

FILED

AUG 7 2007 *pk*

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF SAN ANTONIO,

Defendant.

Civil Action No. SA-06-CV-839-XR

SETTLEMENT AGREEMENT

This action was brought by the United States against the City of San Antonio ("City") 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 ("EEOC") of a charge of discrimination filed by Cheri Estrada (Charge No. 360-2004-00023). 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 the City, through the San Antonio Police Department ("SAPD"), discriminated against Cheri Estrada, a detective in the SAPD, on the basis of her sex and pregnancy, in violation of Section 703(a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a), among other ways, by:

- (a) subjecting Detective Estrada to employment discrimination based on sex and pregnancy by maintaining and implementing a policy requiring pregnant employees to assume limited duty positions, regardless of their ability to fulfill the requirements of their positions;

The joint motion for settlement agreement approval is GRANTED (Docket No. 14). Because this case has been settled, the clerk is instructed to close this case.

(b) requiring Detective Estrada, by policy and practice, to assume a limited duty position on the sole basis of her pregnancy, regardless of her ability to fulfill the requirements of her position; and

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

The City denies that it, through the SAPD, has discriminated against Detective Estrada in violation of Title VII. Nevertheless, the United States and the City, desiring that this action be settled by a Settlement Agreement ("Agreement"), and without the burden of protracted litigation, agree to have the Court retain jurisdiction over the parties and the subject matter of this action pursuant to Paragraph 15, *infra*. The parties also hereby waive, for purposes of entry of this Agreement only, hearings and findings of fact and conclusions of law on all issues, and further agree to the entry of this Agreement as final and binding between them with regard to the issues raised in the United States' complaint in this case.

This Agreement, being entered into with the consent of the United States and the City, shall in no way constitute an adjudication or finding on the merits of the case, nor be construed as an admission by the City or a finding of any wrongdoing or violation of any applicable federal law or regulation, nor be construed as an admission by the United States of the merits of the City's defenses.

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

DEFINITION AND PARTIES

1. The parties to this Agreement are the United States, by the United States Department of Justice ("United States"), and the City of San Antonio, on behalf of the SAPD ("City").
2. "Day" or "Days" refers to calendar and not business days.
3. "Date of entry" of the Agreement refers to the date on which the Court orders entry of the Agreement.
4. The Equal Employment Opportunity Commission is referred to hereinafter as the "EEOC."
5. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.*, is referred to hereinafter as "Title VII."

II. PURPOSES OF THIS AGREEMENT

6. The purposes of this Agreement are to ensure that:
 - (a) employees of the SAPD are not subjected to sex and pregnancy discrimination in violation of Title VII;
 - (b) the City maintains lawful, clear, meaningful and well-publicized policies and procedures for the SAPD that prohibit discrimination on the basis of sex and pregnancy;
 - (c) the City provides adequate training to all SAPD supervisors and all other employees who are authorized to receive and investigate complaints of pregnancy discrimination and are responsible for considering and granting requests for accommodation or change in duty for pregnant employees; and

- (d) the City offers to Detective Estrada appropriate individual relief.

III. GENERAL INJUNCTIVE RELIEF

7. The City, its employees, supervisors, agents and all individuals in active concert or participation with it, are enjoined from:

- (a) engaging in any act or practice that unlawfully discriminates against any employee of the SAPD on the basis of sex and pregnancy; and
- (b) retaliating against, or in any way adversely affecting the terms and conditions of employment of, Detective Estrada or any other person for engaging in practices protected under 42 U.S.C. § 2000e-3(a), including, but not limited to, cooperating with the United States' investigation of EEOC charge number 360-2004-00023 or the litigation of this case.

IV. IMPLEMENTATION OF POLICIES AND PROCEDURES

8. The City shall maintain policies and procedures for SAPD, such as those currently stated in the SAPD General Manual, Procedure 904, Limited Duty Section Assignment, effective April 1, 2004, that prohibit discrimination on the basis of sex and pregnancy, and that require pregnant employees to be treated in the same manner as all other similarly-situated, non-pregnant employees for purposes of workplace accommodation, limited duty assignments, paid or unpaid leave, and receipt of benefits. These policies and procedures shall, at a minimum, include the following:

- (a) a description of the process in which a pregnant employee will be assigned limited duty;

- (b) a description of the manner in which an employee may make a written or verbal complaint of discrimination based on pregnancy;
- (c) a statement indicating that all requests for accommodation will be reviewed promptly and considered on the same basis as requests for accommodation made by similarly-situated, non-pregnant employees;
- (d) a statement indicating that all complaints of discrimination based on pregnancy will be promptly investigated;
- (e) contact information for the person or persons authorized to receive complaints of discrimination based on pregnancy, and contact information for the person or persons authorized to receive requests for accommodation of pregnant employees;
- (f) a statement indicating that the City will make good faith efforts to provide a response to a request for accommodation or the results of an investigation into a complaint of discrimination on the basis of pregnancy to the requesting or complaining party, in writing, no later than thirty (30) days from the date the request or complaint is received; and
- (g) a statement that all requests for accommodation and complaints of discrimination based on pregnancy filed by an SAPD employee shall be forwarded to the Chief's office for investigation, including those submitted to the City's Equal Employment Opportunity office.

