

United States of America v. Mississippi Delta Community College
Northern District of Mississippi, Greenville Division
Case No. 18-CV-168

**SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA AND MISSISSIPPI DELTA
COMMUNITY COLLEGE**

I. INTRODUCTION

1. This Settlement Agreement (“Agreement”) is entered between Plaintiff, the United States of America (“the United States” or “Plaintiff”), through the Department of Justice, and Defendant Mississippi Delta Community College (“MDCC” or “Defendant”), which is an agency of the State of Mississippi (“Mississippi”). Plaintiff and Defendant are referred to herein as the “Parties.”

2. This Agreement resolves the issues raised in an EEOC charge (Charge No. 423-2013-01490) and a Complaint, which will be filed by the United States against Defendant in the United States District Court for the Northern District of Mississippi (Greenville Division). Such action shall be referred to herein as the “Underlying Case.”

3. In its Complaint, the United States alleged that Defendant violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (“Title VII”), by discriminating against Ms. Pamela Venton (“Ms. Venton”), based on her race, by paying her less than similarly situated white colleagues.

II. RECITALS

4. The allegations of the United States against Defendant are set forth in detail in the Complaint.

5. Defendant denies that it discriminated against Ms. Venton in violation of Title VII.

6. Nevertheless, the Parties agree that the controversy should be resolved without further proceedings or an evidentiary hearing.

7. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the United States' claims, and in consideration of the mutual promises and obligations set forth below and the execution of the Venton Release (Appendix A) which is the release agreement to be executed by Ms. Venton in consideration of the payment to her referenced in Paragraphs 19-20 herein, the Parties agree and covenant to the following material terms and conditions:

III. TERMS AND CONDITIONS

A. DEFINITIONS

8. "Days" refers to calendar days, unless business days are clearly specified in the context of a specific provision of this Agreement. If any deadline referenced in this Agreement should fall on a weekend or federal holiday, the deadline shall be moved to the next business day.

9. "Effective Date" refers to the date of the signature of the last signatory to the Agreement.

10. "Policies" refers to all employment, personnel, and labor policies or manuals that relate to the relationship between the Defendant and its employees or job applicants, including, but not limited to, MDCC's policies, any non-discrimination or non-retaliation policies, and any policies or manuals applicable to the investigation of complaints of discrimination or retaliation.

11. For purposes of this Settlement, the Parties agree that the term "Pay-Setting Employee" refers to (1) any employee who has the authority to hire, promote, transfer, or take any other tangible pay-related employment action against another employee; and/or (2) any employee who possesses the authority to set, advise, revise, or adjust pay, salary, or benefits.

12. "Underlying Case" refers to the Complaint to be filed relating to the issues arising in EEOC Charge No. 423-2013-01490.

B. PROHIBITED CONDUCT AND AFFIRMATIVE OBLIGATIONS

i. Non-Discrimination and Non-Retaliation

13. Defendant will not discriminate in violation of Title VII, on the basis of race, against its employees or applicants for employment.

14. Defendant will not retaliate against any individuals in violation of Title VII, including, but not limited to, Ms. Venton, because they opposed any practice that they believed in good faith violates Title VII; filed a charge in good faith with the United States Equal Employment Opportunity Commission ("EEOC") or any other state or local agency charged with enforcing anti-discrimination laws; or testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII and/or in connection with this case.

ii. Training

15. Within one hundred eighty (180) days after the Effective Date of this Agreement, MDCC shall, via its Office of Human Resources, provide Title VII training (which training shall be live when reasonably feasible), including training covering Title VII's prohibition on race discrimination and training on MDCC's non-discrimination and non-retaliation policies, to all Pay-Setting Employees. MDCC may, at its election, have duplicate video-recorded sessions to accommodate staffing needs. MDCC shall be responsible for any additional costs to provide such duplicate sessions.

- a. No later than one hundred twenty days (120) days after the Effective Date, Defendant shall provide to the United States a description of the proposed mandatory

training program as well as copies of the training materials along with a description of the person(s) who will provide such training and his or her (or their) credentials.

