

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

**UNITED STATES OF AMERICA**

**Plaintiff,**

**v.**

**TEXAS DEPARTMENT OF FAMILY  
AND PROTECTIVE SERVICES,**

**Defendant.**

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**EP-11-CA-364-FM**

**ORDER APPROVING AND ENTERING SETTLEMENT ORDER**

On this date, the court considered the parties' "Joint Motion to Approve and Enter Settlement Agreement" ("Motion") [ECF No. 9], filed November 29, 2011. The parties jointly request the court to approve and enter the "Settlement Agreement" attached to their Motion. The parties further request the court to retain jurisdiction over the case for six months from the date of entry of the Settlement Agreement, so that the court may resolve any potential disputes and enter any subsequent orders necessary to implement the terms of the Agreement. Having reviewed the Settlement Agreement, the court finds that the United States of America ("Plaintiff") and Texas Department of Family and Protective Services ("Defendant") have satisfactorily settled all issues involved in the above-captioned cause. The court is of the opinion that the Settlement Agreement is fair and equitable and the same should be, and is hereby in all things approved.

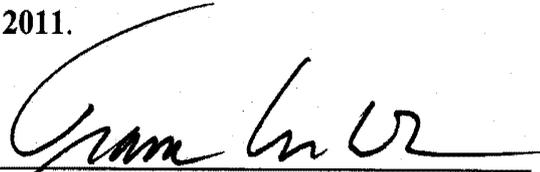
Therefore, the court enters the following Orders:

1. The parties' "Joint Motion to Approve and Enter Settlement Agreement" [ECF No. 9] is **GRANTED**.

2. The Clerk of the Court is instructed to enter the Settlement Agreement attached to this Order.
3. All proceedings in the above-captioned cause are **STAYED** until such time as the court orders otherwise.
4. The Clerk of the Court is instructed to administratively close the above-captioned cause.
5. All pending motions and other proceedings related to the above-captioned cause are **STAYED** until the court orders otherwise.
6. The parties **SHALL** file a joint notice on or before **May 30, 2012**, confirming that all issues in the case have been resolved and the case can be dismissed with prejudice.

**SO ORDERED.**

**SIGNED** this 30th day of November, 2011.



**FRANK MONTALVO**  
**UNITED STATES DISTRICT JUDGE**

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

TEXAS DEPARTMENT OF FAMILY  
AND PROTECTIVE SERVICES,

Defendant.

Case No. 3:11-cv-00364-FM

**SETTLEMENT AGREEMENT**

**I. INTRODUCTION**

This action was brought by the United States against the Texas Department of Family and Protective Services ("DFPS") to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, *et seq.*, as amended ("Title VII"), following receipt by the United States from the Equal Employment Opportunity Commission of a charge of discrimination filed by Michael Lewis against DFPS. This Court has jurisdiction of the action under 42 U.S.C. §2000e-5(f) and 28 U.S.C. §1345.

In its complaint, the United States alleges that DFPS subjected Mr. Lewis to discrimination on the basis of his race (black) and/or sex (male), in violation of Section 703(a) of Title VII, among other ways, by:

- (a) creating and/or maintaining a hostile work environment based on race and/or

sex that adversely affected the terms, conditions, and privileges of Mr. Lewis's employment;

(b) terminating Lewis's employment in July 2007; and

(c) failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment.

DFPS denies it has discriminated against Mr. Lewis in violation of Title VII. Nevertheless, the United States and the DFPS, desiring that this action be settled and to avoid the burdens and risks of protracted litigation, agree to this Court's jurisdiction over this Settlement Agreement ("Agreement") for the six-month period set forth in paragraph 13. This Agreement between the United States and DFPS shall in no way constitute an adjudication or finding on the merits of the case, nor be construed as an admission by DFPS or a finding of wrongdoing or violation of any applicable federal law or regulation.

In resolution of this action, the parties hereby AGREE to, and the Court expressly APPROVES, ENTERS and ORDERS, the following:

## II. TRAINING

1. DFPS, by and through its officials, agents, and employees, shall not engage in any act or practice that discriminates against any employee or applicant on the basis of race or sex in violation of Title VII.

