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U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FT. WORTH DIVISION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

2012 AUG 21 PM 2:56

CLERK OF COURT

KATRINA LANETTA MCINTOSH,

Plaintiff

v.

BANK OF AMERICA,

Defendant.

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CIVIL ACTION NO. 4:11-cv-00715-A

**DEFENDANT'S BRIEF IN SUPPORT OF ITS MOTION
TO ENFORCE SETTLEMENT AGREEMENT**

After numerous informal efforts to resolve this lawsuit short of trial, Plaintiff Katrina Lanetta McIntosh ("Plaintiff") and Defendant Bank of America ("Defendant") settled this matter during a private mediation held on August 13, 2012. On the following day, Plaintiff informed her counsel that she would not execute the agreement memorializing the terms of settlement. Consequently, Defendant respectfully requests that the Court intervene in order to enforce the settlement agreed to by the parties, bring this case to a close, and relieve Defendant from incurring additional unnecessary fees and expenses. As forth below, enforcement of the settlement agreement is appropriate as a matter of law.

Factual Background

In September 2011, Plaintiff filed a *pro se* Complaint in the Dallas Division of the Northern District of Texas purporting to assert violations of Title VII of the Civil Rights Act of 1964 ("Title VII") against Defendant. ECF Doc. No. 2. Prior to Plaintiff effectuating service on Defendant, the Court transferred, *sua sponte*, Plaintiff's lawsuit to the Fort Worth Division because the events about which Plaintiff complains allegedly occurred in Tarrant County, Texas. ECF Doc. Nos. 6-7. Defendant answered Plaintiff's Complaint in full and asserted affirmative

and other defenses on December 9, 2011. ECF Doc. No. 17. The Court then issued an Order setting trial in this matter the week of December 10, 2012. ECF Doc. No. 25. Beginning at the January 5, 2012 face-to-face settlement meeting ordered by this Court, and until the date Plaintiff retained counsel in late July 2012, Plaintiff and counsel for Defendant engaged in numerous informal settlement discussions. Declaration of Angela M. Tsevis ("Tsevis Decl."), ¶¶ 4-6, attached as Exhibit 1. The parties reached a verbal agreement by telephone to resolve this case on at least two occasions, but in both instances, Plaintiff *pro se* changed her mind and refused to execute a settlement agreement. Tsevis Decl., ¶¶ 4-5.

Defendant served Plaintiff with a Notice of Deposition on July 16, 2012, setting her deposition for August 1, 2012. Shortly thereafter, Plaintiff retained counsel on July 24, 2012.¹ ECF Doc. No. 36. After discussing their respective settlement positions, the parties, through counsel, agreed to mediate the case and postpone Plaintiff's deposition pending the outcome of mediation. Tsevis Decl., ¶ 8. Plaintiff filed a First Amended Complaint on August 6, 2012, adding claims under 42 U.S.C. § 1981 and state law based on the same alleged events as her Title VII claims.² ECF Doc. No. 40. After extensive discussions about potential mediators,³ the parties agreed to use certified and experienced Mediator Suzanne Mann Duvall, who is associated with Burdin Mediation in Dallas, Texas, and she was retained by the parties. Tsevis Decl., ¶¶ 9-10.

¹ Before retaining counsel, Plaintiff submitted numerous *pro se* filings attempting to add parties and to seek relief for discovery not properly served, which the Court denied. We would also note here that on July 16, 2012 a copy of the deposition notice was sent by e-mail and certified mail to Plaintiff, then *pro se*, to her address per the lawsuit Complaint, 9200 Buena Vista #2913, Benbrook, Texas 76126; and, Defendant's counsel recently received this certified mail envelope returned as "Return to Sender, undeliverable as addressed, unable to forward."

² Although this case has settled, Defendant is filing contemporaneously with this Motion an Answer to Plaintiff's First Amended Complaint, which is due by August 21, 2012, in order to preserve properly and timely its defenses in this matter, including defenses of waiver, release, and estoppel based on the settlement reached at the August 13, 2012 mediation.

