

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

and

EVA AMAYA,

Intervenor-Plaintiff,

v.

COUNTY OF MUSKEGON,

Defendant.

Case No. 1:08cv1214

Hon. Robert J. Jonker

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CONSENT DECREE

This action was brought by the United States against Muskegon County, Michigan (the "County") to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42

U.S.C. § 2000e, *et seq.*, ("Title VII"), following receipt by the United States from the Equal Employment Opportunity Commission of a charge of discrimination filed by Eva Amaya. Ms. Amaya, with the representation of private counsel, intervened. 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 County discriminated against Eva Amaya on the basis of her sex, female, in violation of Section 703(a) of Title VII, among other ways, by:

- (a) Creating or maintaining a hostile work environment based on sex that adversely affected the terms, conditions and privileges of Ms. Amaya's employment as a Microcomputer Analyst by the County in the 60th District Court; and
- (b) Failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment of Ms. Amaya.

The County denies that it has discriminated against Ms. Amaya and denies that it has violated Title VII or any state statute. Nevertheless, the United States, Amaya and the County, desiring that this action be settled by an appropriate Consent Decree ("Decree"); and without the burden and risks of protracted litigation, agree to the jurisdiction of this Court over the parties and the subject matter of this action. The United States, Amaya and the County also hereby waive, for purposes of this Decree only, hearings and findings of fact and conclusions of law on all issues, and further agree to the entry of this Decree as final and binding with regard to the issues raised in the United States' and Amaya's complaints in this case.

This Decree, being entered into with the consent of the United States, Amaya and the County, shall in no way constitute an adjudication or finding on the merits of the case, nor be

construed as an admission by the County or a finding of wrongdoing or violation of any applicable federal or state law or regulation.

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

GENERAL RELIEF

1. The County, by and through its officials, agents, employees and all persons in active concert or participation with the County in the performance of employment or personnel functions, shall not engage in any act or practice that discriminates against any employee or applicant on the basis of sex in violation of Title VII.

2. The County 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 ("EEOC"), or testified, assisted or participated in any manner in an investigation, proceeding or hearing under Title VII, including this case or this Decree.

3. Within forty-five (45) days from the date of entry of this Decree, the County shall submit to the United States proposed modifications to its anti-discrimination policies and procedures that prohibit sex discrimination for the United States to review and approve. These modifications shall include:

- (a) a clarification of what constitutes a "bona fide" complaint of harassment under the County's policy;
- (b) a description of the circumstances under which an internal investigation of a complaint of harassment will be initiated;

- (c) a clarification of what constitutes a "prompt" investigation of harassment under the County's policy;
- (d) a statement providing employees with the option of reporting harassment to either a supervisor or the County's Equal Opportunity Officer;
- (e) a statement requiring any supervisory employee who receives a verbal or written complaint of sexual harassment from an employee to report the complaint to the County's Equal Opportunity Officer within five (5) business days of receiving such a complaint, and that supervisory employees who fail to meet this requirement are subject to discipline; and
- (f) a statement requiring any supervisory employee who has not received a verbal or written complaint of sexual harassment from an employee but nonetheless has actual knowledge of what he or she believes may constitute sexual harassment of an employee to bring his or her knowledge to the County's Equal Opportunity Officer within five (5) business days of obtaining such knowledge.

4. For purposes of this Decree, "supervisory employee" is defined to include:

- (a) any employee who possesses direct supervisory authority over at least one other employee; and
- (b) any employee who has the authority to hire, fire, promote, transfer, or discipline another employee.

5. Within fifteen (15) days from the date on which the United States approves the proposed modifications to its anti-discrimination policies and procedures, the County shall implement the modified policies and procedures, distribute copies of such modified policies and

procedures to all employees in the 60th District Court and the 14th Circuit Court, and post such modified policies and procedures in all places used for posting general information to employees in the 60th District Court and 14th Circuit Court.

6. No later than thirty (30) days from the date on which the United States approves the proposed modifications to its anti-discrimination policies and procedures, the County shall provide, at its own cost, mandatory training on the law of equal employment opportunity and prohibited discrimination based on sex to all supervisory employees in the 60th District and 14th Circuit Courts, including all managers. The training shall, at a minimum, include an explanation of the County's policies and procedures, modified as set forth in Paragraph 3, above. The County will select, with the concurrence of the United States, a qualified individual or group of individuals to conduct the training outlined in this paragraph. The United States' concurrence will not be unreasonably withheld.

