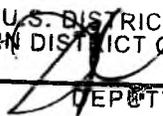


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

OCT 16 2012

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
CITY OF SELMA, TEXAS,)
)
Defendant.)

Civil Action No. 5:12-cv-00287-FB

Honorable Fred Biery

CONSENT DECREE

This action was brought by the United States against the City of Selma, Texas ("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 Adam Sadler ("Mr. Sadler") against the City and the City of Selma Fire Department ("SFD"). This Court has jurisdiction of the action under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. §§ 1331 and 1345.

In its Complaint, the United States alleges that the City, through the acts of the City Administrator and the Fire Chief, has subjected Mr. Sadler to discrimination in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a), among other ways, by retaliating against Mr.

Sadler because he engaged in activity protected under Title VII. Specifically, the United States alleges Mr. Sadler was demoted on or about August 2, 2010 because he complained to the City about the use of ethnic slurs in the workplace.

The City denies that Mr. Sadler was subjected to retaliation for engaging in activity protected under Title VII. Nevertheless, the United States and the City, desiring that this action be settled by an appropriate Consent Decree ("Decree") 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 and the City 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 a final and binding agreement between them with regard to the issues raised in the Complaint filed by the United States in this case.

This Decree, 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 wrongdoing or violation of any applicable federal law or regulation.

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

I. PARTIES TO THE CONSENT DECREE

1. The parties to this Decree are the United States and the City.
2. The City includes its current, former and future agents, employees, officials, designees and successors in interests.

II. PURPOSES OF CONSENT DECREE

3. The purposes of this Decree are to ensure that:
 - (a) The City does not subject any applicant or employee to discrimination or retaliation, as proscribed by Title VII;
 - (b) The City modifies its existing Equal Employment Opportunity (“EEO”) policies and procedures to include a specific process by which complaints of discrimination and retaliation will be investigated, including the identification of person(s) who will conduct such investigations, and the City provides training on how to conduct fair and effective investigations of such complaints to individual(s) responsible for conducting these investigations and for determining appropriate corrective action;
 - (c) The City provides adequate training to all City supervisory employees and all SFD employees concerning the law of EEO, including Title VII’s prohibition against discrimination and retaliation; and
 - (d) The City provides Mr. Sadler with appropriate remedial relief.

III. GENERAL INJUNCTIVE RELIEF

4. The City, its employees, supervisors, directors, agents and all individuals in active concert or participation with it, shall not discriminate, retaliate or in any way adversely affect the terms and conditions of any employee or applicant because that person has opposed any practice made unlawful under Title VII, filed a charge with the EEOC, or testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII, this case, or this Decree.

IV. EEO POLICIES AND PROCEDURES

5. Within thirty (30) days after the date of entry of this Decree, the City shall submit to the United States for review, comment and approval proposed modifications to the City's existing EEO policies and procedures to include a specific process by which complaints of discrimination will be investigated, including the identification of person(s) who will conduct such investigations. The United States' approval will not be unreasonably withheld.

6. Within thirty (30) days after the United States' approval of the City's modifications to its existing EEO policies and procedures, the City shall implement such policies and procedures.

7. Within ten (10) days after the date that the City implements the EEO policies and procedures referenced in paragraph 5, the City shall post such policies and procedures in all buildings, facilities, and websites used for posting general information to City employees.

8. Within thirty (30) days after the date that the City implements the EEO policies and procedures referenced in paragraph 5, the City shall ensure that each employee receives a copy of such policies and procedures, and require that each employee sign an acknowledgment that he or she has read and understood such policies and procedures. The signed acknowledgment shall be placed by the City in each employee's personnel file.