³ One of the mediators initially proposed by Plaintiff's counsel shares office space with local counsel for Defendant. Defense counsel advised Plaintiff's counsel of this fact in the interest of full disclosure, and while Plaintiff's counsel initially did not believe this to be a problem, he later informed counsel for Defendant that he had spoken to Plaintiff and she preferred to select a different mediator and for the mediation to be held at a neutral office. Tsevis Decl., ¶ 9.

Ms. Duvall conducted a mediation in this case on August 13, 2012 at the offices of Burdin Mediation. Tsevis Decl., ¶ 11. The mediation lasted the entire day, beginning at 9:30 a.m. and ending shortly after 5:00 p.m. Tsevis Decl., ¶ 12. Plaintiff and her counsel, Darren Wolf, attended. Tsevis Decl., ¶ 11. Defendant was represented by lead counsel Jack D. Rowe and Angela M. Tsevis, and Scott Prince, Senior Vice President, participated as Defendant's corporate representative. Tsevis Decl., ¶ 11.

Ms. Duvall began the mediation with an introductory joint session, which did not include substantive discussion of the parties' positions, but during which she explained the rules and purpose of the mediation process. Tsevis Decl., ¶ 13. Plaintiff and the Bank's corporate representative each then signed a Waiver and Consent form presented to them by the Mediator. Tsevis Decl., ¶ 13. *See* Waiver and Consent Form signed by Plaintiff and Defendant's representative attached as Exhibits 2 and 3, respectively. At that time the Mediator also presented Plaintiff and Defendant's representative with a document titled "Rules for Mediation," which expressly states, among other things, that "[p]arty representatives must have authority to settle." Tsevis Decl., ¶ 13. *See* Rules for Mediation, attached as Exhibit 4. Ms. Duvall also specifically asked both Plaintiff and Mr. Prince if each was willing to work toward a resolution of Plaintiff's claims, and each answered in the affirmative. Tsevis Decl., ¶ 13.

The parties thereafter mediated in what Defendant believed to be in good faith, and after presentation of their cases and full discussion during a number of caucuses with the Mediator, during which demands and counter-offers were conveyed, the parties reached an agreement to resolve the matter. Tsevis Decl., ¶¶ 14-17. In a late afternoon brief joint session with the Mediator and Defendant's counsel, Mr. Wolf restated and confirmed that Plaintiff had authorized

him to settle the case for the last amount previously demanded by Plaintiff – *i.e.* Plaintiff's last, best and final offer. Tsevis Decl., ¶ 15.

The Mediator then met again collectively with counsel for both parties, and Defendant accepted Plaintiff's last, best and final offer, and the Mediator and counsel again reviewed and confirmed the specific terms of the agreement, which included the settlement amount, details regarding the distribution of the settlement amount between Plaintiff and her counsel, including tax treatment, the nature of the release, and the breadth of the confidentiality provisions as well as other provisions, all of which had previously been discussed and agreed upon earlier in the mediation. Tsevis Decl., ¶ 16. The Mediator subsequently confirmed the settlement and reported to the Court that the matter had settled. *See* Mediator's Report, attached as Exhibit 5.⁴ The course of proceedings left no doubt that the an enforceable agreement was reached, the terms of which included: (1) that Defendant would pay Plaintiff the agreed upon sum, a portion of which would be paid to Plaintiff and be subject to applicable wage withholdings, a portion of which would be paid to Plaintiff's counsel as attorney's fees, and the remainder of which would be paid to Plaintiff and for which Defendant would issue an IRS Form 1099; (2) that Plaintiff agreed to release fully and completely all claims; (3) that this case would be dismissed with prejudice with each party bearing and paying its or her own costs; and (4) that Plaintiff would sign a settlement agreement that included, among other terms, the full release, confidentiality, non-disparagement and no-reemployment. *See* Tsevis Decl., ¶ 17.

Once the parties reached agreement, Defendant presented for execution at the conclusion of the mediation a written release and settlement agreement memorializing the terms of the agreement and a stipulation for dismissal. Tsevis Decl., ¶ 18. Plaintiff's counsel advised the

⁴ To preserve the confidentiality and integrity of the mediation process, as well as the agreement of the parties, Defendant has redacted the settlement amount from the attached copy of the Mediator's Report.