V. TRAINING

9. Within one year of the date of entry of this Agreement, the City shall provide live training, or a videotape of the live training, regarding Title VII's prohibition against pregnancy discrimination, including the determination of how and when pregnant employees will be placed on limited duty assignments because of pregnancy. Such training shall be provided to: (a) all supervisors within the SAPD; (b) all SAPD employees authorized to receive and investigate complaints of sex and pregnancy discrimination; and (c) all SAPD employees who are involved in or responsible for considering and granting limited duty assignments to pregnant employees. The SAPD shall make a good faith effort to provide live training to as many supervisors as practicable.

10. A description of the training required by Paragraph 9, *supra*, and copies of all training materials used shall be submitted to the United States within one hundred twenty (120) days from the date of entry of this Agreement for its review, comment and a determination that the training is acceptable.

11. All persons who undergo training will sign an acknowledgment of their attendance at the training described in Paragraph 9, *supra*. Within thirty (30) days following the completion of the training required by Paragraph 9, *supra*, the City shall provide to the United States written verification that the training has been completed and that all employees required to attend such training in fact did so. The City will keep on file all signed acknowledgments for the duration of the Agreement.

VI. SPECIFIC RELIEF

12. Without admitting the allegations of the United States as set forth in its complaint, and in settlement of the claims of the United States for relief on behalf of Detective Estrada, the City shall provide Detective Estrada with a total monetary award of TWO THOUSAND AND FIVE HUNDRED DOLLARS (\$2,500.00) in accordance with and subject to the following:

- (a) The City shall offer to Detective Estrada a monetary award in the amount of TWO THOUSAND AND FIVE HUNDRED DOLLARS (\$2,500.00) in damages to fully compensate Detective Estrada for injuries caused by the City's allegedly discriminatory conduct against her, pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. No withholdings of any kind shall be made by the City from the damages award, although the City shall issue an Internal Revenue Service ("IRS") 1099-Misc Form to Detective Estrada and report this award to the IRS and any other applicable taxing authority.
- (b) The United States has provided Detective Estrada notice of the terms of this Agreement, and a copy of a release in the form set forth in Appendix A hereto.
- (c) To receive the relief provided to her under this Agreement, Detective Estrada must return the release form to the United States. The United States shall provide the City with a copy of Detective Estrada's executed release form within ten (10) days from the date of entry of the Agreement. Within fifteen (15) days from the date of its receipt of Detective Estrada's executed release form, the City shall mail

to Detective Estrada a check made payable to "Cheri Estrada" for the full amount owed in accordance with paragraph 12(a), *supra*.

VII. RECORD RETENTION AND COMPLIANCE MONITORING

13. The City shall retain the following records during the term of this Agreement or for the period of time required by applicable federal record retention requirements, whichever is longer:

- (a) the provisions and effective date of all policies and procedures implemented pursuant to Paragraph 8, *supra*;
- (b) copies of its policies and procedures prohibiting discrimination on the basis of pregnancy that are made available to SAPD employees, as set forth in Paragraph 8, *supra*;
- (c) all documents that come into its possession relating to written or verbal complaints of pregnancy discrimination from any employee of the SAPD against the SAPD or any of its employees, including documents relating to the City's investigation and resolution of any such complaints; and
- (d) all documents that come into the City's possession relating to notification of pregnancy by any employee of the SAPD, including documents relating to the City's processing and disposition of any such notification.

14. The United States may review compliance with this Agreement at anytime throughout the duration of this Agreement. As part of that review, the City will provide copies of any documents relevant to the City's compliance with this Agreement upon the request of the United

States, including but not limited to the documents described in Paragraphs 13(c) and 13(d),
supra.

VIII. JURISDICTION OF THE COURT

15. 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 for a period of one (1) year from the date of entry of this Agreement. This Agreement shall expire without further order of this Court one (1) year from the date of entry.

16. If a dispute arises concerning compliance with this Agreement, the parties will engage in good faith efforts to resolve the issue before seeking action by the Court. If the parties are unable expeditiously to resolve the issue, any party may move the Court for resolution, provided that written notice is first provided to the other party.

IX. GENERAL PROVISIONS

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

18. All documents required to be delivered under this Agreement to the United States shall be sent by overnight mail to the attention of:

Chief
Employment Litigation Section
U.S. Department of Justice
Civil Rights Division - 950 Pennsylvania Avenue, N.W.
PHB Fourth Floor, Room 4040
Washington, D.C. 20530

19. All documents required to be delivered under this Agreement to the City shall be sent by overnight to the attention of:

Michael D. Bernard, Esq.
City Attorney
Office of the City Attorney
P.O. Box 839966
San Antonio, TX 78283-3966

IT is so ORDERED, this 7th day of August, 2007.



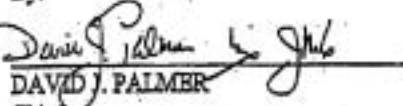
XAYIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE


AGREED AND CONSENTED TO:

For plaintiff United States of America:

WAN J. KIM
Assistant Attorney General
Civil Rights Division

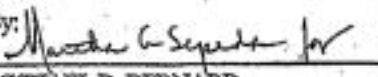
By:


DAVID J. PALMER
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For defendant City of San Antonio:

By: 
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