

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA

Plaintiff,

v.

CUMBERLAND COUNTY, TENNESSEE

Defendant,

CIVIL ACTION NO.

CONSENT DECREE

I. INTRODUCTION

1. This Consent Decree resolves this action brought by Plaintiff, United States of America, against Defendant, Cumberland County, Tennessee (collectively, the “Parties”), under Title I of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. §§ 12111-12117, which incorporates, through 42 U.S.C. § 12117(a), the powers, remedies, and procedures set forth in Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e–17. Title I of the ADA prohibits employment discrimination based on disability and Complainant is a person with a disability. 42 U.S.C. § 12102(1); 29 C.F.R. § 1630.2(g).

2. The United States filed this action against Defendant to enforce Title I of the ADA after receiving a timely charge of discrimination that Complainant filed with the U.S. Equal Employment Opportunity Commission (EEOC).

3. In its Complaint, the United States alleges that Defendant violated Title I of the ADA by denying Complainant’s reasonable accommodation request and constructively discharging him based on his disability.

4. The United States further alleges that Defendant violated Title I of the ADA by

implementing a policy in the Sheriff's Department that prevents people who are taking legally prescribed controlled substances or certain medications from having those substances or medications present in their system while at work for the County, thus prohibiting working for the County while taking such medications, even when the medication did not impact the person's ability to perform the essential functions of the job. 42 U.S.C. §§ 12112(a), (b)(1), (b)(6); 29 C.F.R. §§ 1630.5, 1630.10(a).

5. The United States' also alleges that, in violation of Title I of the ADA, Defendant co-mingles employee medical records in their personnel files. 42 U.S.C. §§ 12112(a), (d)(4)(C); 29 C.F.R. § 1630.14(c).

6. The Parties agree to resolve this action through entry of this Decree. For purposes of this Decree, and subject to its approval and entry by the Court, the Parties agree to the entry of this Decree as final and binding between themselves as to all issues raised in the United States' Complaint.

II. FINDINGS

7. Having examined the provisions of this Decree and the United States' Complaint, the Court finds the following:

- a. This Court has jurisdiction over the Parties and the subject matter of this action under 42 U.S.C. §§ 12117(a), 42 U.S.C. § 2000e-5(f), and 28 U.S.C. §§ 1331 and 1345.
- b. Venue is appropriate in this judicial district under 28 U.S.C. § 1391.
- c. Defendant is a person within the meaning of 42 U.S.C. §§ 2000e(a), 12111(7), and 29 C.F.R. § 1630.2(c), an employer within the meaning of 42 U.S.C. §§

2000e(b), 12111(5), and 29 C.F.R. 1630.2(e), and a covered entity within the meaning of 42 U.S.C. § 12111(2) and 29 C.F.R. § 1630.2(b).

Accordingly, the Parties hereby AGREE and the Court expressly APPROVES, ENTERS, AND ORDERS THE FOLLOWING:

III. INJUNCTIVE RELIEF

8. General Nondiscrimination Obligation: Defendant, by and through its officials, agents, legal representatives, employees, and contractors, shall not engage in any act or practice that discriminates against any applicant or employee on the basis of disability in violation of Title I of the ADA and its implementing regulations.

9. Written Policies, Practices, and Procedures: Defendant shall cooperate to ensure its policies, practices, and procedures do not discriminate on the basis of disability in its employment practices, including with respect to reasonable accommodation and termination, in violation of the ADA. To such end:

- a. Within thirty (30) days of the entry of the Decree, Defendant shall send its currently enacted policies, practices, and procedures to the United States for approval, which shall not be unreasonably withheld. Thereafter, the United States may review and provide comments on Defendant's policies, practices, and procedures and identify any revisions that should be included. The Parties shall cooperate to reach agreement upon any revisions and Defendant shall adopt the revisions.
- b. Within thirty (30) days of the United States' final approval of the revised policies, practices, and procedures, Defendant shall implement the revised policies, practices, and procedures, including by distributing copies of these policies to all employees whose work may be affected by such policies, practices, or procedures.

- c. For the duration of this Decree, Defendant shall, within thirty (30) days of the appointment or retention of an applicable employee whose work may be affected by such policies, practices, or procedures, provide that individual with copies of the policies, practices, and procedures.

