

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
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 Plaintiff, :
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 TAMMY AUER, MARIA GONZALEZ, : **CONSENT DECREE**
 and THERESA CALDWELL-BENJAMIN, :
 : 01 Civ. 4604 (RCC)
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 Plaintiff-Intervenors, :
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 – against – :
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 CITY OF NEW YORK, :
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 Defendant. :
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WHEREAS, the United States of America (the “United States”) brought this action under its authority, pursuant to 42 U.S.C. § 2000e-5, to commence suit against an employer when the Attorney General of the United States has reasonable cause to believe that the employer has violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. (“Title VII”) by engaging in an unlawful employment practice;

WHEREAS, the United States alleges in its complaint that the City of New York (the “City” or “Defendant”) engaged in unlawful employment practices by subjecting Tammy Auer, Maria Gonzalez, and Theresa Caldwell-Benjamin, former participants in the City’s Work Experience Program (“WEP”), to hostile work environments in violation of Title VII;

WHEREAS, Tammy Auer, Maria Gonzalez, and Theresa Caldwell-Benjamin (the “plaintiff-intervenors”) have each filed complaints on their own behalf intervening in this action;

WHEREAS, the United States and plaintiff-intervenors further allege that the City failed or refused to take reasonable action to prevent or promptly correct the discriminatory treatment of the plaintiff-intervenors;

WHEREAS, the City denies each and every allegation in the respective complaints and admits no fault or liability, and specifically denies that it has engaged in unlawful employment practices, denies that it has subjected Tammy Auer, Maria Gonzalez, or Theresa Caldwell-Benjamin to hostile work environments in violation of Title VII, and denies that it has failed or refused to take reasonable action to prevent or promptly correct any alleged discriminatory treatment of the plaintiff-intervenors;

WHEREAS, the City specifically denies that the Attorney General of the United States has reasonable cause to believe that the City has violated Title VII by failing or refusing to take reasonable action to prevent or promptly correct any alleged discriminatory treatment of the plaintiff-intervenors;

WHEREAS, pursuant to the City's Work Experience Program, individuals are assigned work at City agencies, as defined below;

WHEREAS, the plaintiff-intervenors were WEP participants working at City agencies;

WHEREAS, the parties, having the mutual goal of ensuring that WEP participants are protected from discrimination, and desiring to settle this action and to avoid protracted, expensive and unnecessary litigation, agree to the entry of this Consent Decree to resolve all issues that were or could have been raised by the United States and/or the plaintiff-intervenors in their respective complaints;

NOW, THEREFORE, in resolution of the complaints of the United States and the plaintiff-intervenors, and with agreement of all parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. DEFINITIONS

As used in this Consent Decree, the following terms (whether capitalized or in lower-case) shall have the following meanings:

- (a) A “City agency” refers to any agency over which the City’s Department of Citywide Administrative Services (“DCAS”) currently exercises oversight authority regarding Equal Employment Opportunity issues. If DCAS’s oversight authority regarding Equal Employment Opportunity issues expands to include additional agencies during the term of this Consent Decree, then those additional agencies will become City agencies for purposes of this Consent Decree at the time DCAS’s oversight authority becomes applicable to these agencies.
- (b) “City EEO Policy” refers to the City of New York Equal Employment Opportunity Policy that was issued in 2005.
- (c) “EEO Officer” of a City agency refers to the City official so designated by that City agency, some of whom are listed as “Agency EEO Officers” on the website maintained by DCAS at www.nyc.gov/html/dcas/html/resources/eeooffs.shtml.
- (d) The “effective date of this Consent Decree” refers to the date this Consent Decree is entered on the docket.

(e) The “term of this Consent Decree” refers to the entire period of time during which the Court retains jurisdiction under the Consent Decree as set forth in Section II of this Consent Decree.

(f) “WEP participant” refers to an individual assigned work through the City’s Work Experience Program pursuant to New York Social Services Law § 336(1)(d).

II. DISMISSAL OF CLAIMS AND RETENTION OF JURISDICTION SOLELY FOR PURPOSE OF ENFORCEMENT

1. The complaint of the United States and the complaints of plaintiff-intervenors are hereby dismissed with prejudice. The Court shall retain jurisdiction over the parties and this action for two years after the effective date of this Consent Decree solely for the purpose of enforcing and administering its terms. This Consent Decree shall terminate two years after its effective date.

