

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

ORDER
13-CV-503S

NIAGARA COUNTY, NEW YORK,

Defendant.

On December 15, 2015, the parties filed a Stipulated Consent Decree for this Court's approval. (Docket No. 40.) This Court has reviewed the Complaint, the Consent Decree, and the applicable law. Based on that review, this Court will approve the Consent Decree with one minor modification.

Approval of a proposed consent decree falls squarely within the court's discretion and should be considered in light of the strong policy in favor of encouraging voluntary settlement of litigation. See United States v. Hooker Chems. & Plastics Corp., 776 F.2d 410, 411 (2d Cir. 1985). To warrant approval, the proposed consent decree must (1) arise from and resolve a dispute over which the court has subject-matter jurisdiction, (2) fall within the scope of the case made by the pleadings, and (3) further the objective of the law upon which the complaint was based. See Local No.93, Int'l Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland, 478 U.S. 501, 525, 106 S.Ct. 3063, 3077, 92 L.Ed.2d 405 (1986); Kozlowski v. Coughlin, 871 F.2d 241, 244 (2d Cir. 1989); United States v. City of New York, 30 F. Supp. 2d 325, 330-31 (E.D.N.Y. 1998).

In addition, "[i]t is well settled that the function of the reviewing court is not to substitute its judgment for that of the parties to the decree but to assure itself that the

terms of the decree are fair and adequate and are not unlawful, unreasonable, or against public policy.” United States v. Hooker Chems. & Plastics Corp., 540 F. Supp. 1067, 1072 (W.D.N.Y. 1982).

The Consent Decree in this case meets these requirements. This Court will therefore approve the Consent Decree, with the single modification that the provision in paragraph 23 providing for a 2-year delay in closing this case is not approved. Rather, the case will be closed, with leave for either party to reopen without fees or costs by the filing of a Motion to Reopen demonstrating good cause within two years of the entry date of this Order. This Court retains jurisdiction over the Consent Decree for purposes of resolving any disputes that may arise from it or entering any orders that may be necessary to implement the relief contained therein.

IT HEREBY IS ORDERED, that the Stipulated Consent Decree (Docket No. 40) is APPROVED WITH MODIFICATION consistent with this Order.

FURTHER, that the Clerk of Court is directed to CLOSE this case.

FURTHER, that each party is granted leave to reopen without fees or costs by filing a Motion to Reopen demonstrating good cause within two years of the entry date of this Order.

FURTHER, that this Court retains jurisdiction over the Consent Decree for purposes of resolving any disputes that may arise from it or entering any orders that may be necessary to implement the relief contained therein.

SO ORDERED.

Dated: January 6, 2016
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
BUFFALO DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 1:13-cv-00503
)	
NIAGARA COUNTY, NEW YORK,)	
)	
Defendant.)	
_____)	

CONSENT DECREE

This action was brought by the United States of America (“United States”) against Niagara County, New York (“Niagara County”) under provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.* (“Title VII”). The Court has jurisdiction over this action under 42 U.S.C. § 2000e-5(f), 28 U.S.C. § 1331, and 28 U.S.C. § 1345. Venue is proper in this judicial district under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1331(b).

In its complaint, the United States alleges that Niagara County, through the Niagara County Sheriff’s Office (“NCSO”), discriminated against Carisa Boddecker, on the basis of her sex and pregnancy, in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), by revoking her restricted duty assignment, and forcing her to take paid and unpaid leave when she was otherwise able to work, while granting restricted duty assignments to non-pregnant employees with temporary medical conditions. In addition, the United States alleges that Niagara County failed or refused to take appropriate action to remedy the effects of its discriminatory treatment of her. Niagara County denies that it discriminated against Boddecker because of her sex and pregnancy, and denies that it failed or refused to take appropriate action

to remedy the effects of its discriminatory treatment of her in violation of Title VII. Nevertheless, the United States and Niagara County (collectively, the “Parties”), desiring that this action be settled by an appropriate Consent Decree (the “Decree”) and without the burden of additional protracted litigation, agree to the entry of this Decree.

The Parties agree to the jurisdiction of the Court over the Parties and the subject matter of this action. For purposes of this Decree, and subject to its approval and entry by the Court, the Parties waive hearings and findings of fact and conclusions of law on all issues, and further agree to the entry of this Decree as final and binding between themselves as to the issues raised in the complaint filed by the United States and the matters resolved by this Decree. This Decree, being entered with the consent of the Parties, shall not constitute an admission, adjudication, or finding on the merits of the allegations made in the complaint.

FINDINGS

1. Having examined the provisions of this Decree, the Court finds the following:
 - a. The Court has jurisdiction over the subject matter of this action and the Parties.
 - b. The terms and provisions of this Decree are lawful, fair, reasonable, and just.
 - c. The rights of the Parties are adequately protected by this Decree.
 - d. This Decree complies with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights and privileges of any person.

NOW THEREFORE the Court **APPROVES, ENTERS, and ORDERS**, the following:

THE PARTIES

2. The sole parties to this Decree are the United States of America, by the United States Department of Justice, and Niagara County, New York.

