

**SETTLEMENT AGREEMENT BETWEEN  
THE UNITED STATES OF AMERICA AND  
COBB COUNTY, GEORGIA**

**resolving DJ #                      and EEOC charge No.**

1. The parties to this Agreement are the United States of America and Cobb County, Georgia.

2. The United States of America is referred to hereinafter as the "United States." The Cobb County Police Department is referred to hereinafter as "CCPD." Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12111 et seq., and title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12131 et seq., are collectively referred to hereinafter as the "ADA."

The parties hereby agree as follows:

**FACTUAL AND JURISDICTIONAL BACKGROUND**

3. The CCPD maintains a policy whereby applicants for the police department are automatically excluded from consideration for employment if they do not meet the Department's hearing acuity standards. Specifically, the CCPD's medical standards state that "it is the policy of the County that no officer performing field duties shall be judged qualified for such a position if they cannot meet the required hearing acuity standards . . . without the use of hearing aid[s]."

4.                      filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) on                      , Charge No.                      alleging that he was discriminated against on the basis of disability in violation of title I of the ADA when he was denied employment as a police officer with the CCPD because he was unable to meet the hearing acuity standards without his hearing aid during a post-offer medical exam. At the time of the alleged discrimination,                      was employed as a                      has subsequently obtained employment with the

5. On                      , the EEOC issued its determination that there was reasonable cause to believe that the County had violated title I of the ADA. Although Cobb County believed that                      was not a qualified individual with a disability entitled to reasonable accommodation, the EEOC disagreed. The EEOC found that                      submitted medical documentation demonstrating that he could meet the hearing acuity standards with the reasonable accommodation of using hearing aids. The EEOC also found that the County's contention that

would pose a "direct threat" was speculative and without merit. After unsuccessful conciliation efforts between the County and the EEOC, the EEOC referred charge to the United States Department of Justice.

6. The ADA applies to the County because it is a person within the meaning of 42 U.S.C. § 12111(7) and an employer within the meaning of 42 U.S.C. § 12111(5)(a).

7. The United States alleges that the County violated title I of the ADA by prohibiting applicants for a police officer position with the County from using hearing aids during the required hearing acuity exam, that the prohibition on use of hearing aids is not job-related and consistent with business necessity, and that the prohibition has a tendency to screen out individuals with disabilities based on disability. See 42 U.S.C. § 12112(b)(6); 29 C.F.R. §§ 1630.7 and 1630.14(b).

8. The County denies the allegations in ¶ 7 that it violated title I of the ADA.

### GENERAL AGREEMENT

9. The parties have determined that their respective interests can be met without engaging in protracted litigation to resolve this dispute and have therefore voluntarily entered into this Agreement.

10. The County specifically agrees that it will eliminate the CCPD policy of automatically excluding job applicants who cannot meet the CCPD's hearing acuity standards without the use of a hearing aid to accommodate for hearing loss.

11. The County also agrees that it will implement a hiring policy in which all job applicants with hearing impairments are individually assessed on a case-by-case basis to determine if the applicant satisfies the prerequisites for the position as defined by 29 C.F.R. § 1630.2(m).

(a) If the County physician or contractor performing a permissible post-offer medical exam is not an expert in the field of the potentially disabling hearing impairment, the applicant shall be referred to a health care professional with expertise in the area of the applicant's specific condition for this assessment. CCPD shall bear the cost of such an evaluation.

(b) The individualized assessment shall include consideration of all relevant factors, including the applicant's background, experience, education, skills, etc., and consideration of whether the applicant can perform the essential functions of the position desired with or without reasonable accommodation.

12. The County also agrees that, before rejecting an applicant for employment on the basis that the applicant poses a direct threat to the health or safety of the applicant or others, the County shall perform an individualized assessment of the applicant as defined by 29 C.F.R. § 1630.2(r).

(a) This individualized assessment shall include consideration of all relevant factors, including the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm. In evaluating those factors, the County will consider all relevant information, including, but not limited to, information specified in 29 C.F.R. § 1630.2(r) and the interpretive guidance to that section; for example, input from the applicant, the experience of the applicant in previous similar positions, and the opinions of medical doctors and other professionals or associates of the applicant who have expertise in the medical condition involved and/or direct knowledge of the applicant's qualifications for or ability to perform the job.