Mediator and defense counsel that Plaintiff wanted to think it over before she signed an agreement, but that *he confirmed the case was settled*. Tsevis Decl., ¶ 19. The following day, counsel for Plaintiff informed Defendant that Plaintiff refused to sign the settlement agreement and that he was considering withdrawing from the case because *he knows the parties reached a binding, enforceable agreement at the mediation*. Tsevis Decl., ¶ 20.

On August 16, 2012, Plaintiff, who, as of the date of this Motion, remains to be represented by her counsel of record, filed a “Motion to Proceed in Forma Pauperis,” asserting that she did not agree to mediate her claims and requesting that the Court grant her *pro se* status. ECF Doc. No. 42.

Argument

The Court has “inherent power to recognize, encourage, and when necessary enforce settlement agreements reached by the parties.” *Bell v. Schexnayder*, 36 F.3d 447, 449-50 (5th Cir. 1994). Questions regarding the validity or enforceability of oral agreements are determined by federal law in actions brought pursuant to Title VII and other federal anti-discrimination laws. *See Del Bosque v. AT&T Advert., L.P.*, 2011 U.S. App. LEXIS 19280, at *5 (5th Cir. Sep. 16, 2011) (noting that Congress has mandated a policy of encouraging voluntary settlement in Title VII claims); *Fulgence v. J. Ray McDermott & Co.*, 662 F.2d 1207, 1209 (5th Cir. 1981). Federal law requires that settlements be entered into “voluntarily and knowingly.” *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 52, n.15 (1974). “Such settlements are not required to be reduced to writing and oral settlement agreements are enforceable.” *Id.*

Voluntary settlements of civil disputes are highly favored by courts, and a valid settlement agreement, once reached, cannot be repudiated by the parties. *See Kazery v. City of Jackson*, 998 F.Supp. 705, 707 (5th Cir. 1998). “One who attacks a settlement must bear the

burden of showing that the contract he has made is tainted with invalidity.” *Mid-South Towing Co. v. Hardwin Inc.*, 733 F.2d 386, 392 (5th Cir. 1984) (internal citations omitted). Here, Plaintiff knowingly and voluntarily entered into a valid settlement agreement by which she is now bound. There is no evidence to suggest that Plaintiff was coerced into this settlement or that she was at any disadvantage, nor is there evidence to suggest that she could not understand the terms of the agreement. The agreement was not entered into in bad faith or fraudulently, but rather with a mutual compromise between the parties to settle their dispute at a fair and neutral mediation. Further, Plaintiff’s contention that she never agreed to the mediation in the first place stretches the bounds of credulity. Plaintiff cannot refute the representations she made during the joint session, the consent form she signed at the outset of the mediation, or that she provided her attorney with input on the selection of the Mediator and the location of the mediation. *See* Exhibit 1, and footnote 3 *supra*.

In the mediation process, conveyed through her counsel, Plaintiff offered to settle her claims against Defendant for a particular amount, which Defendant unequivocally accepted. “[A]n attorney of record is presumed to have authority to compromise and settle litigation of his client.” *Id.* at 390. Mr. Wolf was authorized to communicate Plaintiff’s offer to Defendant, through the Mediator, and once Defendant accepted that offer, a contract existed. There are simply no facts in the present case suggesting that Plaintiff can prove that Mr. Wolf did not have authority to make the settlement offer that Defendant accepted. *See Harmon v. Journal Pub. Co.*, 2012 WL 1003554, at *2 (5th Cir. March 26, 2012) (affirming enforcement of verbal agreement between counsel to settle Title VII claim where plaintiff failed to establish that her counsel did not have authority to settle the case on her behalf). To the contrary, the course of the parties’ negotiations, the Mediator’s report to the Court that the case settled, Mr. Wolf’s repeated

acknowledgments of settlement, and the fact that counsel for the parties acted on the agreement, drafting and reviewing release and dismissal documents, demonstrate that Plaintiff authorized resolution of the case. Plaintiff's attempt to repudiate the settlement with after-the-fact assertions that her counsel was not authorized to make the settlement offer must fail. Courts reviewing similar situations routinely find that counsel had express or actual authority to make an offer to agree to settle "where it is clear the real motive for challenging a settlement involve[d] a change of heart." *Farris v. J.C. Penney Co., Inc.*, 176 F.3d 706, 713 (3d Cir. 1999).