2. DFPS shall not retaliate against or in any way adversely affect the terms and conditions of employment of any person because that person has opposed any practice made unlawful by Title VII, filed a charge with the Equal Employment

Opportunity Commission, or testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII, this case, or this Agreement.

3. DFPS will continue to maintain an electronic copy of its anti-discrimination and anti-harassment policies, and its mechanism for reporting complaints of harassment on the workstations of all of its employees, supervisors, and officials.

4. DFPS shall ensure that each new employee is made aware of the location of DFPS's electronically displayed anti-discrimination and anti-harassment policies, and its mechanism for reporting complaints of harassment, at the time of the new employee's hire. Each new DFPS employee shall acknowledge in writing or by electronic means the employee's responsibility to be aware of and comply with the policies set out in the Health and Human Services ("HHS") Human Resources ("HR") Manual, and such acknowledgments shall be maintained in the employee's master personnel file.

5. No later than ninety (90) days from the date this Agreement is entered, DFPS shall provide, at its own cost, mandatory training on DFPS's anti-discrimination and anti-harassment policies to all employees in the El Paso, Texas Child Protective Services Offices, including managers and supervisors. The training shall, at a minimum, include an explanation of DFPS's anti-discrimination and anti-harassment policies, and its mechanism for reporting complaints of harassment.

6. All persons who undergo and successfully complete the mandatory training described in Paragraph 5, above, shall be recorded in the DFPS online training system. Within ten (10) days after the successful completion of such training by persons covered by Paragraph 5, DFPS shall provide the United States with written confirmation

those persons completed the training. DFPS shall maintain each employee's completion of the training in the DFPS training system for the duration of that person's employment with DFPS.

7. DFPS shall continue to retain during the term of this Agreement all documents, in paper or electronic form (including electronic mail), that come into its possession that are related to discrimination complaints made by employees of DFPS.

8. The United States may review compliance with this Agreement at any time during the pendency of this action per paragraph 13. As part of that review, DFPS shall provide copies of any documents relevant to DFPS's compliance with this Agreement upon the request of the United States, including but not limited to the documents described in Paragraphs 4, 6, and 7, above.

### III. INDIVIDUAL RELIEF

9. Without admitting the allegations in the United States' Complaint, and in settlement of the claims of the United States for relief on behalf of Mr. Lewis, who, by his signature to the release attached as Appendix A, accepts the relief to be given him pursuant to this Agreement, DFPS shall, within twenty (20) business days from the date of entry of this Agreement, pay Mr. Lewis a total monetary award of \$60,000, comprised of \$27,376.50 in back wages, \$9,444.71 in interest on those back wages, and \$23,178.79 in non-wage compensatory damages. DFPS shall withhold from the \$27,376.50 attributable to back wages all appropriate income tax withholdings and statutory deductions, and shall separately pay its portion of any Social Security tax and other applicable federal, state and local employer-side taxes due on the \$27,376.50, and shall not deduct its portion of such taxes from the amount paid to Mr. Lewis. DFPS shall pay all withheld monies to the

appropriate governmental agencies and shall issue Mr. Lewis the appropriate Internal Revenue Service tax forms on or before the date it is required by law to do so. All of DFPS's payment actions under this paragraph shall be in accordance with federal and state law regarding expenditure of funds. DFPS shall pay the required amount by mailing one or more checks made payable to "Michael Lewis" to the following address:

Mr. Michael Lewis  
14616 Desierto Lindo  
Horizon City, Texas 79928

Within ten (10) days of DFPS's mailing of the check(s) to Mr. Lewis, DFPS shall provide documentary evidence of having paid Mr. Lewis by sending the United States a photocopy of the check(s).

#### IV. DISPUTE RESOLUTION

10. The parties to this Agreement shall reasonably attempt to resolve informally any disputes that may occur under this Agreement before seeking relief in any court.

