

STATE OF INDIANA  
CIVIL RIGHTS COMMISSION

DOCKET NO. EMra06090411  
EEOC NO. 24F-2006-05282

MARK SIMS,  
Complainant,

v.

SPURLINO MATERIALS of  
INDIANAPOLIS, LLC,  
Respondent.

**FILE DATED**

**FEB 27 2009**

Indiana State Civil Rights Commission

**CONSENT AGREEMENT**

This Agreement between Mark Sims (hereinafter called "Complainant") and Respondent, Spurlino Materials of Indianapolis, LLC (hereinafter called "Respondent"), is hereby entered into in full settlement of the complaint filed by Complainant with the Indiana Civil Rights Commission (hereinafter called "the Commission") as Docket No. ~~EMra06090411~~ and charge filed with the U.S. Equal Opportunity Commission (hereinafter called "EEOC") as Charge No. 24F-2006-05282, charging Respondent with unlawful discrimination on the basis of race in employment.

The parties agree to and do settle the above matter as follows:

1. Complainant and Respondent shall forego their right to a Public Hearing before the Commission, trial in the United States Federal Court and State Court systems, and hearings or proceedings before all other tribunals, grievance committees, arbitrators, and alternate dispute resolution methods, on the issues raised by Complainant's above-referenced complaint and charge. The parties agree to waive their right to a formal determination by the Commission on matters which were or might have been alleged as charges settled by this Agreement.

2. Complainant hereby waives any and all claims to remedies except as herein provided and covenants not to sue Respondent with respect to the matters, actions or circumstances which gave rise to the above-referenced complaint and charge, subject to performance by Respondent of the promises and representations contained herein.

3. Complainant and Respondent agree that the Commission may review compliance with this Agreement.

4. The parties acknowledge that execution of this Agreement does not constitute any admission on the part of Respondent it has violated any law or committed any wrongful acts, nor does it constitute any less belief in the correctness of the complaint filed by Complainant. Such execution only represents the parties' desire to settle and conciliate this matter without the necessity and burdens of a Public Hearing.

5. Respondent agrees that there will be no discrimination or retaliation of any kind against Complainant because of the filing of this complaint with the Commission and charge with the EEOC.

6. Respondent agrees to pay Complainant and to deliver to the Commission, as escrow agent, a cashier's check in the gross amount of Seven Thousand Dollars and No Cents (\$7,000.00) payable to Complainant only, such amount representing full settlement of any and all damages at issue in relation to the above-referenced complaint and charge. All normal withholdings will be deducted and a Form W-2 will be issued. Respondent agrees to submit said check on or before January 15, 2009.

7. Respondent agrees to seal Complainant's records of all reference to the complaint and charge herein resolved, of the incidents and circumstances which gave rise thereto, and of any disciplinary action taken. Respondent's personnel file of Complainant

will reflect that Complainant resigned his employment effective August 24, 2006, and his employment termination shall be treated by the parties as an August 4, 2006 resignation. Respondent agrees that, in the event of any reference requests or any inquiries by any third party, Respondent shall not include in any reply, written or verbal, any reference to the purged items or any general adverse references or evaluations of Complainant. Respondent further agrees to designate its official for purposes of a reference check. Respondent designates

Name Jeff Davidson

Title Plant Manager

Address 2605 Kentucky Avenue

Indianapolis, IN 46221

Telephone: (317) 248-2525

as Respondent's official to provide reference information to third parties.

8. Respondent represents that it is and shall be the continuing policy of Spurlino Materials of Indianapolis, LLC to actively recruit, hire, and promote qualified employees without regard to the race, color, sex, disability, religion, ancestry or national origin of the individual. This policy of non-discrimination shall encompass all aspects of the employer-employee relationship, including hiring, job assignments, upgrading, promotion, transfer, selection for training, rates of pay and all other employment benefits.

9. Respondent has and/or shall include a statement of non-discrimination in all employment handbooks distributed to its employees. A copy of that provision is attached herein and incorporated by reference as Exhibit A.

10. Complainant agrees to withdraw his complaint against Respondent pending before the Commission, and any other complaint, charge, grievance, request for arbitration, or action of law regarding his employment with or the termination of his employment from Respondent, which he may have filed under Title VII of the Civil Rights Act of 1964, as amended, or filed with the EEOC, or with any other tribunal having jurisdiction. Specifically, included in this provision is an agreement to withdraw EEOC Charge No. 24F-2006-05282 and American Arbitration Association Case No. 52 300 00340 08. Complainant agrees that this Agreement, when fully executed, shall constitute his request and motion for withdrawal of any such complaint, charge, grievance, or action to any such tribunal, agency, arbitration association or panel.