3. Niagara County and its current, former, and future agents, employees, officers, designees, and successors-in-interest are hereinafter referred to collectively as “Niagara County.”

NON-ADMISSION

4. This Decree, being entered into with the consent of the Parties, shall in no way constitute an adjudication or finding on the merits of this case, nor shall it be construed as an admission by Niagara County or a finding of wrongdoing or violation of any applicable federal or state law.

GENERAL INJUNCTIVE RELIEF

5. NCSO and all individuals in active concert or participation with it are enjoined from:

- a. discriminating against any employee with respect to terms, conditions, and privileges of employment on the basis of sex and pregnancy;
- b. unlawfully retaliating against any person because that person has: complained about discrimination on the basis of sex and pregnancy; participated in or cooperated with the initiation, investigation, or litigation of this action or the administration of this Decree; or received relief or otherwise benefited from the Decree;
- c. engaging in any unlawful retaliation against Carisa Boddecker or her husband, Brian Boddecker, who is also an employee of Niagara

County, for Carisa Boddecker's participation in the initiation, investigation, litigation, or settlement of this action.

IMPLEMENTATION OF POLICIES AND PROCEDURES

6. The NCSO shall implement an anti-discrimination policy ("Policy") that prohibits discrimination on the basis of sex and pregnancy. The Policy shall provide that restricted duty assignments for pregnant employees shall be made, upon the request of a pregnant employee, on the same basis as those provided to non-pregnant employees with other temporary medical conditions, and based upon an individual assessment regarding a pregnant employee's ability to perform the essential functions of her job. The Policy shall also specify the mechanism by which an employee employed in the NCSO may make an internal complaint of sex or pregnancy discrimination.

7. Within thirty (30) days from the date the Court enters this Decree, Niagara County shall submit the Policy to the United States for review and approval.

8. The United States' approval of the Policy shall not be unreasonably withheld. However, if the United States does not believe the Policy complies with the terms of this Decree or Title VII, the United States shall notify Niagara County, in writing, within ten (10) days of receipt of the Policy. The Parties shall thereafter confer in good faith regarding any disagreements concerning the Policy. No later than twenty (20) days after the United States has approved the Policy, the County shall: (1) distribute a copy of the Policy to all current employees of the NCSO and employees of the Niagara County Human Resources Department who regularly work with the NCSO, and obtain a signed acknowledgment from those employees, which will be placed in their personnel files, that they have read and understood the Policy; and (2) shall incorporate the Policy in any policy manual or similar manuals maintained by the

NCSO and the County. To the extent that NCSO makes personnel policies available on any County internet and intranet website, the Policy will also be made available on said internet or intranet sites.

9. Each new employee of the NCSO or new employee of the Niagara County Human Resources Department who would regularly work with the NCSO shall receive a copy of the Policy at the time of his or her hire. Each new employee shall sign an acknowledgment that he or she has read and understood the Policy, and the signed acknowledgment shall be placed in his or her personnel file.

TRAINING

10. Niagara County shall provide mandatory training regarding sex and pregnancy discrimination, and the procedures for reporting allegations of discrimination, to all NCSO employees and Niagara County Human Resources Department employees that regularly work with the NCSO. The training shall also be periodically administered for newly hired or transferred NCSO employees or Niagara County Human Resources Department employees that regularly work with the NCSO during the life of this Decree.

11. Within sixty (60) days from the date the Court enters this Decree, Niagara County shall submit to the United States for review and approval a description of the proposed training provider and training program, along with copies of the training materials and a list of employees (with titles) designated to be trained.

12. The United States' approval of the training shall not be unreasonably withheld. However, if the United States does not believe that the content of the training complies with the terms of the Decree or with Title VII, the United States will notify Niagara County in writing within ten (10) days of receipt of the information regarding the proposed training. The Parties

shall thereafter confer in good faith regarding any disagreements concerning the training. Once the United States has approved the training, the County shall implement the training within twenty (20) days.

13. Within ten (10) days of completion of the training described in Paragraph 10, Niagara County shall provide to the United States a list of employees (with titles) who attended the training, and written confirmation that all persons covered by Paragraph 10 have attended the training.

INDIVIDUAL RELIEF

14. Niagara County agrees to offer the Settlement, Waiver and Release Agreement (“Agreement”), attached hereto as Appendix A, to Carisa Boddecker through her attorneys, Lipsitz Green Scime Cambria LLP, Robert L. Boreanaz, Esq., of Counsel.

a. Niagara County shall deliver the Settlement, Waiver and Release Agreement, along with a copy of this Decree and the letter set forth in Appendix B of the Decree, to Lipsitz Green Scime Cambria LLP, attorneys for Boddecker, Robert L. Boreanaz of Counsel, by electronic mail and hand delivery after the Consent Decree has been executed by the Parties and filed with the Court. Boddecker and her attorneys shall have seven (7) calendar days from the date the Agreement is delivered to her attorneys to execute and return the Agreement and the Release referred to in Paragraph 6 by hand delivery or certified mail to:

Sharon A. Swift, Esq.
Jaekle, Fleischmann & Mugal LLP
The Avant - Suite 900
200 Delaware Avenue
Buffalo, New York 14202