- b. If the United States has objections to Defendant's proposed training program or materials or the proposed trainer, the United States will notify Defendant in writing within thirty (30) days of receipt of the proposed training program and materials pursuant to Paragraph 24(a). The United States shall provide specific notice of any objections to Defendant's proposed training program. Moreover, notwithstanding any timely made objections by the United States, the parties agree to make a good faith effort to confer regarding any disagreements concerning the training program, materials, or trainer prior to instigating any proceedings pursuant to Paragraph 24.
- c. Within fifteen (15) days of completion of the training described in this Paragraph, Defendant shall provide, upon request from the United States, written confirmation to the United States that the training has been completed and which Pay-Setting Employees attended and completed the training.

16. All new Pay-Setting Employees should receive training on non-discrimination and non-retaliation policies and Title VII within fourteen (14) days of their first day of employment by MDCC.

iii. Other Obligations

17. The Parties acknowledge that Defendant has posted, and Defendant agrees to keep posted, an EEO notice in a prominent place or places frequented by its employees regarding its intent to comply with Title VII; advising its employees of their right to complain about or oppose race discrimination and to be free from retaliation; and advising its employees of their right to

contact federal and state anti-discrimination agencies. The notice shall be posted in locations throughout MDCC's workspace in the same manner as other mandatory EEO notices.

iv. Monetary Relief

18. Within thirty (30) days of the later of the Effective Date or approval of this Agreement, Ms. Venton will sign and submit the Venton Release (Appendix A).

19. Within sixty (60) days of the later of the Effective Date or approval of this Agreement and the Venton Release (Appendix A), Defendant will pay Ms. Venton **\$75,000** in monetary relief. Of this total amount, **\$30,000** will be designated as back pay (including lost wages and interest), calculated from two years prior to the filing of Ms. Venton's EEOC charge until MDCC adjusted her salary for the 2013-2014 school year, plus pre-judgment interest. The other **\$45,000** will be designated as compensatory damages for Ms. Venton's pain and suffering, emotional distress, depression, anxiety, stress, and loss of enjoyment of life caused by the alleged discrimination.

- a. Defendant shall pay all federal, state, and local taxes and make all contributions that are normally made by employers and that are due on the portion of Ms. Venton's monetary relief designated as back pay, exclusive of interest. No employer-funded taxes or contributions shall be deducted from Ms. Venton's monetary relief.
- b. Defendant shall make all Mississippi pension contributions or adjustments to ensure that the back pay award is calculated into and reflected in Ms. Venton's retirement benefits.
- c. Defendant shall, to the extent required by law, withhold from the portion of Ms. Venton's monetary relief designated as back pay all appropriate federal, state, and local taxes and any other required employee withholdings or deductions.

20. Defendant shall report the back pay portion of Ms. Venton's monetary relief to the Internal Revenue Service ("IRS") using a Form W-2 and shall issue an IRS Form W-2 to Ms. Venton based on that amount. As to the remaining \$45,000 designated as compensatory damages, Defendants shall report this portion of the monetary relief to the IRS using a Form 1099 and shall issue an IRS Form 1099 to Ms. Venton based on that amount.

21. The United States and Defendant agree that each Party shall be solely responsible for its own respective costs and the attorneys' fees it has incurred in connection with this matter, and neither Party shall have any other financial responsibility except as expressly set forth herein.

22. Defendant agrees to mail a certified check directly to Ms. Venton and to use a method of mailing that requires proof of receipt by the recipient. Defendant agrees to provide a copy of the certified check, and proof of mailing, to counsel for the United States by electronic mail using the contact information in the signature block below.

23. Within ten (10) business days after Ms. Venton receives payment from the Defendants pursuant to Paragraph 19 (i.e., ten (10) business days after the check to Ms. Venton clears) the Parties will sign and file a Joint Stipulation of Dismissal of the Underlying Case pursuant to Rule 41(a)(1).

IV. DISPUTE RESOLUTION

24. The Parties shall endeavor in good faith to resolve informally any differences regarding interpretation of or compliance with this Agreement prior to initiating any court action.

