

**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.)	

**INTERVENING PLAINTIFF’S RESPONSE
TO DEFENDANT’S MOTION AND BRIEF TO
ENFORCE SETTLEMENT AND REQUEST FOR HEARING**

Additional Party Plaintiff and Intervenor Barbara J. Craig, Ph.D. (“Craig”) submits the following response to the Motion and Brief to Enforce Settlement and Request for Hearing filed by Defendant Langston University, ex rel., the Board of Regents for the Oklahoma State Mechanical and Agricultural Colleges (“Langston”), and states as follows:

1. The procedural history of this matter as set forth in Paragraphs 1-6 is correct. Craig would add that it has been essentially admitted that there were facts discussed at the first settlement conference which Craig relied upon in settling the

matter that were incorrect and that a second settlement conference was necessary to resolve those issues.

2. The assertion that Craig “now does not agree to certain aspects of the settlement that were agreed to by her and Langston on February 26, 2008” [Paragraph 7 of Langston’s Brief] or that “Plaintiff is now refusing to abide by” the settlement reached at the settlement conference [Opening Paragraph of Langston’s Brief] is incorrect. Langston is attempting to insert additional terms into the formal settlement agreement that were not agreed upon at the settlement conference, and Craig is only refusing to sign the altered agreement offered by Langston. Without any doubt, the settlement agreement offered by Langston inserts language and a term that was not part of the February 26, 2008, agreement.

3. Although Langston touches upon it in its brief in numbered Paragraph 6, the most important aspect in deciding this motion are the terms of the settlement announced by Magistrate Judge Doyle W. Argo at the conclusion of the settlement conference on February 26, 2008. Those terms are spelled out in Mr. Fern’s affidavit and notes, but not in the body of the brief. The terms agreed to are as follows and are consistent with Craig’s counsel’s notes on the terms, attached hereto as Exhibit “1”:

- a. Langston will pay \$183,240 in full and withhold taxes on \$30,426;
- b. Craig will finish the year at her current salary;

- c. Langston will pay a 6 month sabbatical from August 1, 2008 to December 31, 2008, at full pay with usual benefits other than sick leave and Craig will resign effective December 31, 2008;
- d. Langston will zero out Craig's sick leave as of March 1, 2008 and give her five (5) days of sick leave for the remainder of the academic year, which she will use or lose. Craig can receive five (5) more sick days if necessary with valid doctor's statement.
- e. Craig has sixteen (16) hours of annual leave remaining which she must use or lose for the remainder of the academic year. She will accrue sixteen (16) hours of annual leave during her sabbatical for which she will be paid upon her resignation on December 31, 2008.
- f. Langston will pay Dr. Philip Schapiro, Craig's husband and a faculty member at Langston, the balance of his six (6) months of pay at 60% which should be two (2) more months to go through April 2008;
- g. Regarding the issue with American Fidelity and Dr. Schapiro, Langston will provide necessary documents and speak to the company regarding short-term and long-term disability;
- h. Dr. Schapiro will resign effective April 30, 2008;
- I. Craig will dismiss her pending EEOC claim;

j. A dismissal with prejudice will be filed, all documents and the three (3) checks will be completed within thirty (30) days, and each party is to execute any and all documents necessary to carry out the execution of these provisions.

4. There should be no mistake that Craig agreed to these terms at the conclusion of the settlement conference and that she agrees to those terms today. The reason she has not signed the settlement documents is principally because Langston is attempting to secure a release of all claims for Dr. Schapiro, something that was not agreed to in the settlement conference. As is evident by Exhibit "2" hereto, the settlement agreement proposed by Langston makes Philip Schapiro a party to the settlement agreement, which was not agreed to. Craig has agreed to, on Dr. Schapiro's behalf, his resignation, but there are no other specific terms of the agreement reached which makes Dr. Schapiro a party to the "Settlement Agreement and Full and Final Release of All Claims" submitted by Langston. It is important to remember that Dr. Schapiro has no lawsuit against Langston and was not a party to the settlement conference.

