

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

Richard Pullman, Complainant,)	
)	Case No. 2009-CAA-5
vs.)	Hon. Linda S. Chapman, P.J.
)	
Smithsonian Institution, Respondent.)	

STIPULATION OF SETTLEMENT AND GENERAL RELEASE
FILED UNDER SEAL

The Parties to the above captioned proceeding enter into this Stipulation of Settlement and General Release on the terms and conditions set forth herein:

1. Complainant forever waives, releases, and abandons any and all claims, demands, rights, and causes of action of whatsoever kind and nature, asserted or unasserted, against the Smithsonian Institution, and its respective agents, servants, and employees, arising directly or indirectly from his employment at the Smithsonian or the severance of that employment, including but not limited to, the alleged acts or omissions that gave rise to the above-captioned matter; except that this settlement does not purport to compromise the Complainant's workers' compensation claims including the claim filed by Complainant with the U.S. Department of Labor Office of Workers' Compensation Programs, Federal Employee's Compensation Act File No. 252081409. This general release includes, but is not limited to, any and all claims of discrimination or retaliation, including but not limited to age discrimination, and any and all claims for violation of civil liberties or rights arising under the Constitution or any statute. This general release further includes, but is not limited to, any and all claims for compensatory damages, environmental pay, equal pay, hazard pay, back pay, front pay, and attorney fees and costs. Complainant hereby withdraws his claims for hazard pay.

2. Specifically, with respect to Complainant's rights under the Age Discrimination in Employment Act of 1967, 29 U.S.C. 626 *et seq.*, Complainant acknowledges that he is aware of and understands his rights and that: Complainant was advised to consult with an attorney before executing the waiver herein of his rights under the Age Discrimination in Employment Act and in fact has consulted with counsel; Complainant has been given at least twenty-one (21) days within which to consider the waiver of his rights herein under the Age Discrimination in Employment Act but voluntarily and knowingly foregoes that 21-day period and acknowledges he has had a reasonable period of time in which to consider the terms and conditions of this Stipulation of Settlement and General Release; and for seven (7) days following his execution of this Stipulation of Settlement and General Release he may revoke his agreement, and the Stipulation of Settlement and General Release shall not become effective or enforceable until the revocation period has expired.

3. Complainant agrees not to initiate any other complaint, appeal, grievance, or other action, whether administrative or judicial, related to or arising from his employment with the Smithsonian or the severance of that employment as described in this Stipulation of Settlement and General Release, with the exception of claims made under the Federal Employee's Compensation Act ("FECA").

4. Complainant shall refrain from making any statement, whether oral or written, which disparages the Smithsonian, its employees, officers, management, policies, or services. The Smithsonian, by and through its employees, officers, and management, shall similarly refrain from making any statement, whether oral or written, which disparages Complainant. Nothing in this Stipulation of Settlement and General Release, however, prevents either party from testifying truthfully if subpoenaed or otherwise compelled by law to testify, or from responding truthfully to an official inquiry from Congress or federal government agency.

5. The Smithsonian will place Complainant on administrative leave starting July 19, 2009, with full current benefits, including but not limited to the accrual of annual leave; and Complainant will not report to work beginning on that day. Such administrative leave will continue through August 14, 2009.

6. Complainant acknowledges that he received (through his attorneys) on July 17, 2009, a notice of a staff reduction eliminating his position, effective August 15, 2009. Complainant will continue to be entitled to his current health insurance benefits (except his vision plan) for 31 days following the effective date of the staff reduction.

7. Complainant will receive \$79,019.20 in severance pay (less appropriate tax and other deductions), to be paid out over 26-pay periods, starting with the pay period that follows the effective date of the staff reduction.

8. If Complainant elects COBRA coverage and pays his 35% share of the cost of such coverage, the Smithsonian will pay 65% of the costs of COBRA coverage (medical, dental, and vision) for nine months, starting at the end of the 31-day period described in Paragraph 6 above. Except that if the ARRA COBRA employer subsidy provisions are not extended past the end of 2009 by Congress, Complainant is responsible for paying the full cost of COBRA coverage for the remainder of the nine-month period.

9. Within 15 business days after the expiration of the administrative leave period/effective date of the staff reduction, the Smithsonian will make a lump sum payment of \$154,000 payable to the trust account of Katz, Marshall & Banks, LLP, Complainant's undersigned counsel.

10. Within 15 business days after the expiration of the administrative leave period/effective date of the staff reduction, the Smithsonian will redact from Complainant's most

recent performance appraisal, *inter alia*, references to the incidents that gave rise to the letter of counseling dated August 13, 2008. The agreed-upon redactions are indicated by highlighting in Exhibit A to this Stipulation of Settlement and General Release.