11. Finally, in consideration of the settlement amount described in paragraph 6 of this Agreement, Complainant releases and discharges Respondent from any and all charges, complaints, claims, liabilities, demands, causes, losses, debts and expenses of any nature whatsoever, known or unknown, in law or in equity, arising prior to the date of this Agreement.

## **EQUAL EMPLOYMENT OPPORTUNITY**

Spurlino Materials of Indianapolis will make employment decisions based on merit, qualifications, competence and performance. Except where required or permitted by law, employment practices shall not be influenced or affected by virtue of an applicant's or employee's race, color, religion, sex, national origin, age or any other characteristics protected by law. In addition, we will provide an environment that is free of unlawful harassment of any kind, including sexual, age-related or ethnic. This commitment governs all aspects of employment, promotion, assignment, discharge and other terms & conditions of employment.

## **HARASSMENT POLICY**

Spurlino Materials of Indianapolis is committed to promoting a workplace that is free of harassment of any sort. This includes not only sexual harassment, but also harassment based on race, color, religion, national origin, age, disability, veteran status or any other basis prohibited under law. Harassment of Team Members occurring in the workplace or in other settings in which employees may find themselves in connection with their employment will not be tolerated by our organization. Further, any retaliation against an individual who has complained about harassment or retaliation against individuals for cooperating with an investigation of a harassment complaint will not be tolerated. To achieve our goal of providing a workplace free from harassment, we have provided a procedure by which inappropriate conduct will be dealt with.

This policy applies to all Team Members of the organization up to and including the president. Vendors and visitors are also protected by and expected to adhere to this policy. Because Spurlino Materials of Indianapolis takes allegations of harassment seriously, we will respond promptly to complaints of harassment. If it is determined that such inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary including disciplinary action where appropriate. Deliberately false or dishonest complaints are also against our policy, and the organization will take appropriate disciplinary action if its investigation shows that deliberately false or bad faith accusations have been made.

While this policy sets forth our goals of promoting a workplace that is free of harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of harassment.

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EXHIBIT A

COMPLAINANT:

Mark Sims

Signature of Complainant

MARK SIMS

Type or print name of Complainant

STATE OF Indiana )

COUNTY OF Marion ) SS:

Before me, a Notary Public, in and for said County and State, personally appeared \_\_\_\_\_ and acknowledged the execution of the foregoing Consent Agreement, this 22 day of December, 2008.



Jennifer E Alderman  
Signature of Notary Public

Jennifer E Alderman  
Type or print name of Notary Public

County of Residence:

Madison

My Commission Expires:

May 8, 2016

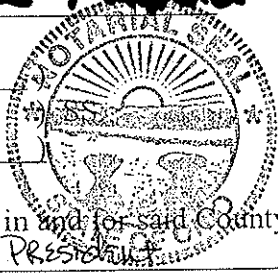
RESPONDENT:

By: *[Signature]*

For: SPURINO MATERIALS & INNOVATIONS, LLC

STATE OF Ohio

COUNTY OF BUTLER



Before me, a Notary Public in and for said County and State, personally appeared James Spurlino, the President of SPURINO MATERIALS OF INDIANAPOLIS, LLC and acknowledged the execution of the foregoing Consent Agreement, this 26<sup>th</sup> day of January, 2009.

*[Signature]*  
Signature of Notary Public

Melissa D. Sizemore  
Type or print name of Notary Public

County of Residence:

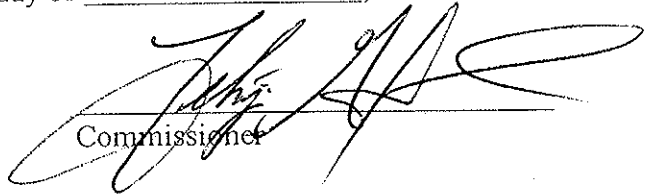
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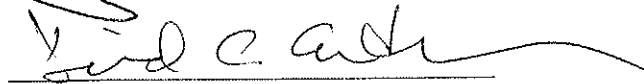
My Commission Expires:

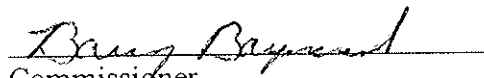
**MELISSA D. SIZEMORE, Notary Public**  
**In and for the State of Ohio**  
**My Commission expires Feb. 5, 2013**

The foregoing Consent Agreement has been signed and entered as record before the Indiana Civil Rights Commission, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

  
Commissioner

  
Commissioner

  
Commissioner

  
Commissioner

To be served upon the following parties and attorneys:

Mark Sims  
7342 E. 46<sup>th</sup> Street  
Indianapolis, IN 46226

Spurlino Materials of Indianapolis, LLC  
2605 Kentucky Avenue  
Indianapolis, IN 46221

SCOPELITIS, GARVIN, LIGHT,  
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