


FILED
At Albuquerque NM

MAY 11 2010 

IN THE UNITED STATES DISTRICT COURT **MATTHEW J. DYKMAN**
FOR THE DISTRICT OF NEW MEXICO **CLERK**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CIV 09-00018 DJS/WDS

LUNA COMMUNITY COLLEGE,

Defendant.

SETTLEMENT AGREEMENT

I. INTRODUCTION

This matter is before the Court with the full and informed consent of the parties, Plaintiff United States of America ("the United States"), and Defendant Luna Community College ("Luna"), in order to settle all claims and charges raised in the United States' Complaint in the above-captioned case ("the lawsuit") and reflected in EEOC Charge Number 543-2007-00004 ("EEOC complaint"). The parties have resolved their differences and agree that the lawsuit should be settled to further the interests of justice and to avoid the burden of protracted litigation. Through this Agreement the lawsuit shall be dismissed with prejudice, with the Court retaining jurisdiction and venue for the limited purpose of enforcing this Agreement.

II. STIPULATIONS

1. The parties agree and acknowledge that this Agreement is final and binding upon them as to all claims raised in the Complaint filed in the lawsuit.
2. The parties agree and acknowledge that they have entered into this Agreement without reservation or condition, and they further agree that this Agreement shall not

constitute an adjudication or finding on the merits of the lawsuit, nor shall it be construed as a judgment against Luna or as an admission or finding of any wrongdoing or violation of any Federal law or regulation.

3. The parties acknowledge that Luna and Plaintiff-Intervenor Charlene Ortiz-Cordova have entered into a separate settlement agreement that resolves all claims for monetary damages in this case to the satisfaction of the United States.

4. The parties agree and acknowledge that this Agreement is subject to Federal Rule of Evidence 408.

5. The parties agree and acknowledge that they have consulted with legal counsel and have been fully advised of the meaning and consequences of entering and executing this Agreement. The parties further agree and acknowledge that they have read and fully understand the terms of this Agreement, and that they freely and voluntarily enter into and execute this Agreement without undue influence from any person or entity and without relying on any promises or statements not expressly set forth herein.

6. The parties agree and acknowledge that a signatory to this document in a representative capacity for either party represents that he/she is authorized to bind that party to this Agreement.

7. The terms of this Agreement are and shall be binding upon the parties.

8. If any provision of this Agreement is found to be unlawful, only the provision in question shall be affected, and all other provisions shall remain in full force and effect.

9. This Agreement constitutes the entire agreement and commitment of the parties. Any modifications to this Agreement must be ratified by the parties in a signed writing.

10. This Agreement is effective on the date that it is entered by the Court.

11. All documents and notifications to which the United States is entitled pursuant to this Agreement, and any requests for documents made by Luna pursuant to this Agreement, shall be delivered subject to the deadlines and other conditions set forth herein to:

Chief
Employment Litigation Section
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Patrick Henry Building
Room 4040
Washington, DC 20579

12. All documents and notifications to which Luna is entitled pursuant to this Agreement, and any requests for documents made by the United States pursuant to this Agreement, shall be delivered subject to the deadlines and other conditions set forth herein to:

Kevin Brown, Esq.
Joel Young, Esq.
Brown Law Firm
2901 Juan Tabo Boulevard, NE, Suite 208
Albuquerque, NM 87112

III. FINDINGS

13. Having examined this Agreement, this Court finds the following:

- a. This Court has jurisdiction over the parties and subject matter of the lawsuit for the limited purposes of entering and enforcing this Agreement. Venue is proper for the same limited purposes.
- b. The terms and provisions of this Agreement are fair, reasonable, and just.

- c. This Agreement adequately protects the rights of the parties.
- d. This Agreement conforms with the Federal Rules of Civil Procedure and Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), and is not in derogation of the rights and privileges of any person or party to the lawsuit or of any person described in the EEOC complaint.
- e. Entry and enforcement of this Agreement will further the objectives of Title VII and is in the best interests of the parties.
- f. Luna and Plaintiff-Intervenor Charlene Ortiz-Cordova have entered into a separate settlement agreement that resolves all claims for monetary damages in this case to the satisfaction of the United States.

It is therefore ORDERED:

IV. EQUITABLE RELIEF

A. Sexual Harassment Policies

14. Luna, including its officers and employees, agrees not to engage in practices or policies that have the purpose or effect of creating a sexually hostile work environment for any of its employees.