10. Training: Within two (2) months of the United States' final approval of all policies, practices, and procedures revised pursuant to Paragraph 9, Defendant shall submit to the United States for approval, which shall not be unreasonably withheld, an outline of the training content to be conducted by the Human Resources Director. Within six (6) months of the United States' final approval of all policies, practices, and procedures revised pursuant to Paragraph 9, and annually throughout the term of this Decree, Defendant shall provide training on Title I of the ADA, and its implementing regulations, and Defendant's revised policies, practices, and procedures, to employees who are involved in personnel decisions, including requests for reasonable accommodation. The training shall also be provided to such applicable employees who are hired or promoted during the term of this Decree, within thirty (30) days of the start of their positions with Defendant. All trainings shall be conducted by the Human Resources Director/trainers knowledgeable about Titles I of the ADA, who Defendant has selected and the United States has approved.

11. Reports: Six (6) months after the entry of the Decree, and every six (6) months thereafter during the term of this Decree, Defendant shall provide a written report (Report) to the United States regarding Defendant's efforts to comply with this Decree. A final additional report shall be provided one (1) month before the termination of the Decree. The Report shall include, for the preceding six-month period:

- a. Any new or revised policies, practices, or procedures regarding Title I of the ADA, or that relate to Paragraph 9 above;
- b. A list of the applicable employees who received copies of the policies described in Paragraph 9;
- c. Written acknowledgment that Defendant has, for the instant reporting period, complied with the training requirements set forth in Paragraph 10 above;
- d. Attendance logs reflecting the dates of the trainings and names and department of individuals who attended the trainings set forth in Paragraph 10 above;
- e. Notification regarding any lawsuit, informal or formal complaint, charge, grievance or anything else alleging that Defendant has violated Title I of the ADA. Such notice will include a description of the nature of the allegation, the name of the individual making the allegation, and all documentation in the possession, custody, or control of Defendant relevant to the allegation. The first Report filed with the United States under this Decree shall include all ADA Title I lawsuits, and all complaints, charges, or grievances of which Defendant is aware and that are pending or otherwise unresolved at the time the first Report is made. All subsequent reports shall include notice of all relevant lawsuits, complaints, charges, and grievances made subsequent to the immediately previous Report, as well as those reported in previous Reports that remain pending.

IV. INDIVIDUAL RELIEF

12. Within seven (7) days of the entry of the Decree, Defendant shall offer Complainant a total monetary amount of \$160,000.00, which includes:

- a. A monetary amount of \$124,513.00, which is designated as back pay. This monetary amount shall be subject to any applicable federal, state, and local taxes, in addition to other payroll tax withholding deductions, and Defendant shall issue an IRS Form W-2 to the complainant for this amount. Defendant shall separately pay all federal, state and local taxes due on the monetary amount, *i.e.*, the employer's payments shall not be deducted from the monetary amount to the complainant.
 - b. A monetary amount of \$11,936.00, which is designated as accumulated interest on the back pay. This amount shall not be subject to withholding deductions, and Defendant shall issue an IRS Form 1099-INT to Complainant for this amount.
 - c. A monetary amount of \$23,551.00, which is designated as compensatory damages. This amount shall not be subject to withholding deductions, and Defendant shall issue an IRS Form 1099 to the complainant for this amount.
13. Within seven (7) days of the entry of the Decree, Defendant shall notify Complainant of the individual relief offered to him under this Decree by mailing to him, by certified mail, return receipt requested, a Notice Letter and Release of Claims Form (attached as Exhibits 1 and 2 respectively), a postage pre-paid return envelope, and a copy of this signed Decree. In order to accept the relief offered by Defendant, Complainant must execute the Release of Claims Form (Exhibit 2) and return the form to Defendant, using the postage pre-paid return envelope, within thirty (30) days of receiving the Notice Letter (Exhibit 1). Defendant shall send the United States a copy of the Notice Letter and Release of Claims Form at the same time that they are sent to Complainant.

14. Within ten (10) days of receipt of Complainant's signed Release of Claims Form, Defendant shall cause to be paid the monetary sums specified in Paragraph 12 to Complainant.

15. Within fifteen (15) days of paying the monetary sums specified in Paragraph 12 to Complainant, Defendant shall send the United States proof of payment and a copy of Complainant's signed Release of Claims Form. An offer of reinstatement for the Complainant is not included in this Decree.