5. After the settlement conference, Craig discovered that Langston has not properly withheld money from Dr. Schapiro's salary for TIAA-CREF, which has resulted in unexpected and unnecessary income tax consequences for Craig and Schapiro. This revelation was disclosed to Langston's counsel through a letter from Craig's counsel on March 20, 2008. See Exhibit "3", Letter from Ward to Fern, dated

3/20/08. The response from Langston's counsel, by letter dated March 25, 2008, was simply that any such problems will be resolved by the settlement agreement, since both Craig and Dr. Schapiro have agreed to release all claims. See Exhibit "4", Letter from Fern to Ward, dated 3/25/08. Craig submitted a revised Settlement Agreement with letter spelling out her position on April 3, 2008. See Exhibit "5", Letter from Ward to Fern, dated 4/3/08 with Revised Settlement Agreement.

6. As can clearly be seen by the terms listed above, there are no terms asking for Dr. Schapiro to dismiss any claims against Langston or that he release any past or future claims against Langston. Craig also believes it would be helpful to inquire of Judge Argo about the settlement agreement, but since it appears that the parties are not disagreeing on the terms, such inquiry may have little effect. Craig also requests that an Order be entered, but that the Order only enforce those terms agreed to and no others.

7. Craig respectfully disagrees with Fern's statements in his affidavit. She does not recall that "[t]hroughout 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." Fern Affidavit, ¶ 12. Obviously issues with Dr. Schapiro's resignation and disability were discussed, but Craig does not recall any discussions about Dr. Schapiro releasing any and all claims against Langston, nor was there any discussion about Dr. Schapiro's earlier charge of discrimination. Additionally, Mr. Fern states that he "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..." Fern Affidavit, ¶ 15. Craig is unaware of any of these oral comments, but even assuming they were made, any such oral claims were clearly not included as terms of the final settlement agreement.

8. Despite Langston's efforts to categorize the issue of Dr. Schapiro's release of all claims an "ancillary" matter, the requested release of a non-party's claims is not comparable to the wording of particular clauses in the agreement. This is a fundamental term of the settlement agreement and it appears from both parties' notes on the agreement that Dr. Schapiro's release was not a term of the settlement. Craig agrees that the parties reached an agreement and that the terms spelled out in the notes, as listed above, were the terms of the contract between the parties. Any oral discussions about a release of all claims by Dr. Schapiro cannot be included the agreement between the parties. This Court is well aware that a contract is ambiguous only when the terms are susceptible to more than one reasonable reading. See *K&K Food Servs., Inc., v. S&H, Inc.*, 2000 OK 31, 3 P.3d 705, 708. There is no ambiguity here as both parties agree on the terms. Therefore, since the settlement agreement is also complete in itself, the parol evidence rule bars evidence tending to vary, contradict, enlarge, or narrow the terms of the agreement. *Ollie v. Rainbolt*, 1983 OK 79, 669 P.2d 275, 269. According to the parol evidence rule, any oral discussions or early negotiations are merged into the agreement and become superseded by the

terms of the writing. 15 O.S. § 137; *Bonner v. Oklahoma Rock Corp.*, 1993 OK 131, 863 P.2d 1176, 1180.

9. Langston is simply attempting to modify, vary and enlarge the terms of the agreement. The best evidence of Craig's position is that the parties specifically contemplated a pending EEOC charge for Craig and made it a term of the agreement that such a claim be dismissed. On the other hand, there is no term requiring Dr. Schapiro to release any pending EEOC charges. Interesting, Craig believes that Dr. Schapiro's charge, based upon discrimination and retaliation, is not pending with the EEOC and that he has no viable claims at this time against Langston at any stage of the process with EEOC. Langston had the opportunity to ask that Dr. Schapiro execute a full and final release of all claims as part of the settlement, but did not do so. Any alleged oral discussions of this release cannot modify or vary the terms of the agreement.