11. The Smithsonian will provide potential employers of Complainant with a neutral reference identifying his dates of employment, last grade and salary, positions held, and the fact that his last performance appraisal was "highly successful." Complainant shall be responsible for ensuring that he provides to prospective employers the name and address of Amy M. Koontz, Attorney, Labor & Employee Relations Branch, Office of Human Resources, P.O. Box 37012, Capital Gallery, Suite 5060, MRC 517, Washington, DC 20013-0712, or her successor. The Smithsonian shall bear no responsibility for referring prospective employers to Ms. Koontz.

12. Not later than August 14, 2009, Complainant will deliver to Pamela Blalock, Human Resources Business Partner (in person at: National Air and Space Museum, Room 3378, or by mail at: P.O. Box. 37012, National Air and Space Museum, Room 3378, MRC 310, Washington, DC, 20013), his Smithsonian identification badge and keys and any and all other Smithsonian-issued items or property. Complainant agrees that he will not remove from the Smithsonian's premises any Smithsonian property; if, prior to the date of his signing of this Stipulation of Settlement and General Release, he has removed any Smithsonian property, he will return it to the Smithsonian's premises not later than August 14, 2009.

13. Complainant agrees not to seek or accept employment with the Smithsonian at any future date.

14. Complainant shall be solely responsible for any tax liabilities arising from the foregoing settlement payments.

15. This Stipulation of Settlement and General Release is not, is in no way intended to

be, and should not be construed as, an admission of liability, fault, or wrongdoing on the part of the Smithsonian, its respective agents, servants, or employees, and the Smithsonian specifically denies it is liable to the Complainant.

16. It is also agreed that the parties will each bear their own costs, fees, and expenses with respect to all complaints and claims. No attorney fees will be paid by the Smithsonian in addition to the payments described above.

17. This Stipulation of Settlement and General Release shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

18. The parties agree that this Stipulation of Settlement and General Release will not be used as evidence or otherwise in any pending or future civil or administrative action against the Smithsonian, or any department, agency, or instrumentality of the United States, except as may be necessary to effectuate or enforce the terms of this settlement, to establish in any dispute with the Department of Labor the absence of a waiver of FECA claims, or to any dispute with the Internal Revenue Service regarding tax liabilities arising from this settlement.

19. The parties agree that this Stipulation of Settlement and General Release is considered to be confidential and will not be disclosed except as required by law or Smithsonian Directive 807 (Requests for Smithsonian Institution Information) , as ordered by a court or administrative body of competent jurisdiction, or as necessary to effectuate or enforce the terms of this settlement, to establish in any dispute with the Department of Labor the absence of a waiver of FECA claims, or to any dispute with the Internal Revenue Service regarding tax liabilities arising from this settlement. The parties hereby request that the Department of Labor (i) maintain this Stipulation of Settlement and General Release confidential by placing it in a "restricted access" portion of the record, (ii) promptly notify the parties of any Freedom of Information Act request that seeks this Stipulation of Settlement and General Release, and (iii) provide the parties with a

reasonable opportunity to review and comment upon the requested or proposed disclosure.

20. The parties agree that the terms expressly recited herein represent the entire Stipulation of Settlement and General Release and that there are no terms or conditions to this settlement except those expressly stated herein. This Stipulation of Settlement and General Release may not be altered, modified, withdrawn, waived, rescinded or supplemented except by a written instrument executed by a duly authorized representative of both parties.

21. The parties agree to cooperate fully and to execute any and all documents necessary to implement and effectuate the provisions of this Stipulation of Settlement and General Release.

22. Complainant stipulates and acknowledges that he has been represented by his undersigned counsel, Katz, Marshall and Banks, before the Office of Administrative Law Judges and throughout the negotiation and execution of this Stipulation of Settlement and General Release.


23. The parties contemplate that this Stipulation of Settlement and General Release may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed one document.

24. This case is dismissed with prejudice.


25. The persons signing this Stipulation of Settlement and General Release warrant and

represent that they possess full authority to bind the person or entity on whose behalf they are signing to the terms of the settlement.

Agreed to by and respectfully submitted,

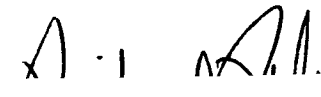


John R. Dailey, Director
National Air & Space Museum
Smithsonian Institution




Christine Nicholson
Associate General Counsel
Eryn Starun
Assistant General Counsel
Smithsonian Institution
P.O. Box 23286
Washington, D.C. 20026-3286
Phone: (202) 633-
Fax: (202) 357-

Counsel for Respondent



Richard Pullman

Complainant



David Marshall
Alexis Rickher
Katz, Marshall and Banks
1718 Connecticut Ave, NW, 6th Floor
Washington, D.C. 20009
Phone: (202) _____
Fax: (202) 299-

Counsel for Complainant

APPROVED, this _____ day of _____, 2009

Honorable Linda S. Chapman
Administrative Law Judge