

United States of America v. Brevard County, Florida
Middle District of Florida (Orlando Division)
Case No. 20-cv-_____

SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA AND BREVARD COUNTY,
FLORIDA

I. INTRODUCTION

1. This Settlement Agreement (“Agreement”) is entered into between Plaintiff, the United States of America (“United States” or “Plaintiff”), through the Department of Justice, and Defendant Brevard County (“County” or “Defendant”), which is a governmental body established pursuant to the laws of Florida. Plaintiff and Defendant are referred to hereinafter as the “Parties.”

2. This Agreement resolves the issues raised in a charge of discrimination filed with the Equal Employment Opportunity Commission (“EEOC”) (Charge No. 510-2016-00733) and a Complaint (“Complaint”), which will be filed by the United States against Defendant in the United States District Court for the Middle District of Florida (Orlando Division). Such matters shall be referred to herein as the “Underlying Case.”

3. In its Complaint, the United States alleges Defendant violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (“Title VII”), by discriminating against Ms. Deidre Jackson (“Ms. Jackson”), based on her race, by terminating her employment with the County’s Space Coast Office of Tourism.

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. Jackson in violation of Title VII.

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

7. The Parties agree that all statutory prerequisites to the filing of the Complaint by the United States have been met.

8. 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 Jackson Release (Appendix A), which is the release agreement to be executed by Ms. Jackson in consideration for the payment to her referenced in Paragraph 16 herein, the Parties agree to the following material terms and conditions:

III. TERMS AND CONDITIONS

A. DEFINITIONS

9. "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.

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

B. EQUITABLE RELIEF

i. Anti-Discrimination and Non-Retaliation

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

12. Defendant will not retaliate against any individuals in violation of Title VII, including, but not limited to, Ms. Jackson, because they opposed any practice that they believed in good faith violates Title VII; filed a charge in good faith with the 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 the investigation or handling of the Underlying Case.

ii. Training

13. Within one hundred eighty (180) days after the Effective Date of this Agreement, the County shall provide live mandatory training (in person or via internet attendance) on the provisions of Title VII of the Civil Rights Act, including training on Title VII's prohibition on race discrimination, and training on the County's anti-discrimination and non-retaliation policies, to all of its supervisors and managers, provided, however, the County may, on a case-by-case basis, provide such training via duplicate video-recorded sessions for managers and supervisors to accommodate staffing needs and special circumstances making live training infeasible or impractical (such as a manager being unavailable due to pre-scheduled leave or work travel). Within 5 days of the last live training, the County shall provide the United States with the names of all supervisors and managers who received the training by recorded video rather than in a live session. The

County shall be responsible for all costs associated with conducting the training required by this Agreement, including any additional costs to provide such duplicate sessions.

a. No later than ninety days (90) days after the Effective Date, the County 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 any objection to the County's proposed training program, materials or the proposed trainer, the United States will so notify the County in writing within thirty (30) days of receipt of the proposed training program and materials. While the United States generally will not withhold its approval of the County's training materials, absent good cause, such approval may be subject to suggested revisions to the training materials as may be required for Title VII compliance. Regarding 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 23.

c. Within thirty (30) days of completion of the training described in this Paragraph, the County shall provide written confirmation to the United States that the training has been completed and written notification of which supervisors and managers attended and completed the training.

14. All new supervisors and managers shall receive the training described in Paragraph 13 on anti-discrimination and non-retaliation policies and on Title VII, within

sixty (60) days of their first day of employment as a supervisor or manager with the County. The employees shall execute a form acknowledging receipt of the required training on the County's anti-discrimination and non-retaliation policies which the County will maintain during the life of the Agreement.

iii. Individual Relief for Ms. Jackson

15. Within thirty (30) days of the Effective Date of this Agreement, Ms. Jackson will sign the Jackson Release (Appendix A) and submit it to counsel for the United States at the address below.

16. Within thirty (30) days of the later of (a) the Effective Date of this Agreement and (b) the date of the signature on the Jackson Release (Appendix A), Defendant will pay Ms. Jackson a monetary award of \$150,000. Of this total amount, \$100,000 will be designated as back pay, and the remaining \$50,000 will be designated as compensatory damages.

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. Jackson's monetary relief designated as back pay. No employer-funded taxes or contributions shall be deducted from Ms. Jackson's monetary relief.

b. Defendant shall, to the extent required by law, withhold from the portion of Ms. Jackson's monetary relief designated as back pay all appropriate federal, state, and local taxes and any other required employee withholdings or deductions.

c. Defendant shall report the back pay portion of Ms. Jackson's monetary relief to the Internal Revenue Service ("IRS") using a Form W-2 and shall issue to Ms. Jackson an IRS Form W-2, within the time prescribed by law, based on that amount.

d. As to the remaining \$50,000 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. Jackson, within the time prescribed by law, based on that amount.

17. In payment of the monetary relief above, Defendant agrees to mail a Brevard County payroll check for the net amount of back pay, and a check in the amount of \$50,000 for compensatory damages drawn on Brevard County's insurer, directly to Ms. Jackson, and to use a method of mailing that requires proof of receipt by the recipient. Defendant agrees to provide copies of the checks, and proof of mailing, to counsel for the United States by electronic mail using the contact information below. The Parties agree that hand delivery of the checks to Ms. Jackson is an acceptable alternative to the above-described mailing.