V. TRAINING

9. No later than one hundred-twenty (120) days after the date of entry of this Decree, all City employees with supervisory responsibilities as well as all SFD employees shall be provided with live training on the law of EEO, including Title VII's prohibition against discrimination and retaliation. The training shall include an explanation of the City's EEO policies and procedures referenced in paragraph 5. The City will select, with the approval of the United States, a qualified individual or group of individuals to conduct the training outlined in this paragraph. Within sixty (60) days of the entry of this Decree, the City shall submit to the United States for review and approval the name(s) and curriculum vitae of the individual(s) selected to conduct the training, and the proposed training program, including the materials to be used during the proposed training. The United States shall review the information submitted and, within thirty (30) days, notify the City as to the United States' approval, which will not be unreasonably withheld.

10. No later than one hundred-twenty (120) days after the date the City implements

the EEO policy and procedures referenced in paragraph 5, the City will provide those persons designated to conduct investigations of complaints of discrimination and retaliation and determine appropriate corrective action with training on how to conduct fair and effective investigations and take appropriate corrective action. The City will select, with the approval of the United States, a qualified individual or group of individuals to conduct the training outlined in this paragraph. Within sixty (60) days of the entry of this Decree, the City shall submit to the United States for review and approval the name(s) and curriculum vitae of the individual(s) selected to conduct the training, and the proposed training program, including the materials to be used during the proposed training. The United States shall review this information submitted and, within thirty (30) days, notify the City as to the United States' approval, which will not be unreasonably withheld.

11. All City employees required by paragraphs 9 and 10 of this Decree to attend training shall sign an acknowledgment of attendance. Within twenty (20) days of such training, the City shall provide the United States with written confirmation that all City employees required by paragraphs 9 and 10 to attend the training did so. The City will keep on file all signed acknowledgments for the duration of this Decree.

VI. INDIVIDUAL RELIEF FOR MR. SADLER

12. Mr. Sadler has secured alternate employment, and no longer works for the City. Accordingly, the United States no longer seeks reinstatement for Mr. Sadler to the position of

Fire Lieutenant.

13. 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 Mr. Sadler, as well as in settlement of the claims of Mr. Sadler, who by his signature to the Release attached to this Decree as Appendix A, accepts the relief provided him by this Decree, the City shall pay Mr. Sadler a monetary award of TWENTY-EIGHT THOUSAND FIVE HUNDRED DOLLARS (\$28,500), of which SEVEN THOUSAND DOLLARS (\$7,000) will be attributed to back pay, and TWENTY-ONE THOUSAND FIVE HUNDRED DOLLARS (\$21,500) to compensatory damages.

14. With respect to the monetary award referenced in paragraph 13, the City shall withhold all appropriate income tax and other statutory deductions associated with the amounts attributable to back pay. The City shall separately pay its portion of any Social Security tax and other applicable employer-side federal, state and local taxes due on the back pay, and shall not deduct its portion of such taxes from the amount paid to Mr. Sadler. The City shall issue to Mr. Sadler the appropriate Internal Revenue Service tax forms reflecting the amounts paid to Mr. Sadler and the amounts withheld by the City, including issuing to Mr. Sadler a W-2 wage and tax statement and, as appropriate, a 1099MISC income statement.

15. In settlement of his claims against the City, Mr. Sadler has executed a release that is attached to this Decree as Appendix A.

16. Within thirty (30) days from the date of entry of this Decree, the City shall ensure that Mr. Sadler is issued payment for the amounts described in paragraph 13, less any applicable withholding and taxes with respect to the check for back pay. Payment may be issued in the form of check or bank draft, and made payable to "Adam Sadler." Within fifteen (15) days from the date payment is made to Mr. Sadler, the City shall provide to the United States documentary evidence of having paid Mr. Sadler by mailing proof of payment, including the specific amounts paid to Mr. Sadler and the amounts of taxes withheld to the address specified in paragraph 22, below.

VII. RECORD RETENTION AND COMPLIANCE MONITORING

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

- (a) All posted notices and posters displayed in City's buildings, offices, facilities and websites pursuant to paragraph 7, above; and
- (b) All documents that come into the City's possession relating to written or verbal complaints of discrimination or retaliation from any employee of the City, including documents relating to the City's investigation and resolution of any such complaints.