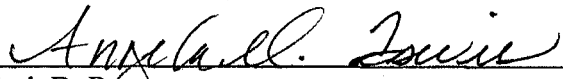
The fact that Plaintiff has now apparently changed her mind, as she has done many times over the course of this litigation, does not rescind the binding agreement. In *Sanders v. Mary Kay, Inc.*, the plaintiff sued her employer alleging race discrimination in violation of Title VII. 1999 U.S. Dist LEXIS 224 (N.D. Tex. Jan. 13, 1999). The two parties reached a settlement as a result of a court-ordered mediation. Counsel for the defendant then prepared the necessary documents to finalize the settlement, but the plaintiff changed his mind and refused to sign them. In enforcing the settlement, the court explained that "[i]f a party to a...suit, who has previously authorized a settlement, changes his mind when presented with the settlement documents, the party remains bound by the terms of the agreement." *Id.* (citing *Fulgence*, 662 F.2d at 1209). *See also Glass v. Rock Island Refining Corp.*, 788 F.2d 450, 455-56 (7th Cir. 1986) (plaintiff's change of heart regarding the terms of settlement and refusal to execute settlement documents had no effect on defendant's ability to enforce an oral agreement to settle where the agreement was made by plaintiff's attorney who was acting with plaintiff's authority). Plaintiff, through her counsel, offered a certain sum to settle her case and Defendant agreed to that sum. The fact that Plaintiff has now changed her mind and wishes to proceed to trial does not invalidate the binding agreement.

Local Rule 16.3 requires the parties to “make good-faith efforts to settle.” Defendant is hesitant to level allegations of improper conduct by a party, but Plaintiff’s actions since the outset of this case regarding settlement have frustrated the parties’ multiple efforts to attempt resolution of this matter. Additionally, Plaintiff’s actions have significantly increased the amount of time necessary to reach settlement and required Defendant to incur additional costs and fees. The parties reached a settlement agreement through mediation, the agreement and its terms were confirmed by the Mediator with counsel for both parties, and counsel for both parties acted on the agreement. Consequently, Plaintiff should not be allowed to vitiate the mediation process and should be held to the agreement.

Conclusion

Plaintiff cannot refute the existence of a valid settlement agreement. She cannot provide competent evidence demonstrating her counsel was not authorized to make the settlement offer that Defendant ultimately accepted. Furthermore, the fact that she has now changed her mind is insufficient to renege the binding agreement. For these reasons, Defendant Bank of America respectfully requests that the Court enter an Order enforcing the agreement reached through mediation, dismissing Plaintiff’s case with prejudice, awarding Defendant its attorneys’ fees and costs in filing this Motion to Enforce Settlement Agreement and for any other relief deemed appropriate in the premises.

Respectfully submitted,




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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that the foregoing *Defendant's Brief in Support of its Motion to Enforce Settlement Agreement* will be served on counsel of record via the Court's ECF/ENS system on the date of entry on the Court's docket.



An Attorney for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

KATRINA LANETTA MCINTOSH,

Plaintiff

v.

BANK OF AMERICA,

Defendant.