18. Within ten (10) business days after Ms. Jackson receives payment from the Defendant pursuant to Paragraph 16 (i.e., ten (10) business days after the check to Ms. Jackson clears), the Parties will make the appropriate filings with Court to consummate this Agreement, as provided in Paragraph 33 below.

19. In response to any employment reference requests or any third-party requests for information about Ms. Jackson's County employment, the County shall provide a neutral employment reference for Ms. Jackson, consistent with its established practice, that

states the dates of her employment and her last job title, and that further information can be obtained by public records request. The County shall not provide any negative employment references for Ms. Jackson, and in responding to reference requests, shall not reference either Ms. Jackson's charge of discrimination or the Complaint filed by the United States pursuant to this Agreement. The County agrees that (a) it will not alter or add to Ms. Jackson's employment file any materials or information which might call into question, or conflict with, the file's current identified basis for Ms. Jackson's separation from employment, i.e., for the convenience of the County, and (b) to any reference in Ms. Jackson's personnel file as to the basis or reason for her separation, the County will add a document on County letterhead stating Ms. Jackson was "not terminated for cause" and that she left her employment with the County "in good standing and is eligible for rehire."

20. All communications with, and submissions and notifications to, the United States in regard to the above provisions concerning monetary relief shall be made to counsel for the United States at the following address:

Louis Whitsett
Senior Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
4 Constitution Square, Room 9.1138
Washington, D.C. 20002
Telephone: (202) 305-0942
Email: Louis.Whitsett@usdoj.gov

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.

IV. DISPUTE RESOLUTION

22. 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.

23. 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 this Agreement, either Party may file a civil action to enforce the Agreement. The Parties agree that the United States District Court for the Middle District of Florida (Orlando 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. OTHER GENERAL PROVISIONS

24. The County agrees to post (if it has not done so already), and keep posted, an Equal Employment Opportunity (“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 of retaliation; and advising its employees of their right to contact federal and state anti-discrimination agencies. The EEO notice shall be posted in locations throughout the County Government workspace in the same manner as other mandatory EEO notices.

25. This 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.

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

27. 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 Middle District of Florida (Orlando Division). 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.

28. 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.

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

30. 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.

31. 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.

32. 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.

33. This Agreement resolves all claims and disputes between the Parties related to the issues raised in Ms. Jackson's EEOC Charge No. 510-2016-00733. The Parties agree the obligations created by this Agreement survive the execution of the Jackson Release. The Parties agree that, in consummation of this Agreement, the United States will file the

Complaint with the Court, and, immediately after that, the Parties will file a Joint Motion for Dismissal with the Court, under Rule 41(a)(2) of the Federal Rules of Civil Procedure. The Parties further agree that the proposed Dismissal Order to be attached to their Joint Motion for Dismissal will provide that the Complaint initially be dismissed without prejudice, and then be dismissed with prejudice, automatically and without further action of the Court, one year after the Effective Date of this Agreement.

Parties' Attorneys: Sign and Date below:

FOR PLAINTIFF UNITED STATES:

ERIC S. DREIBAND
Assistant Attorney General
Civil Rights Division

DELORA L. KENNEBREW
Chief
Employment Litigation Section

/s/ Karen D. Woodard 7/27/20
KAREN D. WOODARD (MD Bar/No
number issued)
Principal Deputy Chief
Employment Litigation Section

/s/ Louis Whitsett 7/27/20
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FOR DEFENDANT BREVARD COUNTY

/s/ Michael H. Bowling 7/27/20
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ysuedmeyer@bellroperlaw.com

APPENDIX A

INDIVIDUAL RELIEF AND RELEASE OF CLAIMS

I, Deidre Jackson, accept the monetary relief that is being offered to me under the Settlement Agreement entered into between the United States and Brevard County, Florida ("County"), resolving all legal and equitable claims arising from my Equal Opportunity Employment Commission Charge No. 510-2016-00733 and contained within the United States' Complaint (Civ. No. 20-cv-____ (M.D. Fla.)).

For and in consideration of the acceptance of the relief offered to me by the County, pursuant to the provisions of the Settlement Agreement entered into between the United States and the County, I forever release and discharge the County, and all current, former and future agents, employees, officials, designees, predecessors and successors in interest from all legal and equitable claims arising out of the facts that form the basis for EEOC Charge No. 510-2016-00733 and the Complaint and accruing prior to the date of this release.

I understand that the relief to be given to me, including the payment to me of any monetary amount, does not constitute an admission by the County of the validity of any claim raised by me or on my behalf, nor does it constitute a finding of any wrongdoing or violation of any applicable federal law or regulation.

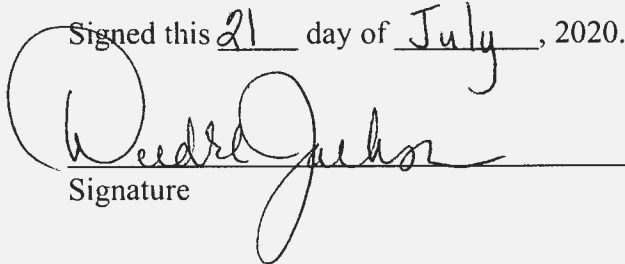
This Release constitutes the entire agreement between the County and myself, without exception or exclusion.

I acknowledge that a copy of the Complaint and Settlement Agreement in this action has been made available to me for my review.

I further acknowledge that I have had a sufficient opportunity to consult with an attorney of my choosing regarding the terms of this Release.

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

Signed this 21 day of July, 2020.


Signature