25. If either Party believes that there has been a failure by the other Party to perform in a timely manner any act required by this Agreement, or otherwise to act in conformance with any provision thereof, whether intentionally or not, the first Party will notify the other Party in

writing of the concerns about breach and the Parties will attempt to resolve those concerns in good faith. Unless otherwise expressly agreed in writing, the responding Party shall have thirty (30) days from the date the first Party provides notification of any breach of this Agreement to cure the breach, unless such breach cannot be cured using reasonable efforts in such period, in which case the responding Party will begin undertaking the curing of such breach within such period and will diligently pursue such cure. If the parties are unable to resolve a dispute over whether Defendant has breached the Agreement, either Party may file a civil action to enforce the Agreement. The Parties agree that the United States District Court for the Northern District of Mississippi (Greenville Division) is the proper venue to enforce this Agreement and that they may, in any action to enforce this Agreement, seek to have the court impose any remedy authorized at law or equity.

V. TERMINATION OF LITIGATION HOLD

26. The Parties agree that, as of the date of the dismissal of the Underlying Case, litigation is not “reasonably foreseeable” concerning the matters alleged in the United States’ Complaint. To the extent that any Party previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described above, the Party is no longer required to maintain such litigation hold. Nothing in this Paragraph relieves any Party of any other obligations imposed by this Agreement.

VI. EXECUTION AND OTHER TERMS

27. The Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

28. The Parties will sign and file a Joint Stipulation of Dismissal of the Underlying Case, pursuant to Rule 41(a)(1), to be filed following the filing of the United States' Complaint.

29. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

30. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Northern District of Mississippi (Greenville Division). This provision does not constitute and should not be construed as a waiver by the United States or by MDCC of sovereign immunity, or any other jurisdictional or legal defense available to the United States or MDCC. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute. This Agreement constitutes the complete agreement among the Parties and supersedes all prior agreements, representations, negotiations, and undertakings not set forth or incorporated herein. This Agreement may not be amended except by written consent of all of the Parties.

31. The undersigned representatives of Plaintiff and Defendant and their counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

32. This Agreement is binding on all Parties, successors, transferees, heirs, and assigns.

33. The parties agree that this Agreement, including all the terms and conditions of this compromise settlement and any additional agreements relating thereto, may be made public in their entirety, and the Parties expressly consent to such release and disclosure pursuant to The Privacy Act of 1974, 5 U.S.C. § 552a.

34. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.

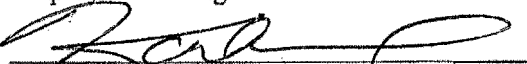
35. The Parties agree that they will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is illegal or invalid.

36. This Agreement resolves all claims and disputes between the Parties related to the the issues raised in Ms. Venton's EEOC Charge No. 423-2013-01490. The obligations created by this Agreement survive this release. The Parties agree that the United States' dismissal of the Complaint shall be with prejudice.

FOR PLAINTIFF UNITED STATES:


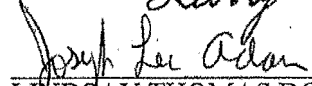
JOHN M. GORE
Acting Assistant Attorney General
Civil Rights Division

DELORA L. KENNEBREW
Chief
Employment Litigation Section


KAREN D. WOODARD (MD Bar)
Principal Deputy Chief
Employment Litigation Section

**FOR DEFENDANT MISSISSIPPI DELTA
COMMUNITY COLLEGE**

DR. LARRY NABORS
President



~~LINDSAY THOMAS DOWDLE~~

Partner
Jones Walker
190 E Capitol St, Ste 800
Jackson, MS 39201
Telephone: (601) 949-4944
Facsimile: (601) 709-8699
Email: ldowdle@joneswalker.com

Torie Atkinson

TORIE A. ATKINSON (NY Bar)
Trial Attorney
Employment Litigation Section
Civil Rights Division
United States Department of Justice
950 Pennsylvania Avenue, NW, PHB 4035
Washington, DC 20530
Telephone: (202) 305-3544
Facsimile: (202) 514-1005
Email: Torie.Atkinson@usdoj.gov

Email: jojoadams@joneswalker.com

*Attorneys for Defendant Mississippi Delta
Community College*

DATED: 8/16/18

*Attorneys for Plaintiff United States of
America*

DATED: 8/12/18