The fully executed Settlement, Waiver and Release Agreement with Attached Release must be received by Ms. Swift at the above address by no later than the close of business on the seventh calendar day from the date on which the Agreement was delivered to Boddecker's attorneys.

b. If Boddecker and her attorneys do not timely execute and return the Agreement and the Release referred to in Paragraph 6 of the Agreement, Niagara County shall have no obligation to effectuate the individual relief set forth in Paragraphs 14 through 16 of this Decree or to carry out the corresponding obligations in Paragraphs 17 and 18 of this Decree. Niagara County shall promptly notify the United States that Boddecker did not timely execute and return the Agreement and Release and the United States shall issue a Notice of Right to Sue to Boddecker. The other provisions of the Decree shall remain in effect.

c. If the Agreement and the Release referred to in Paragraph 6 of the Agreement are executed and returned within the time set forth in Paragraph 14(a) above, Niagara County agrees to pay to Boddecker and her attorneys the gross total sum of Ninety-Four Thousand Dollars and No Cents (\$94,000.00) in complete satisfaction of all damages potentially recoverable by Boddecker from the County or the Sheriff of Niagara County in all matters related to the EEOC Charge or Civil Action (as defined in Appendix A), including but not limited to all claims for costs and attorneys' fees, backpay, overtime compensation, lost employment benefits and income, front pay, interest, punitive damages, liquidated

damages, compensatory damages, equitable relief, or any other amounts or damages potentially recoverable. Such amount shall be paid by Niagara County as set forth in Paragraph 2 of the attached Appendix A.

15. The Parties agree that, effective no later than 30 days after the County's timely receipt of this fully executed Settlement, Waiver and Release Agreement (Appendix A) and the Release referred to in Paragraph 6 of Appendix A, Boddecker's relevant service dates shall be as follows:

Union Seniority Date:	01/02/2005
Benefit Date:	01/02/2005
Accrual Date:	01/31/2005
Continuous Service Date:	01/31/2005

16. It is further understood and agreed by the Parties that the County does not establish a date for retirement eligibility or determine retroactive service credits. Rather, retroactive service credits are determined by the New York State and Local Retirement System ("Retirement System"). Niagara County agrees to report the back pay and additional paid days set forth in Paragraph 2 of Appendix A to the Retirement System within ten (10) days of paying such amounts. The Parties acknowledge that Niagara County will be billed by the Retirement System for the employer's contributions due on the back pay amounts, plus interest, as determined by the Retirement System. The County will timely pay the bill received on the employer's contribution amounts in the ordinary course of business and in conformance with its procedures. Boddecker shall be responsible for paying the employee contributions on these back pay amounts, plus any interest, as determined by the Retirement System.

17. Niagara County shall report to the Internal Revenue Service ("IRS") all payments to Boddecker and her attorneys using the appropriate IRS forms as set forth in Paragraph 2 of Appendix A, and provide her with any required IRS forms.

18. Niagara County shall provide to the United States copies of the fully executed Settlement Waiver and Release Agreement with attached Release and the check or the direct deposit record within 15 days of the date on which it makes the payments set forth in Paragraph 2 of Appendix A.

RECORDKEEPING

19. Niagara County shall retain relevant records that come into its possession relating to formal complaints or charges of employment discrimination based on sex and pregnancy made by employees employed with the NCSO against the County or its employees, agents, or representatives through the internal complaint mechanism set forth in the Policy, the Equal Employment Opportunity Commission, or any other federal or state agency authorized to receive such complaints or charges. For the duration of this Decree, Niagara County shall provide copies of such complaints or charges to the United States within thirty (30) days of its receipt of such complaints or charges. The United States shall also have the right to inspect and copy all documents retained by the County relating to such complaints or charges. The County shall produce such documents or make them available for inspection within thirty (30) days of a written request by the United States except that documents which are deemed confidential by the County shall only be produced pursuant to the December 13, 2013 Stipulation and Protective Order of this Court.

ADDITIONAL PROVISIONS

20. Without further order of the Court, the United States may review compliance with this Decree at any time, and shall have the right to inspect and copy documents that are relevant and necessary to monitor Niagara County's compliance with this Decree. Unless otherwise stated in this Decree, the County shall produce documents or make them available for inspection

within thirty (30) days of a written request by the United States except that documents which are deemed confidential by the County shall only be produced pursuant to the December 13, 2013 Stipulation and Protective Order of this Court.

21. 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, either party may move the Court for a resolution of the issue, provided that the moving party gives written notice to the other party at least ten (10) days before the filing of any motion.

22. 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 for in this Decree.

23. Two (2) years from the date of entry of this Decree, this Decree shall dissolve and this action shall be dismissed, with prejudice, without further order of the Court, unless the Decree is extended by the Court upon good cause shown by motion on notice made by the United States. The time frame for completion of any act required by this Decree may be modified upon mutual written consent of the Parties. The Parties may jointly agree to other modifications of this Decree with approval of the Court.

24. The Parties shall bear their own costs, expenses, and attorney's fees in this action, including the costs of compliance or monitoring.