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CIVIL ACTION NO. 4:11-cv-00715-A

DECLARATION OF ANGELA M. TSEVIS

I, Angela M. Tsevis, declare as follows:

1. I am over twenty-one years of age and make this Declaration based on my own personal knowledge or, to the extent indicated, I am informed and believe and on that basis state it to be true. If called to testify, I would competently testify to the matters set forth herein.
2. I am an attorney with Lathrop & Gage LLP and was admitted to practice law in the State of Missouri in 2007.
3. I represent Bank of America (“the Bank” or “Defendant”) in the lawsuit captioned *Katrina Lanetta McIntosh v. Bank of America*, Civil Action No. 4:11-cv-715-A, which is pending in the Northern District of Texas, Fort Worth Division.
4. I have had numerous discussions with Plaintiff Katrina Lanetta McIntosh (“Plaintiff”), while she was proceeding *pro se*, about resolution of her case against the Bank. We discussed settlement at the Court-ordered face-to-face settlement meeting on January 5, 2012. We agreed to a resolution immediately following the settlement meeting, but Plaintiff later advised that the agreed upon sum was not enough and she refused to execute the settlement and dismissal documents.



5. On yet another occasion, Plaintiff called me and accepted a settlement offer previously conveyed to her by me on the Bank's behalf. I made arrangements for Plaintiff to sign the settlement agreement and dismissal papers at the office of the Bank's local counsel, but Plaintiff later refused to execute the documents.

6. I had numerous other discussions with Plaintiff, by telephone and e-mail, about the resolution of her case until the date she retained counsel in late July 2012.

7. On July 16, 2012, I served Plaintiff, by e-mail and certified mail, a copy of a Notice of Deposition setting her deposition for August 1, 2012.

8. Shortly thereafter, Darren Wolf entered his appearance on behalf of Plaintiff. Mr. Wolf and I agreed to schedule mediation for August 13, 2012, and we agreed to postpone Plaintiff's deposition, if necessary, until the day following the mediation.

9. Mr. Wolf and I talked extensively about potential mediators in this case. One of the mediators initially proposed by Mr. Wolf shares office space with local counsel for the Bank. I advised Mr. Wolf of this fact, and while he initially did not believe this to be a problem, he later informed me that he had spoken to Plaintiff and she preferred to select a different mediator and that the mediation to be held at a neutral office.

10. Mr. Wolf and I agreed to use, and retained, certified and experienced Mediator Suzanne Mann Duvall, who is associated with Burdin Mediation in Dallas, Texas.

11. I attended the mediation in this case on August 13, 2012 at the offices of Burdin Mediation. Jack D. Rowe, counsel for the Bank, and Scott Prince, Senior Vice President and the Bank's corporate representative, also attended and participated. Plaintiff and her counsel, Mr. Wolf, attended.

12. The mediation began at 9:30 a.m. and ended shortly after 5:00 p.m.

13. Ms. Duvall began the mediation with an introductory joint session, which did not include substantive discussion of the parties' positions, but during which she explained the rules and purpose of the mediation process. Plaintiff and Mr. Prince each signed a Waiver and Consent form presented to them by Ms. Duvall. At that time, Ms. Duvall also presented Plaintiff and Mr. Prince with a document titled "Rules for Mediation." Ms. Duvall also specifically asked both Plaintiff and Mr. Prince if each was willing to work toward a resolution of Plaintiff's claims, and each answered in the affirmative.

14. Mr. Rowe and I discussed the Bank's position with Ms. Duvall during a number of caucuses, during which demands and counter-offers were conveyed back and forth between Plaintiff and the Bank.

15. In a late afternoon brief joint session with Ms. Duvall and all counsel, Mr. Wolf restated and confirmed that Plaintiff had authorized him to settle the case for the last amount previously demanded by Plaintiff.

16. After a brief recess, Ms. Duvall then met again collectively with counsel for both parties, and Mr. Rowe communicated the Bank's acceptance of Plaintiff's last offer. Ms. Duvall and counsel reviewed and confirmed the specific terms of the agreement, which included the settlement amount, details regarding the distribution of the settlement amount between Plaintiff and Mr. Wolf, including tax treatment, the nature of the release, and the breadth of the confidentiality provisions as well as other provisions, all of which had previously been discussed and agreed upon earlier in the mediation.

