terms set forth in his statements. All persons present did so.

5. Attached to this Declaration is a true and correct copy of my personal handwritten notes taken at the time that Judge Argo read through the terms of the Agreement.

Such handwritten notes, attached as Exhibit 1, reflect as follows:

Deal - Final 2/26/08

Pay 183,240 in full
30,426 withholding
 π finish year at current \$
LU pays 6 month sabb at full pay - w/usual benefits other than SL
Resignation eff 12/31/08 - sabb 8/1 thru 12/31
LU zero out SL as of 3/1 - give her 5 days SL in aca yr.
Use it or lose it
16 hrs AL use it or lose it
If needed, doc statement up to 5 more SL
During sabbatical 16 AL accumulates or paid - at end on 12/31
LU pays balance of 6 month at 60% - should be 2 months as
Of end of April
K w/AmFed - pursue necc. doc. if needed - will talk to AmFed on issue
Schpiro resigns eff. 4/30/08
 π dismisses EEOC claim
Dis/Prej of all claims -
30 days
3 checks
Execute all docs needed

6. These notes reflected the agreements of the parties that the Plaintiff, Dr. Craig, would receive \$183,240.00 in lump sum payments for her various claims, of which \$30,426.00 was for lost income and, therefore, all required state and federal withholdings would be deducted from that sum, and the remainder would not be subject to withholdings as such constituted payment for personal injuries allegedly suffered by the Plaintiff.

7. These payments were to be made within thirty (30) days of final execution of

the Settlement Agreement to be formally signed by the parties. At the request of Plaintiff's legal counsel, three checks were to be prepared by the University, one in an amount of \$30,426.00 (less withholdings), and two others, one payable to the Plaintiff and one to her legal counsel, in amounts to be supplied later by Dr. Craig's legal counsel.

8. Additionally, the Plaintiff would continue to work the remainder of the 2007-2008 academic school year in her then-current role as a faculty member at the same rate of pay she was being paid that year.

9. Additionally, Langston University would provide the Plaintiff with a paid sabbatical, starting on August 1, 2008 and ending on December 31, 2008 in an amount equal to her regular rate of pay for the 2007-2008 academic year, together with payment of all usual job-related benefits accorded to members of the faculty at Langston University, with only the accumulation of Sick Leave excepted.

10. With reference to the Plaintiff's unused, accumulated Sick Leave, the parties agreed that all such Sick Leave would be "zero'd out", meaning it would be considered exhausted completely and the Plaintiff would receive no payment for such Sick Leave, except that she would be afforded the right to use up to five (5) days of Sick Leave during the remainder of the 2007-2008 academic year, and the opportunity to use an additional five (5) days of Sick Leave upon certification of need by a physician to attend to the medical needs of herself or her husband, Dr. Philip Schapiro, during the 2007-2008 academic year. The parties also agreed, as to this clause, that if Dr. Craig did not actually use such Sick Leave,

it would be forfeited and Langston University would not be required to make any monetary payments to her for such unused Sick Leave.

11. Additionally, the parties agreed that Dr. Craig would be granted the usual accumulation of sixteen (16) hours of Annual Leave normally afforded to faculty members of Langston University in the 2007-2008 academic year and an additional sixteen (16) hours of Annual Leave during her sabbatical as referenced in Paragraph 9, above. She would receive no payment for the 2007-2008 accumulation of Annual Leave if she did not exhaust such prior to the end of the academic year, but would receive payment for any of the sixteen (16) of hours unused Annual Leave accrued during her sabbatical period.

12. The Plaintiff is married to Dr. Philip Schapiro, also a member of the faculty of Langston University. Throughout the negotiations relating to this case on February 26, 2008, the parties also discussed pending legal claims and issues related to Dr. Schapiro as part of the Settlement. Dr. Schapiro has been the victim of a number of strokes in recent years, and Dr. Craig, the Plaintiff herein, has acted with the University on his behalf for several years through a Power of Attorney executed by Dr. Schapiro.

13. Langston University, for many years, has provided long term disability insurance coverage for its faculty employees. That insurance is contracted for with the American Fidelity Assurance Company and does not become effective until six months have passed from the date that an employee makes an application with American Fidelity for such insurance payments. During the six (6) months from the date an employee initially files for

long term disability payments, and the date of eligibility, Langston University makes short-term disability payments to the employee at the rate of sixty percent (60%) of the employee's regular rate of pay.