25. All documents required to be delivered under this Decree to the United States shall be sent by an express mail service to:

Elizabeth Banaszak
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
601 D Street, NW
Room 4032

Washington, DC 20579

26. This Decree constitutes the entry of final judgment within the meaning Rule 54(b) of the Federal Rules of Civil Procedure as to all claims asserted in this action by the United States.

27. If any provision of this Decree is found unlawful, only the specific provision in question shall be affected, and the other provisions will remain in full force and effect.

28. The Parties understand and agree that this Consent Decree, the Agreement attached as Appendix A, and the letter attached as Appendix B may not be used as evidence of the validity or value of the underlying Title VII claims in any judicial or administrative action, any arbitration or other proceeding. It is further agreed that the Consent Decree, the Agreement attached as Appendix A and the letter attached as Appendix B and any payments thereunder shall not constitute, be interpreted, construed or used as evidence of any admission of liability, law or fact, or a waiver of any right or defense by, nor an estoppel against the County, the Sheriff or any of their predecessors, successors, affiliates or subordinates or their legislators, officials, agents, insurers, representatives, officers, directors or employees. Furthermore, Federal Rule of Evidence 408 shall apply to this Consent Decree, the Agreement attached as Appendix A and the letter attached as Appendix B. This paragraph shall not be construed to apply to a proceeding in which either Party alleges a breach of this Decree, or to the extent required by law, subpoena, rule, order or ordinance.

DONE AND ORDERED at Buffalo, New York, this ____ day of _____, 2015.

HON. WILLIAM M. SKRETNY
UNITED STATES DISTRICT COURT JUDGE

AGREED AND CONSENTED TO:

FOR PLAINTIFF UNITED STATES OF AMERICA:

VANITA GUPTA
Principal Deputy Assistant Attorney General

DELORA L. KENNEBREW
Chief
Employment Litigation Section
Civil Rights Division

s/Elizabeth B. Banaszak
JOHN P. BUCHKO, DC Bar No. 452745
Deputy Chief
ELIZABETH B. BANASZAK, IL Bar No. 6299035
KATHLEEN O. LAWRENCE, DC Bar No. 1011297
Senior Trial Attorneys
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania, Ave., NW- PHB
Washington, DC 20530
Telephone: (202) 305-4071
Facsimile: (202) 514-1005
E-mail: Elizabeth.Banaszak@usdoj.gov

Attorneys for Plaintiff United States of America

FOR DEFENDANT COUNTY OF NIAGARA, NEW YORK:

s/William L. Ross

WILLIAM L. ROSS
Chairman, Niagara County Legislature

s/Sharon A. Swift, Esq.

SHARON A. SWIFT
Jaeckle, Fleischmann & Mugal, LLP
Attorneys for Defendant
Avant Building, Suite 900
200 Delaware Avenue
Buffalo, NY 14202-2107
Telephone: (716) 843-3936
Facsimile: (716) 856-0432
E-mail: sswift@jaeckle.com

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APPENDIX A

SETTLEMENT, WAIVER AND RELEASE AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into this ____ day of December, 2015, by and among Carisa Boddecker ("Boddecker"), Lipsitz Green Scime Cambria LLP, attorneys for Boddecker, Robert L. Boreanaz, Esq., of Counsel, and the County of Niagara ("County")(collectively, the "Parties").

WHEREAS, in or about January 2008, Boddecker, an employee of the County in the Niagara County Sheriff's Office ("NCSO"), filed a charge of discrimination with the United States Equal Employment Opportunity Commission ("EEOC"), Charge No.846-2008-18853 ("EEOC Charge"), claiming that she had been subjected to unlawful discrimination on the basis of sex and pregnancy; and

WHEREAS, the EEOC Charge was cross-filed with the New York State Human Rights Division ("Division"); and

WHEREAS, on or about August 17, 2010, the EEOC issued its determination; and

WHEREAS, attempts to conciliate the EEOC Charge were unsuccessful; and

WHEREAS, the EEOC referred the EEOC Charge to the United States Department of Justice ("United States") for review; and

WHEREAS, on or about May 13, 2013, the United States commenced an action in United States District Court, Western District of New York, Civil Action No. 13-CV-0503, ("Civil Action") against the County based on Boddecker's EEOC Charge and seeking damages on Boddecker's behalf; and

WHEREAS, the United States and the County have entered into a Consent Decree; and

WHEREAS, Boddecker and the County, without any admission of liability or wrongdoing whatsoever and to avoid further expense, wish to resolve and settle any and all

disputes and controversies between them relating to the claims in the EEOC Charge and the Civil Action brought by the United States.

NOW, THEREFORE, IT IS HEREBY AGREED:

1. The Parties enter into this Agreement solely for the purpose of settling and resolving all pending matters commenced by Boddecker against the County related to the EEOC Charge and Civil Action and all claims which could be commenced by Boddecker against the County and the Niagara County Sheriff ("Sheriff") related to the EEOC Charge and Civil Action. By entering into this Agreement, the County does not admit that it or any of its predecessors, parents, affiliates or subordinates or its legislators, officials, agents, insurers, representatives, officers, directors or employees violated any federal, state, local or other regulation, rule, ordinance, statute or constitution. Rather, the County enters into this Agreement solely for the purpose of resolving said matters between it and Boddecker without further proceedings, except as necessary to implement the terms of this Agreement.

