

1 BILL LOCKYER
Attorney General of the State of California
2 JACOB A. APPELSMITH
Senior Assistant Attorney General
3 VINCENT J. SCALLY JR.
Supervising Deputy Attorney General
4 DAVID I. BASS, State Bar No. 161556
Deputy Attorney General
5 1300 I Street, Suite 125
P.O. Box 944255
6 Sacramento, CA 94244-2550
Telephone: (916) 322-5586
7 Facsimile: (916) 324-5567
Attorneys for Defendant

8 Benjamin W. Bull, AZ SBN 009940
9 Gary S. McCaleb, AZ SBN 018848
Joshua W. Carden, AZ SBN 021698
10 Alliance Defense Fund Law Center
15333 N. Pima Rd., Suite 165
11 Scottsdale, AZ 85260
Telephone: (480) 444-0020
12 Facsimile: (480) 444-0028

13 Robert H. Tyler, CA SBN 179572
Alliance Defense Fund Law Center
14 38760 Sky Canyon Drive, Suite B
Murrieta, California 92563
15 Telephone: (909) 461-7860
Facsimile: (909) 461-9056

16 Kevin D. Koons, CA SBN 225867
The Zumbun Law Firm
17 3800 Watt Avenue, Suite 101
18 Sacramento, CA 95821
Telephone: (916) 486-5900
19 Facsimile: (916) 486-5959

20 Attorneys for Plaintiff

21 IN THE UNITED STATES DISTRICT COURT
22 FOR THE EASTERN DISTRICT OF CALIFORNIA

24 **ENOCH DAVID LAWRENCE,**
25 Plaintiff,
26 v.
27 **RITA SAENZ, individually and in her capacity**
28 **as Director of California Department of Social**
Services; FRED C. PERKINS, Chief of The

Case No. CIV-S-04-1723 WBS PAN

**SETTLEMENT AGREEMENT
AND RELEASE**

Judge: Hon. William B. Shubb

1 **Roseville Branch, California Department of**
2 **Social Services, Disability and Adult Programs**
3 **Division; and JOYCE M. BULLIVANT, Team**
4 **Five Manager of the Roseville Branch,**
5 **California Department of Social Services,**
6 **Disability and Adult Programs Division;**
7 **individually and in their official capacities,**

8 Defendants.

9 This seven-page Settlement Agreement and Release ("Agreement" or "Settlement") is made
10 this 27th day of December, 2004, by and between (1) The California Department of Social
11 Services ("DSS" or Defendant") and (2) Enoch David Lawrence, his heirs, successors, and
12 assigns ("Lawrence" or "Plaintiff"). Plaintiff and Defendant shall collectively be referred to as
13 "the Parties."

14 RECITALS

15 A. On approximately August 23, 2004, Plaintiff filed Case No. CIV-S-0401723 WBS
16 PAN in the United States District Court, Eastern District, Sacramento, California against DSS
17 and three individuals, Rita Saenz, Fred C. Perkins, Joyce M. Bullivant ("the Action"). Plaintiff
18 never effected service on the three just-named individuals.

19 B. By entering into this Agreement, the Parties wish to formalize the settlement and
20 termination of the Action with prejudice with respect to any and all of Plaintiff's claims and
21 potential claims against (1) Defendant DSS, (2) the three individuals named in the Action, and
22 (3) any employees of Defendant related to the Action, known or unknown by the Parties, as of
23 the date this Settlement Agreement is executed by the Parties, and, accordingly, agree as follows:

24 AGREEMENT

25 Now, therefore, in consideration for the release and covenants contained in this Settlement,
26 the sufficiency of which is hereby acknowledged, Defendant and Plaintiff hereby unequivocally
27 agree to the following:

28 1. The Action as brought by Plaintiff against Defendant is settled. Plaintiff agrees to
dismiss his complaint against Defendant in the Action with prejudice. Plaintiff agrees to file a

1 Notice of Dismissal as provided by Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure and
2 as specifically described below in paragraph 9. Upon delivery to counsel for Defendant, by
3 Plaintiff's counsel, of the Notice of Dismissal of the Action with prejudice ("the Dismissal"),
4 payment of the amount described in paragraph 2 below will be made by Defendant to Plaintiff
5 under the terms described in paragraph 2 below. Defendant will file with the court the Dismissal
6 only after payment of the amount as described in paragraph 2 below.