17. It was my understanding that an enforceable agreement was reached, the terms of which included: (1) that the Bank would pay Plaintiff the agreed upon sum, a portion of which would be paid to Plaintiff and be subject to applicable wage withholdings, a portion of which

would be paid to Plaintiff's counsel as attorney's fees, and the remainder of which would be paid to Plaintiff and for which the Bank would issue an IRS Form 1099; (2) that Plaintiff agreed to release fully and completely all claims; (3) that this case would be dismissed with prejudice with each party bearing and paying its or her own costs; and (4) that Plaintiff would sign a settlement agreement that included, among other terms, the full release, confidentiality, non-disparagement and no-reemployment.

18. At the conclusion of the mediation, I prepared a written release and settlement agreement memorializing the terms of the agreement as well as a stipulation for dismissal.


19. Mr. Wolf then advised Ms. Duvall, Mr. Rowe and me that Plaintiff wanted to think it over before she signed an agreement, but he confirmed the case was settled.

20. The following day, Mr. Wolf informed me by telephone that Plaintiff refused to sign the settlement agreement and that he was considering withdrawing from the case because he knows the parties reached a binding, enforceable agreement at the mediation.

I make this Declaration under penalties of perjury pursuant to 28 U.S.C. § 1746, and I state that the facts set forth are true.

Dated:

8/20/12


Angela M. Tsevis

Suzanne Mann Duvall / 4514 Cole Avenue, Suite 1450 / Dallas, Texas 75205

WAIVER AND CONSENT FORM

Cause No. 4:11-cv-00715-A

This waiver and consent form is executed in exchange for participation by the mediator in the mediation of a dispute in the case styled K. McIntosh and Bank of America. It pertains only to the matters arising during the mediation of that dispute.

1. I understand that the mediator is not a legal advisor and is not to provide legal advice to any party involved in mediation. I agree to hold the said mediator harmless for any observations, suggestions or implications that he/she may make in the course of mediation. I specifically agree to obtain legal advice on any issue of interest to me from my own attorney and not to rely upon the mediator for such advice.

2. I waive any right of action that I may have against the mediator for any allegation of wrongful conduct on his/her part or on the part of his/her employees, while acting in the course of the mediation herein agreed to.

3. I agree to the necessity that mediation be confidential and, therefore, agree that I will not call the mediators, or their agents or employees, who serve on my case to act as witnesses in any court of competent jurisdiction to testify to facts concerning or relating to the subject matter here being mediated and that neither will I subpoena documents or information about my case which may have been retained in any file of the mediator.

4. I agree to treat anything said by the opposing party as part of an offer to compromise and settle the dispute being mediated. I further agree that statements made during mediation shall be treated as offers to settle and shall not be admissible should this matter result in litigation.

5. I specifically agree, however, that a fully executed settlement agreement can be admitted to any court proceeding without by objection as evidence of such settlement.

6. I acknowledge receipt of the Rules for Mediation and agree to abide by them.

I consent to these terms and waive the rights herein specified, and I know that I have the right to consult legal counsel before executing this document.

[Signature]
Signature of Party

8-13-2012
Date

EXHIBIT

2

Suzanne Mann Duvall / 4514 Cole Avenue, Suite 1450 / Dallas, Texas 75205

WAIVER AND CONSENT FORM

Cause No. 4-11-CV-00715-A

This waiver and consent form is executed in exchange for participation by the mediator in the mediation of a dispute in the case styled McIntosh and Bank of America. It pertains only to the matters arising during the mediation of that dispute.

1. I understand that the mediator is not a legal advisor and is not to provide legal advice to any party involved in mediation. I agree to hold the said mediator harmless for any observations, suggestions or implications that he/she may make in the course of mediation. I specifically agree to obtain legal advice on any issue of interest to me from my own attorney and not to rely upon the mediator for such advice.

2. I waive any right of action that I may have against the mediator for any allegation of wrongful conduct on his/her part or on the part of his/her employees, while acting in the course of the mediation herein agreed to.

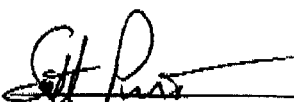
3. I agree to the necessity that mediation be confidential and, therefore, agree that I will not call the mediators, or their agents or employees, who serve on my case to act as witnesses in any court of competent jurisdiction to testify to facts concerning or relating to the subject matter here being mediated and that neither will I subpoena documents or information about my case which may have been retained in any file of the mediator.