2. In consideration of the timely execution of this Agreement and the attached Release referred to in Paragraph 6 below, the County agrees to pay to Boddecker and her attorneys the gross total sum of Ninety-Four Thousand Dollars and No Cents (\$94,000.00) in complete satisfaction of all damages potentially recoverable by Boddecker from the County or the Sheriff in all matters related to the EEOC Charge or Civil Action, including but not limited to all claims for costs and attorneys' fees, backpay, overtime compensation, lost employment benefits and income, front pay, interest, punitive damages, liquidated damages, compensatory damages, equitable relief, or any other amounts or damages potentially recoverable. Such amount shall be paid as follows:

a. Twenty Nine Thousand Dollars and Zero Cents (\$29,000) shall be paid to Lipsitz Green Scime Cambria LLP, 42 Delaware Avenue Buffalo, New York 14202, whose Federal Tax ID number is _____, as Boddecker's attorneys, in satisfaction of all Boddecker's claims or potential claims for attorneys' fees and costs incurred by or paid to any and all attorneys representing or assisting Boddecker. The payment made pursuant to this Section 2(a) will be reported separately on the applicable version of Form 1099 in the name of Lipsitz Green Scime Cambria LLP.

b. The Parties agree that Boddecker shall receive pay for wages, including briefing time, for a total of 89 work days occurring between the time periods of 12/16/2007-12/31/2007 (10.5 days); 2/6/2008-3/10/2008 (22 days) and 4/14/2008 - 7/1/2008 (56.5 days) in the gross amount of Eighteen Thousand Seventy-One Dollars and Eighty-Five Cents (\$18,071.85), less applicable deductions, paid to Boddecker in complete satisfaction of all Boddecker's claims and potential claims for any alleged back pay.

The County shall withhold any federal, state, or local taxes required to be withheld from this payment and any other amounts that the County may be legally required to deduct, and shall pay Boddecker the net amount remaining thereof together with an explanation of the deductions made. The payment made pursuant to this Section 2(b) will be reported on Form W-2 in the name of Boddecker.

c. One Thousand Six Hundred Fifty-One Dollars and Seventeen Cents (\$1,651.17), less applicable deductions, shall be paid to Boddecker for three (3) accrued vacation days and four (4) holidays, including overtime.

The County shall withhold any federal, state, or local taxes required to be withheld from this payment and any other amounts that the County may be legally required to deduct, and shall

pay Boddecker the net amount remaining thereof together with an explanation of the deductions made. The payment made pursuant to this Section 2(c) will be reported on Form W-2 in the name of Boddecker.

d. Five Thousand Nine Hundred Ninety-Two Dollars and Ninety-Four Cents (\$5,992.94) shall be paid to Boddecker in satisfaction of all Boddecker's claims and potential claims for interest on the alleged monetary damages. The payment made pursuant to this Section 2(d) will be reported on the applicable version of Form 1099 in the name of Boddecker.

e. Thirty-Nine Thousand Two Hundred Eighty-Four Dollars and Four Cents (\$39,284.04) shall be paid to Boddecker in satisfaction of all Boddecker's claims and potential claims for alleged damages on account of actions or inactions by the County allegedly resulting in emotional distress, physical or psychological consequences, or other non-economic injury to Boddecker, and any and all other losses allegedly suffered by Boddecker not previously described. The payment made pursuant to this Section 2(e) will be reported on the applicable version of Form 1099 in the name of Boddecker.

The Parties understand and agree that a copy of this Settlement, Waiver and Release Agreement and Release referred to in Paragraph 6 below was provided to Mr. Boreanaz on December __, 2015. For this Agreement to be effective, Boddecker and Mr. Boreanaz must execute this Agreement and the attached Release and deliver the documents within seven (7) calendar days to:

Sharon A. Swift, Esq.
Jaackle, Fleischmann & Mugal LLP
The Avant - Suite 900
200 Delaware Avenue
Buffalo, New York 14202

The fully executed Agreement and attached Release must be received by Ms. Swift at the above address by no later than the close of business on December __, 2015 (the seventh calendar day).

The payments set forth in Paragraphs 2(a), 2(b), 2(c), 2(d) and 2(e) shall be paid within 30 days of the County's timely receipt of this fully executed Agreement and the Release referred to in Paragraph 6 below.

3. The County shall not make any withholding from the amounts stated in Paragraph 2(a), 2(d) and 2(e) of this Agreement. Taxes to be paid on said sums, if any, shall be the obligation of the recipient of part or all of said sums. Boddecker and Lipsitz Green Scime Cambria LLP agree that the County bears absolutely no responsibility or liability whatsoever with regard to whether or not all or part of said sum is determined by the Internal Revenue Service or any other federal, state or local governmental agency to be subject to federal, state or local taxation or withholdings, and Boddecker agrees to indemnify, defend and hold harmless, including the costs of defense, the County, from any claims, causes of action, liability, administrative proceedings or lawsuits related to the taxation of, or withholding from, the monetary consideration set forth herein.