7 2. Subject to the provisions of paragraph 9 below, Defendant shall cause to be paid to
8 Plaintiff and his attorneys of record, the Alliance Defense Fund Law Center the sum of
9 \$2,750.00. The payment may be made by a single check made payable to Plaintiff, Enoch David
10 Lawrence, and delivered to Joshua W. Carden, his counsel. Mr. Carden agrees that he acts on
11 behalf of all of plaintiff's counsel. Defendant will make all good faith efforts so that such
12 payment can occur 30 and 69 days after the date Plaintiff has delivered to Defendant's counsel
13 the fully executed Settlement Agreement and Release.

14 3. The DSS will provide, within 30 days after the date plaintiff has delivered to
15 defendant's counsel the fully executed Agreement, written confirmation to Mr. Lawrence of the
16 following:

- 17 3(a). That no reference to the events addressed in the lawsuit are present, or will
18 be placed, in his official personnel file.
- 19 3(b). The DSS will state what is inherent in its Policy Prohibiting Sexual
20 Harassment and Unprofessional Conduct: an employee is not subject to
21 discipline merely because someone might or does disagree with the point of
22 view expressed by that employee.
- 23 3(c). The DSS will acknowledge that Lawrence may continue to place expressive
24 items in his cubicle and on his cubicle-entry wall to the same general extent
25 as other employees, including some of the items he was previously instructed
26 to remove, so long as his expression does not objectively constitute a
27 violation of the DSS's lawful policies or illegal harassment under state or
28 federal law.

1 4. Plaintiff, on behalf of himself, his heirs, successors, assigns, and persons claiming
2 through his or in his right, in consideration for the above-described payment, releases and forever
3 discharges Defendant and its agents, representatives, attorneys, heirs, assigns, and successors in
4 interest as follows:

5 Plaintiff releases and forever discharges all actual or potential claims Plaintiff made or
6 could have made against Defendant or any employee of Defendant; these released claims cover
7 all disputes that were raised in the Action and all disputes, up until the date this Settlement is
8 executed, however characterized, that relate to the Action although not specifically raised in the
9 Action. The Parties understand and agree that this Settlement extends to all past and/or present
10 claims Plaintiff believes he has against Defendant or any employee of Defendant, which are
11 claims related to the Action of every nature and kind whatsoever, known or unknown, suspected
12 or unsuspected, regardless of whether any particular claim is referenced herein specifically or
13 generally, or not mentioned at all, and all rights under Section 1542 of the California Civil Code
14 are hereby expressly waived by all parties. Section 1542 of the California Civil Code reads as
15 follows:

16 A general release does not extend to claims which the creditor does not know or suspect to
17 exist in his favor at the time of executing the release, which if known by him must have
materially affected his settlement with the debtor.

18 Plaintiff waives any such right or benefit available to him in any capacity under the comparable
19 provisions of any other state or federal law. Plaintiff acknowledges that he may have sustained
20 losses that are presently unknown and unsuspected, and that such losses as were sustained may
21 give rise to additional losses and expenses in the future that are not now anticipated.

22 Nevertheless, Plaintiff acknowledges that this Settlement has been negotiated and agreed upon in
23 light of this realization and, being fully aware of this situation, Plaintiff intends to release, acquit,
24 and forever discharge (1) Defendant DSS, (2) the three individuals named in the Action, and (3)
25 any employees of Defendant related to the Action, known or unknown by the Parties, as set forth
26 herein from any and all such unknown claims.