10. Craig does not object to a request for hearing if this Court deems one necessary, and she stands ready to honor the settlement agreement that was achieved at the February 26, 2008 settlement conference.

WHEREFORE, Barbara Craig, Ph.D., respectfully requests that this Court enforce the settlement as specifically reached by the parties, which does not include any terms for a full release from Dr. Philip Schapiro, who is not a party to this action. The only issue to be decided is whether the parties specifically agreed as part of the settlement of this matter for Dr. Schapiro to sign to a full release of all claims. Craig

contends that neither party has such a term in its notes, and because this involves an individual not a party to this action, such a term has to be specifically included in the agreement. Since it was not, it cannot be a term of the settlement agreement, and this Court should order the parties to sign the Revised Settlement Agreement removing that term submitted by Craig and her counsel.

Dated this 29th day of April, 2008.

Respectfully submitted,

WARD & GLASS, L.L.P.

s/Scott F. Brockman

Stanley M. Ward, OBA #9351
Woodrow K. Glass, OBA #15690
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CERTIFICATE OF MAILING

This is to certify that on this 29th day of April, 2008, a true and correct copy of the above and foregoing was electronically transmitted to the Clerk of the Court using ECF System for filing and transmittal of a Notice of Electronic Filing was electronically sent to the following counsel of record:

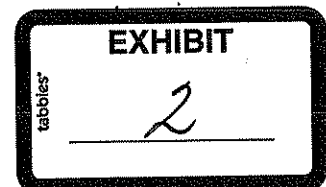
David W. Lee
Ambre C. Gooch
COMINGDEER, LEE & GOOCH
6011 N. Robinson Avenue
Oklahoma City, OK 73118-7425

S/Scott F. Brockman
Scott F. Brockman

**SETTLEMENT AGREEMENT
AND
FULL AND FINAL RELEASE OF ALL CLAIMS**

FOR AND IN CONSIDERATION of the mutual agreements set forth in this SETTLEMENT AGREEMENT AND FULL AND FINAL RELEASE OF ALL CLAIMS (hereafter referred to as "Agreement"), the receipt and sufficiency of which are hereby acknowledged, the parties hereto, Barbara Craig, an individual, Phillip Schapiro, an individual, and Langston University, a public institution of higher education of the State of Oklahoma, do hereby agree as follows:

1. Barbara Craig and Phillip Schapiro, for themselves, their heirs, executors, administrators, successors, and assigns, do hereby fully, finally, and forever release and discharge the State of Oklahoma, the Board of Regents of Oklahoma State University and the Agricultural and Mechanical Colleges, Langston University, and all of their respective subsidiaries, affiliates, successors, assigns, officers, employees, representatives, and agents, in both their personal and official capacities (all of which are also hereafter collectively referred to as "Langston"), of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses of any and every nature whatsoever, including but not limited to, attorney fees, other related costs, and interest, that said Barbara Craig and Phillip Schapiro have or may have a right to bring against such entities and persons stemming from or related to their employment relationships with Langston University, including, but not limited to, all matters raised in the civil case of United States of America v. Langston University, ex rel. The Board of Regents for Oklahoma State University and the Agricultural and Mechanical Colleges, Case No. CIV-06-185-R (W.D. Okla.), any and all complaints filed by Barbara Craig with the United States Equal Employment Opportunity Commission, and any and all complaints filed by Phillip Schapiro with the United States Equal Employment Opportunity Commission, through the date of execution of this Settlement Agreement and Full and Final Release of All Claims by the parties hereto. This release encompasses all rights that Barbara Craig or Phillip Schapiro have or may have a right to bring against Langston for monetary, equitable, or prospective relief. Barbara Craig and Phillip Schapiro agree and understand that they are waiving, releasing and discharging any presently existing employment discrimination, wrongful termination, or other employment-related rights, actions or claims, whether based upon: (1) law or equity; (2) state or federal common law; (3) state or federal statutes; or (4) state or federal constitutional provision. Barbara Craig and Phillip Schapiro specifically agree and understand that they are waiving, releasing, and discharging any rights, actions, or claims that may exist under the Age Discrimination in Employment Act of 1967 (P.L. 90-202, 29 U.S.C. §§621, et seq.), the Older Workers Benefit Protection Act (29 U.S.C. §§623, et seq.), the Civil Rights Act of 1964 (P.L. 88-352, 42 U.S.C. §§2000e, et seq.), the Civil Rights Restoration Act of 1991 (P.L. 102-166, 105 Stat. 1071), the Rehabilitation Act of 1973 (29 U.S.C. §§701, et seq.), the Americans with Disabilities Act of 1990 (P.L. 101-336, 42 U.S.C. §§12101, et