V. IMPLEMENTATION

16. Delivery of Reporting Materials: All materials sent to the United States pursuant to this Decree shall be sent by e-mail to Elaine.Grant@usdoj.gov (or to any other e-mail address that the United States designates during the term of this Decree). The e-mail shall include a subject line referencing Cumberland County and DJ No. 205-71-11.

17. Enforcement: Without further order of the Court, and during the duration of this Decree, the United States may review compliance with this Decree at any time and shall have the right to inspect and copy any documents that are relevant and necessary to monitor Defendant's compliance with this Decree. Unless otherwise specified in this Decree, Defendant shall produce any requested documents or make them available for inspection and copying within thirty (30) days of a written request by the United States. The Parties shall attempt in good faith to resolve informally any disputes concerning compliance with this Decree prior to seeking a resolution from the Court. If a dispute cannot be resolved informally, either party may move this Court to enforce the Decree and may seek a ruling that enforces this Court Order, provided that the moving party gives thirty (30) days advance written notice to the non-moving party before moving for review by the Court.

18. Retention of Jurisdiction: During the term of this Decree, this Court shall retain

jurisdiction over this action to enforce the terms of the Decree, including resolving any disputes, issuing any orders necessary to implement the relief provided for in this Decree, and extending the term of the Decree if Defendant fails to comply with the provisions herein.

19. Severability: If any provision of this Decree is determined to be unenforceable by any court, only the specific provision in question shall be affected and all other provisions of this Decree shall remain in full force and effect.

20. Non-Waiver: Failure by the United States to enforce any provision or deadline in this Decree shall not be construed as a waiver of the right of the United States to enforce any deadline or provision of this Decree.

21. Extensions: Any time limits for performance imposed by this Decree may be extended only by the mutual written consent of the Parties. With regard to any of the deadlines specified in this Decree, Defendant shall notify the United States as soon as reasonably possible before any deadline of an anticipated inability to meet the deadline and the reasons why, and shall request an extension of time to a specific date. However, any extension of the termination date of this Decree shall require Court approval.

22. Successor Liability: This Decree shall be binding upon Defendant, its officers, agents, employees, contractors, successors, assigns, and any other person under the authority or control of Defendant.

23. Authority: A signatory to this document in a representative capacity for Defendant represents that she or he is authorized to bind Defendant to this Decree.

24. Entire Agreement: This Decree, including its attachments, constitutes the entire agreement between the United States and Defendant on the matters raised herein and no other

statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written Decree, including its attachments, shall be enforceable.

25. Limitation: This Decree is limited to resolving claims under Title I of the ADA related to the facts specifically set forth in Paragraphs 1 through 5 above and the complaint. Nothing in this Decree relates to other provisions of the ADA or affects Defendant's obligations to comply with any other law, including those relating to nondiscrimination against individuals with disabilities. This Decree does not affect Defendant's continuing responsibility to comply with all aspects of the ADA.

26. Counterparts: This Decree may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same Decree, notwithstanding that each Party is not a signatory to the original or the same counterpart.

27. Effective Date: The effective date of this Decree shall be the date that the Court approves and enters the Decree. Unless otherwise specified, all time periods designated for an action run from the entry of the Decree.

28. Term: This Decree shall terminate, and this action shall be dismissed without further order of this Court, eighteen (18) months from the entry of the Decree.

29. Publicity: This Decree and any amendment hereto shall be public documents. A copy of this Decree or any information contained herein may be made available to any person, and Defendant shall provide a copy of this Decree to any person upon request.

30. Litigation Hold: The parties agree that, as of the date of entry of this Decree, litigation is not "reasonably foreseeable" concerning the matters alleged in the complaint and described in this Decree. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to these matters, the

party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Decree.

31. Records: For the term of this Decree, Defendant shall preserve all records related to this Decree.

32. Costs and Fees: The United States and Defendant shall bear the cost of their own fees and expenses incurred in connection with this Decree.

For Cumberland County

For the United States of America

/s/ Robyn Beale Williams
Robyn Beale Williams
Farrar & Bates, LLP
Law Offices
12 Cadillac Drive, Suite 480
Brentwood, TN 37027

Date: 1/13/2023

Rebecca B. Bond, Chief
/s/ Elaine Grant
Kevin J. Kijewski, Deputy Chief
Elaine Grant, Trial Attorney
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Date: 1/18/2023