4. The Parties agree that, effective no later than 30 days after the County's timely receipt of this fully executed Agreement and the Release referred to in Paragraph 6, Boddecker's relevant service dates shall be as follows:

Union Seniority Date:	01/02/2005
Benefit Date:	01/02/2005
Accrual Date:	01/31/2005
Continuous Service Date:	01/31/2005

It is further understood and agreed by the Parties that the County does not establish a date for retirement eligibility or determine retroactive service credits. Rather, retroactive service credits are determined by the New York State and Local Retirement System ("Retirement System"). Niagara County agrees to report the back pay and additional paid days set forth in Paragraph 2 above to the Retirement System within ten (10) days of paying such amounts. The Parties acknowledge that Niagara County will be billed by the Retirement System for the employer's contributions due on the back pay amounts, plus interest, as determined by the Retirement System. The County will timely pay the bill received on the employer's contribution amounts in the ordinary course of business and in conformance with its procedures. Boddecker shall be responsible for paying the employee's contributions on these back pay amounts, plus any interest, as determined by the Retirement System.

5. The County shall refrain from unlawfully retaliating against Boddecker or her husband, Brian Boddecker, who is also an employee of the County, due to Boddecker's participation in the initiation, investigation, litigation or settlement of the EEOC Charge or Civil Action.

6. Lipsitz Green Scime Cambria LLC shall execute a Release, appended hereto as **Exhibit A**, in favor of the County and the Sheriff with regard to all possible claims existing as of the date of execution of the Release with respect to the representation of Boddecker with regard to the EEOC Charge and the Civil Action which Release shall be deemed incorporated into this Agreement.

7. Boddecker understands and acknowledges that the County and the United States have entered into a Consent Decree resolving the claims in the case entitled United States of

America v. Niagara County, New York, Civil Action No. 13-CV-00503, and acknowledges that a copy of the Consent Decree has been made available to her for her review.

8. Upon execution of the Consent Decree on behalf of the County and the United States and upon execution of this Agreement, Boddecker agrees to withdraw with prejudice the EEOC Charge she filed against the County and any Complaint filed with the New York State Human Rights Division which resulted from cross-filing the of the EEOC Charge with the Division by executing the withdrawal letter attached hereto as **Exhibit B**. Boddecker will execute any further documents necessary to effectuate these withdrawals.

9. **RELEASE OF THE COUNTY AND THE SHERIFF.** Boddecker, for herself and her heirs, personal representatives, successors and assigns, in consideration of the sums and benefits described in Paragraph 2 of this Agreement, does hereby forever discharge and release the County and the Sheriff, their legislators, officials, agents, insurers, representatives, officers, directors, employees, successors and assigns from any and all claims, grievances, charges, demands, causes of action, damages, complaints, expenses and compensation which she now has or may in the future have, or which any person or entity may have on her behalf, whether known now or discovered later, on account of or arising out of the facts asserted in the EEOC Charge or the Civil Action. Boddecker hereby waives any and all such claims, grievances, charges, causes of action, demands, damages, complaints, expenses and compensation of any type or description that she has or might have against the County or the Sheriff, and their legislators, officials, agents, insurers, representatives, officers, directors, employees, successors and assigns.

This Waiver and Release includes, but is not limited to, a waiver, discharge and release by Boddecker of the County and the Sheriff, their legislators, officials, agents, officers, directors, employees, successors and assigns from any damages or relief of whatever nature or

description, including, but not limited to, compensatory and punitive damages and equitable forms of relief, as well as any claim for attorneys' fees or costs, which may arise from any of the claims waived, discharged or released.

Boddecker agrees that this Waiver and Release may be enforced in any court, federal, state or local, and before any arbitrator or administrative agency or body, federal, state or local. The parties irrevocably agree that all actions or proceedings arising in connection with this Agreement and/or any documents and instruments contemplated by this Agreement shall be tried and litigated only in the state and federal courts located in the State of New York. Each of the parties agrees to submit to the jurisdiction of the courts of the State of New York.

10. Boddecker agrees not to commence or continue any action or proceeding in any court, federal, state or local, concerning any matters included in the Waiver and Release or any claim waived and released in the Waiver and Release.

Boddecker also agrees, that if a claim or anything else included in the Waiver and Release should be prosecuted in her name before any court or administrative agency, she waives and agrees not to take any award of money or other damages and will immediately request in writing that the claim or matter on her behalf be withdrawn.

11. This Agreement constitutes the complete understanding between the parties and may not be changed orally. Boddecker acknowledges that no representatives of the County have made any representation or promise to her concerning this settlement other than the terms and conditions contained in this Agreement.

12. Boddecker acknowledges that she has been given, by this Agreement and otherwise, an opportunity to review this Agreement with her attorneys, Lipsitz Green Scime Cambria LLP, Robert L. Boreanaz, Esq., of counsel, prior to its execution.