14. Prior to the Settlement Conference conducted in this matter on February 26, 2008, Dr. Craig, acting on her husband's behalf, filed for Dr. Schapiro to be placed on long term disability status. As per Langston's policies, pending the review by American Fidelity of Dr. Schapiro's application for long term disability status, Langston University began to make short-term disability payments to Dr. Schapiro. As of the date of the Settlement Conference, February 26, 2008, Dr. Schapiro had already received payment for the first three (3) months of such short-term disability coverage from the University and the fourth payment had already been scheduled to be deposited into his bank account electronically on February 29, 2008.

15. I was aware at the time of the Settlement Conference on February 26, 2008, and had previously been aware in the previous Settlement Conference held in this matter on September 11, 2007, that the Plaintiff's husband, Dr. Schapiro, had previously filed a complaint of unlawful retaliation with the United States Equal Employment Opportunity Commission in 2002 in EEOC Charge No. 311-2005-00477, which complaint had never been acted upon by the EEOC and was still pending at the time of the two Settlement Conferences held in this matter. Out of concern that the Plaintiff, on behalf of her husband, would assert in the future that such matter was not contained within the terms of the settlement of this

matter, I orally insisted during both Settlement Conferences that any settlement of Dr. Craig's pending civil action would also include a settlement of any other legal claims that Dr. Craig or Dr. Schapiro might be able to assert, known or unknown, as well as a release and settlement of all parties associated with Langston University, including the State of Oklahoma, the Board of Regents, and all officers, employees, agents, etc, of such entities, in both their official and individual capacities, and that the settlement of this matter was not limited solely to the claims directly raised in this action.

16. During the Settlement Conference held on February 26, 2008, the representatives for the Defendant were advised it had been discovered through a telephone call by the Plaintiff to American Fidelity that American Fidelity believed that it had no legal obligation to pay any long-term disability payments to Dr. Schapiro. As part of the consideration from Langston University for the release of any potential legal claims against it by Dr. Schapiro, Langston University, as is reflected in my handwritten notes, agreed to go ahead and pay the final two months of short-term disability payments to Dr. Schapiro, and, additionally, to reasonably provide any documentation required by Dr. Schapiro and Dr. Craig in any efforts by them to persuade American Fidelity to change its position on the matter of Dr. Schapiro's long term disability coverage.

17. On the date of the Settlement Conference, February 26, 2008, it was disclosed by the Plaintiff that she had filed a new charge of discrimination with the EEOC, which Defendant had become informally aware of, but which had not been perfected as of that date.

As part of the Settlement Agreement to be reached in this matter, Plaintiff agreed specifically further that this new, pending EEOC Charge would also be resolved through this Settlement Agreement.

18. In return for the above promises by Langston University to Dr. Craig and Dr. Schapiro, Dr. Craig, on her own behalf, agreed to resign, effective December 31, 2008, but such resignation to be deemed irrevocable and accepted in full as of the Settlement Agreement date. Additionally, on behalf of her husband acting under power of attorney signed by him, Dr. Craig agreed that Dr. Schapiro would resign effective April 30, 2008, and that such resignation would be deemed irrevocable and accepted in full as of the Settlement Agreement date. Additionally, both Dr. Craig and Dr. Schapiro, through Dr. Craig, would execute full and final releases of any and all claims of any nature whatsoever relating to or stemming from their employment relationships with Langston University up to the date of final execution of the formal Settlement Agreement in exchange for the payments and other promises made by Langston University.

19. In furtherance of that obligation, legal counsel for Dr. Craig, as one of the last statements of the Settlement Conference, suggested that an additional term be added, one in which the parties agreed to execute any documents needed to fully effectuate the several terms of the agreement being reached on that date.

20. Plaintiff's counsel transmitted a letter to me on March 14, 2008 stating how to divide the two payments to be made other than the \$30,426.00 payment from which

deductions would be withheld. A copy of that correspondence is attached as Exhibit 2 to this Declaration. The monetary amounts contained in that letter were in error, however, as this March 14, 2008 letter referenced aggregate lump sum payments totaling \$165,000.00, rather than the actual figure of \$183,240.00 agreed to by the parties. I contacted the office for counsel for Dr. Craig and notified it of the error and the need for accurate figures so that the checks to be issued in this matter could be accurate.

21. On March 21, 2008, I talked with Plaintiff's legal counsel over the telephone and he confirmed to me how the two latter checks were to be accurately divided between a payment to his firm and a payment to Dr. Craig. I confirmed that conversation by letter on March 25, 2008, a copy of which is attached as Exhibit 3.

22. Defendant has caused three checks to be prepared for transmission to Dr. Craig's counsel and counsel for Dr. Craig has been notified of such orally on two occasions. Copies of those checks, which I have in my office at this time, are attached as Exhibits 4, 5, and 6.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 22, 2008.


Michael Scott Fern