(b) Before rejecting an applicant on the basis, that the applicant poses a direct threat, the County shall advise the applicant of the reasons for the proposed rejection, including each essential function of the job which the County believes the applicant cannot safely perform and all of the reasons why the County believes the applicant cannot safely perform those functions, and invite the applicant to provide, within a reasonable time, additional information in regard to the applicant's ability to perform safely the job, with or without reasonable accommodation, including but not limited to information from other physicians and information about the applicant's current and recent physical capabilities. The County shall evaluate this information in good faith to determine whether the applicant can safely perform the essential functions of the position with or without reasonable accommodation and maintain records of all factors taken into consideration in reaching its final decision. Such documentation shall indicate the weight given to each element or factor.

13. The County also agrees that it will revise all publications, including websites and training manuals, pertaining to any facet of employment, employment opportunities, and/or the process of applying for employment to be consistent with the requirements of ¶¶ 10-12. The County agrees that any such written materials developed after the effective date of this Agreement shall also be consistent with the requirements of ¶¶ 10-12.

14. The County has designated a Cobb County employee to deal with and address ADA compliance matters.

15. The actions described in ¶¶ 10-13 of this Agreement will be completed by the County within thirty (30) days of the effective date of this Agreement.

16. On or before October 15, 2003, the County will offer \$16,000 to as compensatory damages for injuries sustained as a result of the County's actions.

17. does not seek job relief from the County and, accordingly, none has been requested by the United States on his behalf.

18. The County's offer to will be made in a letter, the contents of which will be the same as in Exhibit 1 attached hereto. The offer letter will advise that in order to accept the relief offered, he must return an executed Release, the contents of which will be the same as in Exhibit 2 attached hereto, to the County in care of its counsel within thirty (30) days of his receipt of the offer letter.

19. The County will send to the undersigned counsel for the United States a copy of the offer letter and release that it sends to . If accepts the County's offer, the County will send a copy of the executed release and a copy of the check indicating that the monetary award has been paid to the undersigned counsel for the United States. If accepts the County's offer, the County will pay the monetary award within forty-five (45) days of receiving his release.

### NOTIFICATION

20. The County will notify the United States when it has completed the actions described in ¶¶ 10-13, 16.

21. Within thirty (30) days of receiving from the County a copy of the offer letter to be sent to by the County according to this Agreement, the United States will issue to a notice of right to sue on EEOC Charge No. , pursuant to 42 U.S.C. § 12117(a) and 42 U.S.C. § 2000e-5(f)(1).

### IMPLEMENTATION

22. The Attorney General is authorized, pursuant to Section 107(a) of title I, 42 U.S.C. § 12117(a), to institute a civil action against a local government employer when the EEOC has determined that there is reasonable cause to believe that a charge of employment discrimination is true, and the EEOC has been unable to secure an acceptable conciliation agreement. These preconditions exist with respect to EEOC Charge . In consideration for the offer of relief to set forth above, the Attorney General will not institute any civil action alleging employment discrimination on the basis of EEOC Charge No. , filed by

### OTHER PROVISIONS

23. In consideration for the agreements as set forth above, the Attorney General and the Department of Justice will not institute any civil action alleging employment discrimination on the basis of the CCPD's hiring policy with respect to applicants for the police department whose hearing loss is attenuated by use of a hearing aid. The Department of Justice may institute a civil

action in the appropriate U.S. District Court to enforce this Agreement or the ADA, if the United States believes that this Agreement or any of its provisions has been violated. The United States may review compliance with this Agreement at any time. If the United States believes that this Agreement or any portion of it has been violated, it will raise its concern(s) with the County and the parties will attempt to resolve the concern(s) in good faith. The United States will give the County twenty-one (21) days from the date it notifies the County of any breach of this Agreement to cure that breach, prior to instituting an enforcement action. Nothing in this Agreement changes the County's obligation to otherwise comply with the requirements of the ADA.

24. Failure by the United States to enforce this entire Agreement or any of its provisions shall not be construed as a waiver of its right to do so with regard to other provisions of this Agreement.

25. A signatory to this document in a representative capacity for either party represents that he or she is authorized to bind that party to this Agreement.