seq.), Title 42 U.S.C. §§1983, the Family Medical Leave Act of 1993 (29 U.S.C. §§2601, et seq.), the Employee Retirement Income Security Act of 1974 (29 U.S.C. §§1001, et seq.), the Fair Labor Standards Act (29 U.S.C. §§215, et seq.), the Oklahoma Governmental Tort Claims Act (51 O.S. 1991, §151, et seq.), personal injuries for intentional infliction of physical and emotional suffering and distress, slander, and libel, whether from Langston or any of its officers, employees, or agents, and any other state employment, labor, or nondiscrimination statute. In this regard, as set forth above, Langston specifically denies engaging in any act or omission proximately causing any such injuries and this Agreement shall not be construed or represented by any party as an admission of wrongdoing or fault by Langston.

2. Barbara Craig and Phillip Schapiro hereby declare and represent that any injuries and damages that they allegedly have sustained may be permanent and progressive and that recovery therefrom is uncertain and indefinite and that all such injuries, damages, and losses may not now be fully known to them, and may in fact be more numerous or more serious than presently expected, and in making this release it is understood and agreed that said Barbara Craig and Phillip Schapiro rely wholly upon their own judgment of the future development, progress and result of such injuries, damages, and losses, and that they have not been influenced to any extent whatsoever in making this release by any representations or statements regarding such injuries, damages, and losses, both past and future, or the legal liability therefore or regarding any other matters made by the persons or entities who are hereby released, and that said Barbara Craig and Phillip Schapiro accept this Agreement in full settlement and satisfaction for all claims or demands whatsoever for injuries, damages, and losses as set forth in this Agreement, both known and unknown.

3. Langston University agrees to pay to Barbara Craig the sum of Thirty Thousand Four Hundred and Twenty Six Dollars and no cents (\$30,426.00), such payment to be made within thirty (30) days of the execution of this Agreement in a lump sum amount. In this regard, Langston University promises to expedite such payment so that same is received earlier than thirty (30) days, if at all reasonably possible. Barbara Craig acknowledges and understands that the sum referenced in this Paragraph 3 is a gross amount calculated prior to normal withholding deductions required by state and federal law and that the actual amount of said payment shall reflect a sum calculated after all required deductions called for under federal and state law have been made from said sum. Barbara Craig shall receive an accounting reflecting the deductions that are made pursuant to this Paragraph. In this regard, as set forth above, Langston specifically denies engaging in any act or omission proximately causing any such injuries and this Agreement shall not be construed or represented by any party as an admission of wrongdoing or fault by Langston.