III. INDIVIDUAL RELIEF

2. The City agrees to pay Tammy Auer \$110,000 in full satisfaction of all claims that were or could have been raised in this action, including claims for costs, expenses and attorneys’ fees. In consideration for the payment of this sum, plaintiff-intervenor Auer agrees to dismissal of all claims against the City, and agrees to release the City and all present or former officials, employees, representatives or agents of the City from any and all liability, claims or rights of action arising from the allegations set forth in her complaint, and the complaint of the United States, including claims for costs, expenses and attorneys’ fees.

3. Plaintiff-intervenor Auer shall execute and deliver to the City's attorney all documents necessary to effect this settlement, including without limitation, a release based on the terms of paragraph 2 above and an affidavit regarding liens.
4. The City agrees to pay Maria Gonzalez \$40,000 in full satisfaction of all claims that were or could have been raised in this action, including claims for costs, expenses and attorneys' fees. In consideration for the payment of this sum, plaintiff-intervenor Gonzalez agrees to dismissal of all claims against the City, and agrees to release the City and all present or former officials, employees, representatives or agents of the City from any and all liability, claims or rights of action arising from the allegations set forth in her complaint, and the complaint of the United States, including claims for costs, expenses and attorneys' fees.
5. Plaintiff-intervenor Gonzalez shall execute and deliver to the City's attorney all documents necessary to effect this settlement, including without limitation, a release based on the terms of paragraph 4 above and an affidavit regarding liens.
6. The City agrees to pay Theresa Caldwell-Benjamin \$18,000 in full satisfaction of all claims that were or could have been raised in this action, including claims for costs, expenses and attorneys' fees. In consideration for the payment of this sum, plaintiff-intervenor Caldwell-Benjamin agrees to dismissal of all claims against the City, and agrees to release the City and all present or former officials, employees, representatives or agents of the City from any and all liability, claims or rights of action arising from the allegations set forth in her complaint, and the complaint of the United States, including claims for costs, expenses and attorneys' fees.

7. Plaintiff-intervenor Caldwell-Benjamin shall execute and deliver to the City’s attorney all documents necessary to effect this settlement, including without limitation, a release based on the terms of paragraph 6 above and an affidavit regarding liens.

IV. INJUNCTIVE RELIEF

A. CONTENT OF NOTICE

8. As described below, the City shall prepare a notice (the “Notice”) to be disseminated as described below in sections IV.B-F. The contents of the Notice are intended to inform all employees at City agencies that assign work to WEP participants and all WEP participants who work at City agencies of the following:

- a. These WEP participants are protected from unlawful employment discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. (“Title VII”); the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. (“ADA”), and the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq. (“ADEA”). Accordingly, these WEP participants have the right to a workplace that is free of discrimination, including harassment, based on race, color, national origin, religion, gender, disability, or age, as provided for in the above laws.
- b. All persons who direct or oversee the performance of WEP participants performing work assignments at City agencies are required to treat WEP participants in a manner consistent with the treatment of City employees mandated by Title VII, the ADA, and the ADEA.

- c. If any WEP participant who receives the Notice believes that he or she has been discriminated against or harassed in violation of Title VII, the ADA, or the ADEA, he or she may have the right to file a complaint with the United States Equal Employment Opportunity Commission (“EEOC”), 33 Whitehall Street, 5th Floor, New York, New York 10004, (212) 336-3620, TTY: (212) 336-3622, website: www.eeoc.gov.

B. DISTRIBUTION OF THE NOTICE TO CITY EMPLOYEES

9. Within ninety (90) days after the effective date of this Consent Decree, the City shall distribute the Notice or a document incorporating the provisions of the Notice to all employees at City agencies that assign work to WEP participants, and to all WEP participants who work at City agencies.
10. The City shall distribute the Notice or a document incorporating the provisions of the Notice to all employees at City agencies that assign work to WEP participants approximately one year after the distribution provided for by paragraph 9. The City may, but is not required to, distribute the Notice required by this paragraph to WEP participants, who will already be receiving the Notice pursuant to paragraphs 9 and 16.
11. To comply with the obligations of paragraphs 9 and 10, the City may, but is not required to, distribute a document incorporating the provisions of the Notice to all City employees, including, but not limited to, all employees at City agencies that assign work to WEP participants.

12. The City shall post the Notice or a document incorporating the provisions of the Notice on the DCAS website, see www.nyc.gov/html/dcas/html/resources/eeopol.shtml, at which the City's EEO Policy is also maintained.

C. EEO PUBLICATIONS

13. The City shall include the provisions of the Notice as part of an addendum to the City's publication "About EEO: What You May Not Know."
14. If the City revises, modifies, changes, or re-issues the City EEO policy during the term of this Consent Decree, the City shall include the provisions of the Notice as part of the City EEO policy.