26. This Agreement is a public document and constitutes the entire agreement between the parties on the matters raised herein.

#### **EFFECTIVE DATE/TERMINATION DATE**

27. The effective date of this Agreement is the date of the last signature below.

28. The duration of this Settlement Agreement will be five (5) years from the effective date.

For the United States of America:

R. Alexander Acosta  
Assistant Attorney General for Civil Rights

John L. Wodatch, Chief  
L. Irene Bowen, Deputy Chief

By: Eugenia Esch  
Eugenia Esch, Attorney  
Disability Rights Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW - NYA  
Washington, D.C. 20530  
(202) 514-3816

Dated: 9/17/03

For Cobb County, Georgia

By: Samuel S. Olens  
Samuel S. Olens, Chairman  
Cobb County Board of Commissioners

Dated: 9/9/03

Approved as to form and legality:  
Cobb County Attorney's Office

By: Deborah L. Dance  
Deborah L. Dance  
Assistant County Attorney  
100 Cherokee Street, Suite 595  
Marietta, Georgia 30090-7000

Dated: 9-8-03

**APPROVED**  
PER MINUTES OF  
COBB COUNTY  
BOARD OF COMMISSIONERS  
8/12/03

EXHIBIT 1

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Re: v. Cobb County Police Department,  
EEOC Charge No.

Dear

The United States and Cobb County, Georgia, have entered into a Settlement Agreement with the intent of resolving the above-captioned matter. A copy of the Settlement Agreement is enclosed.

Pursuant to the Settlement Agreement, Cobb County offers you payment of \$16,000, which shall be considered compensatory in nature.

In order to accept the County's offer to you, you must communicate your acceptance to the County by executing the enclosed RELEASE OF ALL CLAIMS and by returning it to them within thirty (30) days of your receipt of this letter. You must send your RELEASE OF ALL CLAIMS by mail to:

Ms. Deborah L. Dance  
Assistant County Attorney  
Cobb County, Georgia  
100 Cherokee Street, Suite 595  
Marietta, Georgia 30090-9679

As set forth in paragraph 21 of the Settlement Agreement, the United States will, within thirty (30) days after it receives a copy of this letter, issue to you a notice of your right to sue on EEOC Charge No. . In consideration for the offer of relief to you, as set forth in the Settlement Agreement, the Attorney General has agreed not to institute a civil action alleging employment discrimination on the basis of EEOC Charge No. filed by you. If you accept the relief being offered to you pursuant to the Settlement Agreement, and so signify your acceptance by executing the enclosed RELEASE OF ALL CLAIMS, you will thereby agree not to exercise your right to file suit on that charge.

If you have any questions concerning the Settlement Agreement, you may call or write to the following attorney at the U.S. Department of Justice:

Eugenia Esch  
Trial Attorney  
Disability Rights Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Ave., NW - NYA  
Washington, D.C. 20035  
(202) 514-3816

Sincerely,

Ms. Deborah L. Dance  
Assistant County Attorney  
Cobb County, Georgia  
100 Cherokee Street, Suite 595  
Marietta, Georgia 30090-9679

Enclosures

EXHIBIT 2

RELEASE OF ALL CLAIMS

For and in consideration of the acceptance of the relief offered to me by Cobb County, Georgia, pursuant to a Settlement Agreement between the United States of America and Cobb County:

I, \_\_\_\_\_, release and discharge Cobb County, and its current, former, and future agents, employees, officials, and designees, of and from all legal and equitable claims, known at this time, related to my application to serve as a police officer with the Cobb County Police Department, or EEOC Charge No. \_\_\_\_\_, which I filed with the Equal Employment Opportunity Commission on or about \_\_\_\_\_. I further agree that I will not exercise my right to institute against the above entities any civil action alleging employment discrimination on the basis of EEOC Charge No. \_\_\_\_\_, or any of the facts alleged therein.

I understand that the payment offered to me does not constitute an admission by Cobb County of the validity of any claim raised by me or on my behalf.

I acknowledge that a copy of the Settlement Agreement between Cobb County and the United States of America resolving the matter between them has been made available to me.

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

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_

Social Security Number \_\_\_\_\_

Subscribed and sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Notary Public

My Commission expires on: \_\_\_\_\_