18. The City shall report to the United States any written or verbal complaint of discrimination or retaliation made by any employee of the City, whether made internally or made

to the EEOC, or any other state or local agency charged with enforcement of anti-discrimination laws pertaining to employment, within twenty (20) days of the submission of the complaint.

19. The United States may review compliance with this Decree at any time, and shall have the right to inspect and copy any documents it deems necessary to monitor the City's compliance with this Decree, upon thirty (30) days written notice to the City, without further order of this Court.

VIII. DISPUTE RESOLUTION

20. The parties shall attempt to resolve informally any dispute that may arise under this Decree. If the parties are unable to resolve the dispute expeditiously, after providing the other party with twenty (20) days written notice, either party may move the Court for a resolution of the issue.

IX. GENERAL PROVISIONS

21. The parties shall bear their own costs in this action, including attorney's fees, incurred by them prior to entry of this Decree by the Court. However, the parties shall retain the right to seek costs for any matter which, in the future, may arise under this Decree and require resolution by the Court.

22. All documents required to be delivered under this Decree 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
601 D Street, N.W., Room 4040
PHB, Fourth Floor
Washington, D.C. 20579

23. All documents required to be delivered under this Decree to the City shall be sent to the attention of:

Charles S. Frigerio, Esq.
Law Offices of Charles S. Frigerio, P.C.
111 Soledad, Suite 840
San Antonio, Texas 78205

X. JURISDICTION OF THE COURT

24. 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. This Decree shall expire and this action shall be dismissed one (1) year from the date of entry of this Decree, provided that the City has complied with the provisions of this Decree.

It is so ORDERED.

SIGNED this 16th day of October, 2012.


FRED BIERY
CHIEF UNITED STATES DISTRICT JUDGE

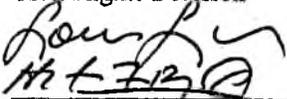
AGREED AND CONSENTED TO:

For Plaintiff United States of America:

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

By:

DELORA L. KENNEBREW (GA Bar No. 414320)
Chief
Employment Litigation Section
Civil Rights Division



LOUIS LOPEZ (DC Bar No. 461662)

Deputy Chief

HECTOR F. RUIZ, JR. (TX Bar No. 24029814)

Senior Trial Attorney

U.S. Department of Justice

Civil Rights Division

Employment Litigation Section

950 Pennsylvania Avenue, N.W.

PHB, Fourth Floor

Washington, D.C. 20530

Telephone: (202) 514-9694

For Defendant City of Selma, Texas:

By:



Ken Roberts
City Administrator

APPENDIX A

RELEASE

STATE OF TEXAS

COUNTY OF TRAVIS

For and in consideration of the relief to be provided to me by the City of Selma, Texas ("City") pursuant to the provisions of the Consent Decree once approved and entered in *United States v. City of Selma, Texas*, Case No. 5:12-cv-00287-FB, in the United States District Court for the Western District of Texas, I, Adam Sadler, hereby release and forever discharge the City, its current and future officials, employees and agents, of all legal and equitable claims arising out of the above-referenced case and EEOC Charge No. 451-2010-1494 and occurring prior to the date of this Release.

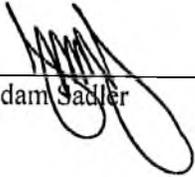
I understand that the relief to be given to me in consideration for this release does not constitute an admission by the City of liability, discrimination, violations of law, or wrongdoing and does not constitute an admission by the City or the Selma Fire Department of the validity of any claims raised by me or on my behalf.

This Release constitutes the entire agreement between the City and me, and is subject only to entry and approval by the Court of the Consent Decree, and the execution of the individual relief award, as referenced above.

I acknowledge that a copy of the Consent Decree entered into by the United States and the City has been made available to me. I acknowledge also that I have been given the opportunity to review the Consent Decree and this Release with an attorney of my own choosing.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Date: 9/29/12


Adam Sadler