4. Langston University further agrees to pay to Barbara Craig the sum of Eighty Three Thousand Four Hundred Sixteen Dollars and sixty four cents (\$83,416.64), such payment to be made within thirty (30) days of the execution of this Agreement in a lump sum amount. In this regard, Langston University promises to expedite such payment so that same is received earlier than thirty (30) days, if at all reasonably possible. The parties acknowledge and agree that the payment

referenced in this Paragraph 4 to this Settlement Agreement stems from or relates to tortious personal injuries Barbara Craig has claimed to have suffered, including but not limited to, personal injuries for intentional infliction of physical and emotional suffering and distress due to alleged unlawful discrimination and slander and libel. It is acknowledged that such claims are further alleged by Barbara Craig to have resulted in personal injury suffered by her due to alleged deliberate and intentional violations of her civil rights protected under the constitution and laws of the State of Oklahoma, and also alleged to have resulted from tortious interference with contractual, liberty and property interests owned by Barbara Craig. It is agreed and understood that said sum is not salary or employment compensation and, being based only upon personal injuries alleged to have been suffered, no income tax, FICA, or other employee deductions shall be withheld herefrom. LU shall make no withholding deductions from such payment and will execute an IRS Form 1099-Misc regarding such payment. In this regard, as set forth above, Langston specifically denies engaging in any act or omission proximately causing any such injuries and this Agreement shall not be construed or represented by any party as an admission of wrongdoing or fault by Langston.

5. Langston University further agrees to pay to the firm of Ward & Glass, L.L.C., the sum of Sixty Nine Thousand Three Hundred Ninety Seven Dollars and thirty six cents (\$69,397.36), such payment to be made within thirty (30) days of the execution of this Agreement in a lump sum amount. In this regard, Langston University promises to expedite such payment so that same is received earlier than thirty (30) days, if at all reasonably possible. LU shall make no withholding deductions from such payment and will execute an IRS Form 1099-Misc regarding such payment. In this regard, as set forth above, Langston specifically denies engaging in any act or omission proximately causing any such injuries and this Agreement shall not be construed or represented by any party as an admission of wrongdoing or fault by Langston.

6. Langston University agrees that Barbara Craig will serve out her faculty 2007-2008 contract at the current rate of pay set for such year. Langston University further agrees to place Barbara Craig on a paid sabbatical leave for the Fall, 2008 academic semester, during which time frame she will receive the equivalent of six months' pay at her base salary as set for the 2007-2008 academic year. Such payments will be made on a monthly basis with an additional payment as needed for this payment to equal six months' salary as of the end of December, 2008. During such time period, Barbara Craig will receive all employee benefits normally due to a faculty member of Langston University, with the exception of the accumulation of sick leave and annual leave, which are separately provided for in Paragraph 7, below.

7. Barbara Craig understands and agrees that the payments referenced in this Settlement Agreement and Full and Release of All Claims satisfies all monetary payments owed to her by Langston University and that she will not be entitled to receive any additional monetary payments from Langston University for unused accrued annual or sick leave, except as specifically set forth in this Paragraph 7. Barbara Craig understand and agrees to forfeit all accumulated, unused sick leave that she otherwise would be eligible to exhaust as an employee. Barbara Craig and Langston University agree that in lieu of same, Barbara Craig shall be entitled to exhaust up to five (5) days during the 2007-2008 academic year of sick leave for any reasons authorized under the Langston University

leave policies relating to use of sick leave. Barbara Craig and Langston University further agree that Barbara Craig shall be entitled to exhaust up to an additional five (5) days of sick leave during the 2007-2008 academic year for any reasons authorized under the Langston University leave policies relating to use of sick leave, if such need is medically certified by a physician. In addition to such sick leave usage, Barbara Craig shall also accumulate and may exhaust up to two (2) days of annual leave during the 2007-2008 academic year, and may further exhaust or receive payment for two (2) days of annual leave during the sabbatical period referenced above in Paragraph 6 to this Agreement.

8. Langston University agrees to pay to Phillip Schapiro the equivalent of sixty percent (60%) of his base rate of pay established as of the beginning of the 2007-2008 academic year for the months of March, 2008 and April, 2008. In this regard, as set forth above, Langston specifically denies engaging in any act or omission proximately causing any such injuries and this Agreement shall not be construed or represented by any party as an admission of wrongdoing or fault by Langston.