#### V. CONTACTS FOR THE PARTIES

11. All documents required to be delivered under this Agreement to the United States shall be sent to the following address by overnight delivery service:

Louis Whitsett  
Trial Attorney  
Employment Litigation Section  
Civil Rights Division  
U.S. Department of Justice  
601 D Street, N.W., Room 4035  
Washington, D.C. 20004

Documents sent by electronic mail should be sent to the following address:

Louis.Whitsett@usdoj.gov

12. All documents required to be delivered under this Agreement to DFPS shall be sent by U.S. Mail to the following address:

Shelley Dahlberg  
Assistant Attorney General  
Office of the Texas Attorney General  
P.O. Box 12548 (MC 059)  
Austin, Texas 78711

Documents sent by electronic mail should be sent to the following address:

Shelley.dahlberg@oag.state.tx.us

#### VI. JURISDICTION OF THE COURT

13. The Court shall retain jurisdiction over this Agreement for the purpose of resolving any disputes or entering any orders that may be necessary to implement the relief provided in the Agreement. At the end of six months from the date of entry of this Agreement, the Court's jurisdiction over this Agreement shall expire and this action dismissed without further order of the Court.

#### VII. GENERAL PROVISIONS

14. The parties shall bear their own costs, expenses, and attorney's fees in this action, except that the parties shall retain the right to seek costs for any matter which, in the future, may arise from this Agreement and require resolution by this Court.

15. The effective date of this Agreement shall be the date on which it is entered by the Court.

It is so ORDERED, this 30 day of November, 2011.

  
UNITED STATES DISTRICT JUDGE

AGREED AND CONSENTED TO:

For Plaintiff United States of America:

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

By:  
/s/ Delora L. Kennebrew  
DELORA L. KENNEBREW (GA Bar No. 414320)  
Chief

/s/ Louis Lopez  
LOUIS LOPEZ (DC Bar No. 416662)  
Deputy Chief

/s/ Louis Whitsett  
LOUIS WHITSETT (DC Bar No. 257626)  
Senior Trial Attorney  
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JOHN E. MURPHY  
United States Attorney

BY:

/s/ John Paniszczyn  
JOHN PANISZCZYN (TX Bar No. 15443855)  
Chief, Civil Division  
Office of the United States Attorney  
Western District of Texas  
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Telephone: (210) 384-7300  
Facsimile: (210) 384-7312  
Email: John.Paniszczyn@usdoj.gov

For Defendant Texas Department of Family and Protective Services:

GREG ABBOTT  
Attorney General of Texas

By:

/s/ Shelley Dahlberg  
SHELLEY DAHLBERG (TX Bar No. 24012491)  
Assistant Attorney General  
Office of the Texas Attorney General  
P.O. Box 12548 (MC 059)  
Austin, Texas 78711  
Telephone: (512) 936-1826  
Facsimile: (512) 474-2697  
Email: Shelley.Dahlberg@oag.state.tx.us.

**APPENDIX A**

**RELEASE**

I, Michael Lewis, for and in consideration of accepting the relief to be provided to me pursuant to the provisions of the Settlement Agreement entered in United States v. Texas Department of Family and Protective Services, release and discharge the Texas Department of Family and Protective Services ("DFPS") and its current, former, and future officials, employees and agents from any and all claims and causes of action relating to the complaint filed in that case and EEOC Charge No. 453-2008-00481 occurring prior to the date of this Release.

In order to receive as part of my monetary relief under the Agreement any moneys that would otherwise have been withheld by DFPS for my pension contributions, I further waive my right to make pension contributions, as well as DFPS's obligation to do so as my former employer, to the Employees Retirement System of Texas, and I waive my right to receive health insurance coverage based upon my payment of health insurance premiums, and I authorize DFPS to refrain from paying all such employer's health insurance premiums that it would otherwise be required to contribute for my health insurance.

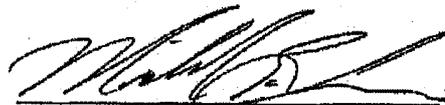
I understand that the relief to be given to me does not constitute an admission by DFPS of the validity of any claim raised by me, or on my behalf.

This Release constitutes the entire agreement between DFPS and myself in connection with this case, without exception or exclusion.

I acknowledge that a copy of the Settlement Agreement in this action was provided to me.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF,  
AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Signed this 25 day of November, 2011.



Signature