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WESTERN DISTRICT OF WASHINGTON DEPUTY
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WESTERN DISTRICT OF WASHINGTON DEPUTY

ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

FUTURE SHOP, INC.,

Defendant.

CIVIL NO. C98-1369C
STIPULATION FOR SECOND
AMENDMENT TO CONSENT
DECREE

CPC, JWC

1. Plaintiff, Equal Employment Opportunity Commission ("EEOC"), filed a lawsuit in the United States District Court for the Western District of Washington at Seattle on September 30, 1998, alleging, *inter alia*, that Defendant, Future Shop, Inc. ("Future Shop") violated the ADEA by failing to consider Mr. Peter Scott and a class of similarly situated applicants for employment because of their age. Defendant denied the allegations of discrimination in the EEOC's complaint and asserted several affirmative defenses.

2. Subsequently, the parties reached a settlement in the matter. On April 20, 1999, the Court entered an Order approving the Consent Decree which had been proposed by the parties. See, Consent Decree and Court Order, dated April 20, 1999.

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Seattle District Office
Federal Office Building
909 First Avenue, Suite 400
Seattle, Washington 98104-1061
Telephone (206) 220-6883
Fax (206) 220-6911
TDD (206) 220-6882

1 3. The District Court retained jurisdiction over the matter for the duration of the Consent
2 Decree, three years and ninety days. Id., at page 12, paragraph 45 and 46.

3 4. Under the terms of the Consent Decree, Future Shop agreed to provide for a
4 Settlement Fund in the amount of Three hundred and sixty-one thousand dollars (361,000.00). Id., at
5 page 4, paragraph 20. EEOC received a timely check in this amount from Future Shop.

6 5. EEOC deposited the settlement fund check into a U.S. Treasury Department account.
7 Individual checks drawn on the Treasury account were issued to Peter W. Scott and Frederick Cain,
8 pursuant to the Consent Decree. See Consent Decree, page 5, paragraph 20(a) and (b), leaving
9 \$325,000 in the account to be distributed to class claimants and to cover administrative costs.

10 6. The EEOC identified Stephen B. Bishop, Benson & McLaughlin, Certified Public
11 Accountants, P.S., 1400 Blanchard Plaza, 2201 6th Avenue, Seattle, WA 98121-1810 as the
12 Settlement Fund Administrator responsible for locating potential claimants entitled to relief under
13 the Settlement Fund.

14 7. The parties originally estimated that the Settlement Fund Administrator would be
15 reviewing approximately 5000 Future Shop applications to identify potential claimants from the
16 protected age group. However, by September of 1999, it was clear that the Administrator would
17 review well in excess of 30,000 applications, requiring much more of his time and resources than
18 originally anticipated. As a result, an amendment to the original Consent Decree was sought to
19 extend the specific time frames established for identifying and notifying class members, and
20 disbursing the settlement funds. See, Stipulation and Order to Amend Consent Decree, dated
21 September 2, 1999.

22 8. Also, the EEOC learned sometime after the original settlement funds were deposited
23 in the U.S. Treasury that in order for the funds properly to be disbursed, the \$325,0000 remaining in
24 the settlement account needed to be transferred into the registry of the District Court, pursuant to
25 Local Rule GR 6(a). In order to allow time for the transfer, along with the extra time needed by the
26 Settlement Fund Administrator to continue with his duties, the Court approved a 90 day extension
27 for the class member mailing contemplated under paragraph 25 of the Consent Decree, page 6,

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Fax (206) 220-6911
TDD (206) 220-6882

1 through December 1999. Id. Subsequent steps following the mailing, including the final
2 identification of claimants and mailing of individual checks, were timed to follow from the date of
3 the initial mailing.

4 9. After the Court ordered the transfer of settlement funds from the Treasury Department
5 to the District Court's registry, and the EEOC sought and the Court entered an Order for
6 Disbursement of Registry Funds, to allow for a payment to the Settlement Fund Administrator, it
7 was discovered that the full \$325,000 was not transferred from the Treasury account. Rather,
8 \$39,070 only was deposited with the Court's Registry. The EEOC assured the Court that it would
9 continue to pursue the transfer of the full amount of the fund and the Court entered an Order
10 providing that \$25,365.74 be disbursed to the Administrator, along with the payment of statutory
11 user fees to the Court. See, Revised Order for Disbursement of Registry Funds Pursuant to LR 6(b),
12 entered January 5, 2000.