9. Barbara Craig agrees to submit a written letter of resignation or retirement to Langston University contemporaneously with the execution of this Agreement, and agrees that such letter of resignation will be effective as of December 31, 2008, but deemed irrevocable and accepted by Langston University on its tender to Langston University. Phillip Schapiro agrees to submit a written letter of resignation or retirement to Langston University contemporaneously with the execution of this Agreement, and agrees that such letter of resignation will be effective as of April 30, 2008, but deemed irrevocable and accepted by Langston University on its tender to Langston University.

10. Barbara Craig and Phillip Schapiro agree to notify the United States Equal Employment Opportunity Commission of the settlement of this matter under the supervision of the United States District Court for the Western District of Oklahoma and to request dismissal with prejudice of any and all pending claims filed by them with the Commission as of the date of the execution of this Settlement Agreement.

11. Langston University agrees to assist Barbara Craig and Phillip Schapiro by providing any documentation that might be requested by Langston University's Long Term Disability carrier, the American Fidelity Assurance Company in the furtherance of any claim by Phillip Schapiro for Long Term Disability payments requested by him of the American Fidelity Assurance Company.

12. The parties hereto mutually agree to execute all documents which might be required to fulfill the promises made in the Settlement Agreement, including, but not limited to, any Power of Attorney or Limited Guardianship documents required to effectuate the promises made in this Settlement Agreement by Phillip Schapiro.

13. The terms and conditions set out in this Agreement are in compromise and settlement of disputed claims of unlawful, inappropriate, and unfair treatment, the validity, existence, or occurrence of which are expressly denied by the parties.

14. The terms of this Agreement shall be binding on the parties hereto and their relatives, representatives, agents, governing board, administrators, officers, employees, assigns, and successors in interest. This Agreement is not revocable by any party.

15. The validity, construction, and enforcement of this Agreement shall be governed in accordance with the laws of the State of Oklahoma and any applicable federal laws. Venue for any such action shall lie exclusively in the District Court for Payne County, Oklahoma, or the United States District Court for the Western District of Oklahoma, if federal jurisdiction is applicable.

16. If any provision of this Agreement contravenes any applicable law or public policy, such provision or provisions shall be regarded as modified to the extent necessary to conform with such applicable law and the remaining provisions of this Agreement shall be fully binding upon the parties.

17. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either oral or written, between the parties.

18. The undersigned affirm that the only consideration for signing this Agreement are the terms stated above; that the terms of this release are contractual and not a mere recital; that no other promise or agreement of any kind has been made to or with them by any persons or entity whomsoever to cause them to execute this Agreement; and that they fully understand the meaning and intent of this Agreement, including, but not limited to, its final and binding effect.

THE UNDERSIGNED FURTHER STATE AND AFFIRM THAT THEY HAVE CAREFULLY READ THE WITHIN AND FOREGOING "SETTLEMENT AGREEMENT AND FULL AND FINAL RELEASE OF CLAIMS," HAVE REVIEWED SAME WITH THEIR LEGAL COUNSEL, AND KNOW AND UNDERSTAND THE CONTENTS THEREOF AND THAT THEY EXECUTE THE SAME AS THEIR OWN FREE ACT AND DEED.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands the dates shown below.

Barbara Craig
Individually

DATE

COUNTY OF _____)
)ss
STATE OF OKLAHOMA)

Sworn to and subscribed to before me this ___ day of _____, 2008.

My Commission Expires: _____

Notary Public

Phillip Schapiro
Individually

DATE

COUNTY OF _____)
)ss
STATE OF OKLAHOMA)

Sworn to and subscribed to before me this ___ day of _____, 2008.

My Commission Expires: _____

Notary Public

Dr. JoAnne Haysbert
President
Langston University

DATE

COUNTY OF LOGAN)
)ss
STATE OF OKLAHOMA)

Sworn to and subscribed to before me this ___ day of _____, 2008.

My Commission Expires: _____

Notary Public