13. Boddecker specifically acknowledges that she fully and completely understands the terms of this Agreement and their significance and that she accepts these terms and enters into this Agreement freely and without reservation. Boddecker acknowledges that if she had any questions about any provision of this Agreement or about her complete, voluntary, knowing and full release and waiver of her legal rights (except with regard to enforcement of this Agreement itself), Boddecker would not sign this Agreement. Boddecker further acknowledges that if she considered this Agreement to be ineffective and/or non-binding in any particular manner she would not sign it. Boddecker agrees that invalidity of any part of this Agreement does not render the remaining portion of this Agreement invalid. Boddecker agrees that she will not attempt to challenge or void this Agreement in any manner, form or forum.

14. Boddecker represents and warrants that she has carefully read each and every provision of this Agreement and that she fully understands all of the terms and conditions of this Agreement.

15. Boddecker represents and warrants that she enters into this Agreement voluntarily, of her own free will, without any pressure or coercion from any person or entity, including, but not limited to, the County or any of its representatives.

16. Boddecker acknowledges that the mutual promises, payments and benefits set forth herein exceed the mutual promises, payments and benefits to which Boddecker would have been entitled had she not executed this Agreement.

17. This Agreement shall be interpreted, enforced, and governed in accordance with the laws of the State of New York.

18. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is

held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

19. The Parties understand and agree that the Consent Decree, the letter attached to the Consent Decree as Appendix B, and this Agreement may not be used as evidence of the validity or value of the underlying Title VII claims in any judicial or administrative action, any arbitration or other proceeding. It is further agreed that the Consent Decree, the letter attached to the Consent Decree as Appendix B, and this Agreement and any payments thereunder shall not constitute, be interpreted, construed or used as evidence of any admission of liability, law or fact, or a waiver of any right or defense by, nor an estoppel against the County, the Sheriff or any of their predecessors, successors, affiliates or subordinates or their legislators, officials, agents, insurers, representatives, officers, directors or employees. Furthermore, Federal Rule of Evidence 408 shall apply to the Consent Decree, the letter attached to the Consent Decree as Appendix B, and this Agreement. This paragraph shall not be construed to apply to a proceeding in which either Party alleges a breach of this Agreement, or to the extent required by law, subpoena, rule, order or ordinance.

Carisa Boddecker

Date _____

LIPSITZ GREEN SCIME CAMBRIA LLP

By: _____ Date _____
Robert L. Boreanaz, Esq.
Attorneys for Carisa Boddecker

COUNTY OF NIAGARA

By: _____ Date _____
William L. Ross
Chairman, Niagara County Legislature

STATE OF NEW YORK)
 : ss.
COUNTY OF ERIE)

On the ____ day of _____, 2015, before me personally appeared **Carisa Boddecker**, to me known and known to me to be the same person described in and who executed the within instrument, and she duly acknowledged to me that she executed same.

Notary Public

STATE OF NEW YORK)
 : ss.
COUNTY OF ERIE)

On the ____ day of _____ 2015, before me personally appeared **Robert L. Boreanaz, Esq.**, to me known, who being by me duly sworn did depose and say that he is a partner of Lipsitz Green Scime Cambria LLP, the law firm described herein, and who executed the within instrument, as attorney for Carisa Boddecker, on behalf of such law firm.

Notary Public

1160681v4

EXHIBIT A

RELEASE

KNOW YE, that the undersigned, **Lipsitz Green Scime Cambria LLP** for good and sufficient consideration, the receipt whereof is hereby acknowledged, has remised, released, and forever discharged and by these presents does for the undersigned and the undersigned's predecessors, affiliates, subsidiaries, successors and assigns and each of their partners, agents, representatives and employees remise, release and forever discharge the **County of Niagara, and the Niagara County Sheriff**, their predecessors, parents, subsidiaries, affiliates, successors, divisions, departments and assigns, and each of their officers, directors, agents, legislators, officials, representatives, insurers and employees (collectively "Releasees"), of and from all, and all manner of action and actions cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespass, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, which against the said Releasees, the undersigned ever had, now has or which the undersigned and the undersigned's heirs, executors or administrators, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, relating to any claims for attorneys' fees and costs in connection with their representation of Carisa Boddecker with respect to EEOC Charge No. 846-2008-18853 filed by Carisa Boddecker or the case entitled United States of America v. Niagara County, New York, Civil Action No. 13-CV-00503.

IN WITNESS WHEREOF the undersigned have executed this instrument on the ____ day of _____, Two Thousand Fifteen.

LIPSITZ GREEN SCIME CAMBRIA LLP

By: _____
Robert L. Boreanaz, Esq.

STATE OF NEW YORK)
 : ss.:
COUNTY OF ERIE)

On the ____ day of _____, 2015, before me personally appeared **Robert L. Boreanaz, Esq.**, to me known, who being by me duly sworn did depose and say that he is a partner of Lipsitz Green Scime Cambria LLP, the law firm described herein, and who executed the within instrument, as attorney for Carisa Boddecker, on behalf of such law firm.

Notary Public

EXHIBIT B

United States Equal Employment Opportunity Commission
Buffalo Local Office
6 Fountain Plaza, Suite 350
Buffalo, NY 14202

New York State Division of Human Rights
Federal Contract Unit
One Fordham Plaza, 4th Floor
Bronx, NY 10458

Re: EEOC Charge No. 846-2008-18853, Carisa Boddecker v. Niagara County
Sheriff's Department

In consideration for the relief obtained on my behalf in a consent decree and settlement agreement in *United States v. Niagara County, New York*, Civil Action No. 1:13-cv-00503 (W.D.N.Y.), I hereby request that my charge with the Equal Employment Opportunity Commission, Charge No. 846-2008-18853, and any related charge that was cross-filed with the New York State Division of Human Rights be withdrawn with prejudice.