13 10. Due to changes in personnel and other administrative complications at EEOC
14 Headquarter's, the balance of the settlement fund was not transferred to the District Court until on or
15 about March 14, 2000. Given all that has occurred, further changes to the Original and Amended
16 Consent Decree are necessary.

17 11. Paragraph 25 of the Consent Decree provides for the mailing of notices to all
18 Potential Claimants identified by the Settlement Fund Administrator. Under Paragraph 26, the
19 Settlement Fund Administrator was to "request a standard trace by the U.S. Post Office in an effort to
20 identify current addresses for members of the Potential Claimant Group whose letters were returned
21 as undeliverable." The Administrator was then required to repeat the notification process set forth in
22 Paragraph 25. However, the Settlement Fund Administrator has been informed by representatives
23 of the Post Office that there is no process called "a standard trace" and that it does not divulge
24 individual forwarding addresses to third parties. Even more problematic, assuming a method could
25 be determined to forward the current non-deliverable notices, is the cost associated with continuing
26 to search for these claimants. Out of the 6,608 notices mailed pursuant to Paragraph 23,
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1 approximately 2,217 were returned to the Settlement Fund Administrator as undeliverable. The
2 Settlement Fund Administrator believes that the cost of attempting to find new addresses to forward
3 these 2,217 undeliverable letters would be significant, far outweighing any potential benefit.

4 **SPECIFIC AMENDMENTS REQUIRED TO CONSENT DECREE**

5 12. In light of the difficulties associated with tracing all of the undeliverable notices, the
6 EEOC requests that the Consent Decree be amended to remove the tracing requirements of
7 Paragraph 26. Rather, no effort to locate Claimants whose notices were returned as undeliverable
8 will be required of the Settlement Fund Administrator. All such returned notices will be maintained
9 by the Settlement Fund Administrator and turned over to the EEOC at the conclusion of the
10 Administrator's duties.

11 13. Given that the dates for the Settlement Fund Administrator to complete the various
12 duties outlined in the original and Amended Consent Decree have been impacted by the delay in the
13 transfer of funds to the District Court, and questions associated with the undeliverable notices, the
14 EEOC requests that the Settlement Fund Administrator be allowed up to July 31, 2000 to complete
15 the settlement process under the Consent Decree. It is anticipated that by July 31, 2000, the final list
16 of Claimants can be identified, the actual settlement fund due each person will be calculated, and all
17 steps associated with disbursement of individual settlement fund checks through the Court's Registry
18 can be taken. Finally, at the time that the Settlement Fund Administrator identifies the final
19 Claimant list and amount of the funds due each person, a final motion will be made calling for the
20 payment of a lump sum amount to the Settlement Fund Administrator for final disbursement of
21 funds and for payment of the Administrator's services.

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Seattle District Office
Federal Office Building
909 First Avenue, Suite 400
Seattle, Washington 98104-1061
Telephone (206) 220-6863
Fax (206) 220-6911
TDD (206) 220-6882

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Respectfully submitted, this 12 day of April, 2000.

A. LUIS LUCERO, JR., Regional Attorney
CLAIRE CORDON, Supervisory Trial Attorney
KATHRYN OLSON, Senior Trial Attorney
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
909 First Avenue, Suite 400
Seattle, Washington 98104
Telephone (206) 220-6915

BY: Claire Cordon
Claire Cordon

Attorneys for Plaintiff

PRESTON, GATES AND ELLIS
701 Fifth Avenue, Suite 5000
Seattle, Washington 98104
Telephone (206) 467-6795

Approved by telephone

BY: Patrick M. Madden
Patrick M. Madden

Attorneys for Defendant *by Claire Cordon*

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Seattle District Office
Federal Office Building
909 First Avenue, Suite 400
Seattle, Washington 98104-1061
Telephone (206) 220-6883
Fax (206) 220-6911
TDD (206) 220-6882

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ORDER APPROVING SECOND AMENDMENT TO CONSENT DECREE

The parties have submitted a Stipulation for a Second Amendment to the Consent Decree, which is incorporated herein by reference. The Court hereby ADOPTS and APPROVES the Second Amendment to the Consent Decree.

SO ORDERED this 1st day of May, 2000.



U.S. District Court Judge

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