27 5. Plaintiff acknowledges that the Age Discrimination in Employment Act "ADEA" (29
28 U.S.C. § 621 et seq.), Title VII of the Civil Rights Act of 1964, the Americans with Disabilities

1 Act and the California Fair Employment and Housing Act provide him the right to bring action
2 against Defendant if he believes he has been discriminated against on the basis of race, age,
3 ancestry, color, religion, sex, marital status, national origin, physical or mental disability, or
4 medical condition. Plaintiff understands the right afforded to him under these Acts and agrees he
5 will not file any action against Defendant, or any entity or person connected with or employed by
6 Defendant, based upon any alleged violation of these Acts. Plaintiff waives any rights to assert a
7 claim for relief available under these Acts against Defendant including, but not limited to,
8 present or future wages, mental or emotional distress, attorney's fees, reinstatement or injunctive
9 relief.

10 Further, Plaintiff acknowledges that:

11 a) He has been given a reasonable time, of up to 21 days, in which to consider this
12 Agreement before executing it. Plaintiff understands that he may use as much of this 21 day
13 period as he wishes prior to signing;

14 b) He knowingly and voluntarily agrees to all of the terms set forth in this
15 Agreement, including his waiver of any claim he may have under the ADEA, and that he intends
16 to be bound by all of the terms of the Agreement;

17 c) He has a full seven (7) days following his execution of this Agreement in which to
18 revoke the Agreement and any such revocation must be in writing;

19 d) He has had an opportunity to consult with his attorney prior to executing this
20 Agreement, and;

21 e) He has been and hereby is advised in writing that this Agreement shall not
22 become effective or enforceable as against any party hereto until the revocation period has
23 expired.

24 6. This Agreement, or any of the provisions contained in it, does not constitute an
25 admission of liability on the part of Defendant, who expressly denies such liability. Neither this
26 Agreement nor any of its provisions constitutes a finding of fact as to any of the issues raised in
27 the Actions, nor is it to be used as evidence for any purpose, except for the enforcement of this
28 Agreement.

1 7. This Agreement constitutes the entire agreement of the Parties to it, and it may not be
2 altered or modified or otherwise changed in any respect whatsoever except by a writing duly
3 executed by authorized representatives of all parties to the Agreement.

4 8. The terms of this Agreement shall be subject to the provisions of Section 948 of the
5 California Government Code, insofar as that Section's provisions are applicable to the
6 circumstances of the Parties to this Agreement.

7 9. In the event of any action or proceeding arising from the breach of this Agreement or
8 any provision of this Agreement, the prevailing party shall be entitled to recover from the losing
9 party or parties not only the amount of any judgment that may be awarded, but also all such other
10 damages, costs, and expenses as may be incurred by the prevailing party, including but not
11 limited to any arbitration costs and attorneys' fees. As described above in paragraph 1, the
12 Plaintiff agrees to file a Notice of Dismissal, as provided by Rule 41(a)(1)(i) of the Federal Rules
13 of Civil Procedure, to include the following terms:

14 9(a). The dismissal will be with prejudice;

15 9(b). The Settlement Agreement and Release will be attached to the Notice of
16 Dismissal;

17 9(c). Pursuant to *Kokkonen v. Guardian Life Insurance Company of America*
18 (1994) 511 U.S. 375, the parties agree that the Court's endorsement of the filing of Plaintiff's
19 Notice of Dismissal, dismissing the Action with prejudice, shall embody the Settlement
20 Agreement and Release and, thereby, the court shall retain jurisdiction to enforce the Settlement
21 Agreement and Release. If, however, the federal court declines to exercise its continuing
22 jurisdiction, the Parties agree that the Superior Court of the County of Sacramento shall have
23 jurisdiction to enforce the Settlement Agreement and Release.

24 10. If any part of this Agreement is determined to be illegal, invalid or unenforceable, the
25 remaining parts shall not be affected thereby and the illegal, unenforceable or invalid part shall
26 be deemed not to be part of this Agreement.

27 11. The Parties to this Agreement hereby acknowledge that each has been represented in
28 connection with the above-described actions and this Agreement by counsel of its choice.