7. All persons who undergo the training described in Paragraph 6, above, shall sign an acknowledgment of attendance at the training. Within ten (10) days after such training, the County shall provide the United States with written confirmation that all persons covered by Paragraph 6, above, attended the training. The County will keep on file all signed acknowledgments for the duration of the Decree.

8. The County shall retain during the term of this Decree all documents, in paper or electronic form (including electronic mail), that come into its possession that are: (a) related to complaints of sex discrimination (formal or informal) made by employees in the 60th District and 14th Circuit Courts; and/or (b) related to the training provided for under this Decree. The Circuit and District Courts shall within five (5) days of creation or receipt of any such documents,

provide copies to the County's Equal Employment Opportunity office.

9. The United States may review compliance with this Decree at any time. As part of that review, the County shall provide copies of any documents relevant to the County's compliance with this Decree upon the request of the United States, including but not limited to the documents described in Paragraphs 7 and 8, above.

SPECIFIC RELIEF

10. Without admitting the allegations of the United States, and in settlement of the United States' claims for relief for Ms. Amaya who, by her signature to the release attached as Appendix A, accepts the relief to be given her pursuant to this Decree, the County shall pay Ms. Amaya a monetary award of \$120,000.00 within fifteen (15) days of the entry of this Decree. The County also shall issue to Ms. Amaya such appropriate tax forms as may be required by law.

DISPUTE RESOLUTION

11. The parties to this Decree shall attempt to resolve informally any disputes that may occur under this Decree. If the parties are unable to reach agreement after informally seeking to resolve a dispute, the issue may be submitted by any party to the Court for resolution upon at least thirty (30) days written notice to the other party.

12. All documents required to be delivered under this Decree to the United States shall be sent to the following address if sent by U.S. mail:

Chief, Employment Litigation Section
Civil Rights Division
U.S. Department of Justice
PHB, Fourth Floor
950 Pennsylvania Avenue, NW
Washington, DC 20530

Documents sent by overnight delivery service should be sent to the following address:

Chief, Employment Litigation Section
Civil Rights Division
U.S. Department of Justice
601 D Street, NW, Room 4040
Washington, DC 20004

13. All documents, including the monetary relief, required to be delivered under this

Decree to Ms. Amaya shall be sent to the following address:

Stephen R. Drew, Esq.
Drew, Cooper & Anding
Attorneys at Law
125 Ottawa Avenue, N.W.
Grand Rapids, MI 49503

14. All documents required to be delivered under this Decree to the County shall be sent to the following address:

Theodore N. Williams, Jr.
Williams Hughes & Cook P.L.L.C.
120 W. Apple Avenue
Muskegon, MI 49440

JURISDICTION OF THE COURT

15. The Court shall retain jurisdiction over this Decree for the purpose of resolving any disputes or entering any orders that may be necessary to implement the relief provided in the Decree. At the end of two (2) years from the date of entry of this Decree, this Decree shall be dissolved and this action shall be dismissed without further order of the Court.

GENERAL PROVISIONS

16. 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 Decree and require resolution by this Court.

It is so ORDERED, this 30th day of April, 2009.

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE

AGREED TO:

For Plaintiff United States of America:

LORETTA KING
Acting Assistant Attorney General
Civil Rights Division

By:

John M. Gadzichowski
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For Defendant Muskegon County:

Kenneth Mahoney
KENNETH MAHONEY
Chair, Muskegon County
Board of Commissioners
990 Terrace Street
Muskegon, MI 49441

APPENDIX A

RELEASE

State of Michigan
Muskegon County

I, Eva Amaya, for and in consideration of accepting the relief to be provided to me pursuant to the provisions of the Consent Decree entered in *United States and Amaya v. Muskegon County, Michigan*, release and discharge Muskegon County and its current, former and future officials, employees and agents from all legal and equitable claims arising out of the complaint filed in that case and EEOC Charge No. 471-2007-00437 occurring prior to the date of this Release. For the purposes of this Release, Muskegon County includes, without limitation, the 60th District Court and the 14th Circuit Court of the state of Michigan.

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

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

I acknowledge that a copy of the Consent Decree 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 18 day of March 2009.

Eva Amaya
Eva Amaya

Social Security Number: [REDACTED]

Subscribed and sworn to before me this 18th day of March, 2009.

Joseph D. Caswell - Kent County
Notary Public

My Commission expires: 5/4/2012