Please contact me with any questions or if any further information is needed to effectuate my withdrawal.

Sincerely,

Carisa Boddecker

Address

Telephone Number

Signature

Date

APPENDIX B

[DATE]

VIA HAND DELIVERY AND ELECTRONIC MAIL

Ms. Carisa L. Boddecker
c/o Robert Boreanaz, Esq.
Lipsitz Green Scime Cambria LLP
42 Delaware Avenue, Suite 120
Buffalo, New York 14202
rboreanaz@lglaw.com

**Re: *United States of America v. Niagara County, New York,*
 *Civil Action No. 1:13-cv-00503 (W.D.N.Y.)***

Dear Ms. Boddecker:

The United States and Niagara County, New York ("Niagara County"), have entered into a Consent Decree to settle the case of *United States of America v. Niagara County, New York*, Civil Action No. 1:13-cv-00503 (W.D.N.Y.). A copy of the Consent Decree executed by the parties is enclosed.

Pursuant to the Consent Decree, Niagara County is offering you the following:

- a total monetary award of \$94,000 (less applicable taxes and withholdings), which includes \$18,071.85 for backpay, \$1,651.17 in lieu of restored vacation days and holiday pay, \$5,992.94 for interest on backpay and paid time off, \$39,284.04 for compensatory damages, and \$29,000 for attorney's fees;
- adjusted services dates; and
- to notify the New York State and Local Retirement System ("NYSLRS") that the above backpay payment has been made so that the NYSLRS may make any appropriate adjustment to your retirement eligibility date and/or service credits.

The above monetary award will be paid to you as set forth in Paragraph 2 of the Settlement, Waiver and Release Agreement ("Agreement") upon Niagara County's timely receipt of the Agreement ("Agreement") and the Release attached as Exhibit A to the Agreement, which are enclosed with this letter.

Carisa L. Boddecker
c/o Robert L. Boreanaz, Esq.

[DATE]

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In order to obtain the offered relief, you and your attorney **must** execute the enclosed Agreement and the attached Release, along with enclosed W-9 forms, and return the documents via hand delivery or certified mail, return receipt requested, **within seven (7) calendar days of the date of this letter** to:

Sharon A. Swift
Jaekle, Fleischmann & Mugal, LLP
Avant Building, Suite 900
200 Delaware Avenue
Buffalo, NY 14202-2107

The fully executed Agreement and attached Release **must be received by Ms. Swift at the above address by no later than the close of business on the seventh calendar day from the date of this letter.**

If you decline the relief offered by Niagara County, the County nevertheless will have satisfied its obligation to the United States pursuant to the Consent Decree, and the United States will not seek additional relief on your behalf.

This letter and enclosed Consent Decree and Settlement, Waiver and Release Agreement, are for settlement purposes only. These documents, and any payments thereunder, shall not constitute, be interpreted, construed or used as evidence of any admission of liability, law or fact, or a waiver of any right or defense by, nor an estoppel against the County of Niagara, the Niagara County Sheriff or any of their predecessors, successors, affiliates or subordinates or their legislators, officials, agents, insurers, representatives, officers, directors or employees. Furthermore, Federal Rule of Evidence 408 shall apply to this letter, the enclosed Consent Decree, and the Settlement, Waiver and Release Agreement.

If you have any questions concerning the Consent Decree or Niagara County's offer to you, you may contact the following Department of Justice attorney:

Elizabeth Banaszak
United States Department of Justice
Civil Rights Division
Employment Litigation Section
601 D Street, N.W.—PHB 4032
Washington, DC 20579
Telephone: (202) 305-4071
Email: Elizabeth.Banaszak@usdoj.gov

Carisa L. Boddecker
c/o Robert L. Boreanaz, Esq.

[DATE]

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Very truly yours,

Sharon A. Swift
Jaekle, Fleischmann & Mugal, LLP
Avant Building, Suite 900
200 Delaware Avenue
Buffalo, NY 14202-2107

Enclosures

1161731v4

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Civil Action No. 1:13-cv-00503

COUNTY OF NIAGARA, NEW YORK,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2015, I electronically filed the foregoing **Consent Decree** with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case:

John P. Buchko, Esq.
Elizabeth B. Banaszak, Esq.
Kathleen O. Lawrence, Esq.
Delora L. Kennebrew, Esq.
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Ave., NW
Washington, DC 20530

DATED: Buffalo, New York
December 15, 2015

JAECKLE FLEISCHMANN & MUGEL, LLP

By: s/Sharon A. Swift
Sharon A. Swift, Esq.
Attorneys for Defendant
County of Niagara, New York
The Avant Building
200 Delaware Avenue, Suite 900
Buffalo, New York 14202-2292
Telephone: (716) 856-0600
Email: sswift@jaeckle.com