4. I agree to treat anything said by the opposing party as part of an offer to compromise and settle the dispute being mediated. I further agree that statements made during mediation shall be treated as offers to settle and shall not be admissible should this matter result in litigation.

5. I specifically agree, however, that a fully executed settlement agreement can be admitted to any court proceeding without by objection as evidence of such settlement.

6. I acknowledge receipt of the Rules for Mediation and agree to abide by them.

I consent to these terms and waive the rights herein specified, and I know that I have the right to consult legal counsel before executing this document.



Signature of Party
SVP, Bank of America

8-13-12
Date

EXHIBIT

3

1. DEFINITION OF MEDIATION. Mediation is a process under which an impartial person, the mediator, facilitates communication between the parties to promote reconciliation, settlement or understanding among them. The mediator may suggest ways of resolving the dispute, but may not impose his own judgment on the issues or that of the parties.

2. CONDITIONS PRECEDENT TO SERVING AS MEDIATOR. The mediator shall not serve as a mediator in any dispute in which he has any financial or personal interest in the result of the mediation. Prior to accepting an appointment, the mediator shall disclose any circumstance likely to create a presumption of bias or prevent a prompt meeting with the parties.

3. AUTHORITY OF MEDIATOR. The mediator does not have the authority to decide any issue for the parties, but will attempt to facilitate the voluntary resolution of the dispute by the parties. The mediator is authorized to conduct a joint and separate meeting with the parties and to offer suggestions to assist the parties to achieve settlement. If necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator of the parties, as the mediator shall determine.

4. PARTIES RESPONSIBLE FOR NEGOTIATING THEIR OWN SETTLEMENT. The parties understand that the mediator will not and cannot impose a settlement on their case. The mediator, as an advocate for settlement, will use every effort to facilitate the negotiations of the parties. The mediator does not warrant or represent that settlement will result from the mediation process.

5. AUTHORITY OF REPRESENTATIVES. Party representatives must have authority to settle and all persons necessary to the decision to settle shall be present. The names and addresses of such persons shall be communicated in writing to all parties and the mediator.

6. TIME AND PLACE OF MEDIATION. The mediator shall fix the time of each mediation session. The mediation shall be held at the office of the mediator, or at any other convenient location agreeable to the mediator and the parties, as the mediator shall determine.

7. IDENTIFICATION OF MATTERS IN DISPUTE. Prior to the first scheduled mediation session, each party shall provide the mediator and all attorneys of record with an information sheet and request for mediation on the form provided by the mediator setting forth its position with regard to the issues that need to be resolved.

8. PRIVACY. Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

9. CONFIDENTIALITY. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports or other documents received by a mediator while serving in that capacity shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum. Any party that violates this order shall pay all reasonable fees and expenses of the mediator and other parties, including reasonable attorneys fees, incurred in opposing the efforts to compel testimony or records from the mediator.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding: A) views expressed or suggestions made by another party with respect to a possible settlement of the dispute; B) admissions made by another party in the course of the mediation proceedings; C) proposals made or views expressed by the mediator; or D) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

10. NO STENOGRAPHIC RECORD. There shall be no stenographic record of the mediation process and no person shall tape record any portion of the mediation session.

11. NO SERVICE OF PROCESS AT OR NEAR THE SITE OF THE MEDIATION SESSION. No subpoenas, summons, complaints, citations, writs or other process may be served upon any person at or near the site of any mediation session upon any person entering, attending or leaving the session.

12. TERMINATION OF MEDIATION. The mediation shall be terminated: A) by execution of a settlement agreement by the parties; B) by declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or C), after the completion of one full mediation session, by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

13. INTERPRETATION AND APPLICATION OF RULES. The mediator shall interpret and apply these rules.

14. FEES AND EXPENSES. The mediator's daily fee, if agreed upon prior to mediation, shall be paid in advance of each mediation day. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including fee and expenses of the mediator, and the expenses of any witness and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.

EXHIBIT

4