D. EEO TRAINING

15. Within ninety (90) days after the effective date of this Consent Decree and annually thereafter during the term of this Consent Decree, the City shall instruct the EEO Officer at each City agency that assigns work to WEP participants that: the information contained in the Notice or a document incorporating the provisions of the Notice should be incorporated in EEO training of the agency's employees, including managers and supervisory employees concerning hostile work environments and/or harassment based on race, color, national origin, religion, gender, disability, or age.

E. WEP ORIENTATION MANUAL

16. Each City agency shall include the Notice or the provisions of the Notice in its WEP Orientation Manual or any equivalent publication that is provided to WEP participants during their orientation and/or introduction to WEP at the City agencies that assign work to WEP participants.

F. CITY AGENCIES THAT ASSIGN WORK TO WEP PARTICIPANTS

17. The City shall distribute the Notice or a document incorporating the provisions of the Notice to the head of each City agency that assigns work to WEP participants.
18. To the extent that the City's Human Resources Administration, during the term of this Consent Decree, enters into an agreement or renews an existing agreement with a City agency governing that agency's use of WEP participants, such agreement shall be modified to include the Notice or otherwise incorporate the provisions of the Notice.

V. OVERSIGHT PROCESS

19. Within one year of the effective date of this Consent Decree, and one year thereafter, the City shall certify in writing that the requirements of this Consent Decree have been met. In addition, the City shall identify the steps taken during that year to comply with this Consent Decree, and shall provide a copy of (a) the Notices or documents otherwise incorporating the provisions of the Notice as required by paragraphs 9, 10, 13, 16, and 17, and (b) any documents containing the instructions required by paragraph 15.

VI. MISCELLANEOUS TERMS AND PROVISIONS

20. If any challenge to the Consent Decree arises in any court, the City shall immediately notify counsel for the United States.
21. Any amendments or modifications to this Consent Decree shall be in writing and signed by the City and the United States.
22. Nothing in this Consent Decree shall be construed to relieve the City of its obligation to comply with any federal, state or city statute or regulation.

23. Nothing in this Consent Decree limits the authority of the United States, pursuant to Title VII or any other applicable statute, to investigate or act upon any complaint of discrimination not covered by this Consent Decree that is brought to its attention, from any source, including but not limited to referrals of complaints by the EEOC, pursuant to 42 U.S.C. § 2000e-5.
24. The United States and the City shall attempt to resolve informally any dispute, concerns, or perceived violations that may arise under this Consent Decree. To that end, the United States will notify the City in writing of any perceived instances of non-compliance by the City with the Consent Decree's terms. The United States and the City also agree to meet and confer in good faith to discuss such matters and try to resolve them prior to either party seeking Court intervention.
25. Only the United States and the City can enforce the provisions of this Consent Decree, except that each of the plaintiff-intervenors can enforce those provisions of Section III, "Individual Relief," above, that are applicable to her.
26. Any applications to the Court under this Consent Decree shall be on notice to the United States and the City.
27. Nothing contained in this Consent Decree shall be deemed to be an admission by the City that it has in any manner or way violated the rights of any person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York.

28. Copies of all notices, correspondence, reports or documents required to be provided to the United States under this Consent Decree shall be mailed to:

United States Attorney's Office
Southern District of New York
86 Chambers Street
New York, NY 10007
Attention: Chief, Civil Rights Unit

Copies of all notices, correspondence, reports or documents required to be provided to the City under this Consent Decree shall be mailed to:

The City of New York Law Department
100 Church Street
New York, NY 10007-2601
Attention: Marilyn Richter

29. Each party acknowledges that it has not relied upon any representations, warranties or statements of any nature whatsoever, whether written or oral, made by any person, except as specifically set forth herein and that this Consent Decree represents the entire agreement of the parties. No prior agreements, oral representations or statements shall be considered a part of this Consent Decree.
30. The parties agree that this Consent Decree is subject to Rule 408 of the Federal Rules of Evidence. It is therefore the parties' understanding that the Consent Decree is not admissible to prove the City's liability for the claims of the United States and plaintiff-intervenors that the City engaged in unlawful employment practices by subjecting the plaintiff-intervenors to hostile work environments in violation of Title VII.
31. Nothing contained in this Consent Decree shall be deemed to constitute a policy or practice of the City or any of its constituent agencies.

32. This Consent Decree is not intended to alter the pre-existing rights or obligations of the parties which are not expressly covered by its terms.

AGREED TO:

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BY: _____

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SO ORDERED.

UNITED STATES DISTRICT JUDGE