15. Luna, including its officers and employees, agrees not to retaliate against or adversely affect any person because that person has opposed discriminatory policies or practices, complained of harassment, filed an EEOC charge, or participated in or cooperated with the initiation, investigation, litigation, and/or administration of this lawsuit or this Agreement.

16. The United States hereby acknowledges that Luna has drafted amendments to its sexual harassment policy and related employee handbook provisions. Within forty-five (45) days from the date of entry of this Agreement, Luna shall deliver an updated sexual harassment policy and related employee handbook provisions to the United States for review and certification.

17. Within thirty (30) days of receiving Luna's policy and the related handbook provisions, the United States agrees to review them and either certify that they are consistent with the goals of Title VII and applicable EEOC guidelines, or submit proposed revisions to Luna.

18. In the event that the United States submits proposed revisions to Luna pursuant to Paragraph 17, supra, the parties agree to work cooperatively until both parties are satisfied that Luna's policy and the related handbook provisions are consistent with Title VII and the goals of Luna.

19. Within thirty (30) days of receiving the United States' certification, Luna shall post on its website the sexual harassment policy and related handbook provisions reviewed and certified by the United States, as set forth in Paragraph 17, and Luna shall notify all employees of the posting. The posting shall remain accessible by all Luna employees and by the public for the duration of this Agreement.

20. For the duration of this Agreement, Luna shall post all proposed modifications to its sexual harassment policy on its website with an email address or link to allow employees to submit comments for review and consideration by Luna.

21. For the duration of this Agreement, Luna shall notify the United States of any proposed amendments to its sexual harassment policy and allow the United States thirty (30) days to provide comments. Luna shall consider such comments before implementing any amendments to its policy.

B. Employee Training

22. For the duration of this Agreement, Luna shall provide mandatory training twice annually to all of its employees regarding its sexual harassment policy. Certificates of completion shall be placed in each employee's file. Adjunct instructors shall sign a form acknowledging that they have reviewed and understand Luna's sexual harassment policy.

23. Within thirty (30) days of receiving the sexual harassment policy and related handbook provisions certified by the United States as set forth in Paragraphs 17 and 18, Luna shall provide the United States with copies of its sexual harassment training materials. Luna shall then allow the United States fifteen (15) business days to provide comments. Luna shall consider such comments before conducting training regarding its sexual harassment policy.

C. Records Retention and Disclosure

24. Luna agrees to retain the following records pursuant to its document retention practices or applicable Federal guidelines, whichever period is longer:

- a. All documents related to written or verbal complaints of sexual harassment perpetrated by Luna's employees, supervisors, administrators, or its President; and

b. All documents related to alleged retaliation by Luna against any employee who files a complaint of sexual harassment or participates or cooperates with any complaint, claim, or investigation of sexual harassment.

25. Luna will provide the United States with copies of all complaints it receives after entry of this Agreement by the Court, whether written or verbal and memorialized in writing, alleging sexual harassment or retaliation as described in Paragraph 24. Luna will provide such copies exactly 90 days after entry of this Agreement by the Court, and every 90 days thereafter for the duration of this Agreement.

V. FULL AND UNCONDITIONAL RELEASE OF CLAIMS

26. In exchange for the equitable relief specified herein, the United States agrees to dismissal of the lawsuit with prejudice, and further agrees to fully and unconditionally release and discharge Luna and all of its current and former officials, board members, employees, agents, representatives, insurers, successors, and assigns, including, without limitation, Leroy Sanchez, New Mexico Public School Insurance Authority and Cannon Cochran Management Services, Inc., and their current and former officials, employees, agents, representatives, re-insurers, successors, and assigns (hereinafter, collectively "Releasees") from all legal and equitable claims, suits, or causes of action that the United States had or may ever have hereafter that relate to Ortiz-Cordova's former employment at Luna, or are as a result of the incident, actions, and omissions alleged in the lawsuit and in the EEOC complaint, including claims for any physical injury, psychological, economic, professional, creative, or other damage, loss, pain or suffering or distress arising out of any facts now known or believed to be true or that arise out of additional or

different facts which may be discovered in the future related to Ortiz-Cordova's former employment at Luna. The relief specified herein shall constitute the sole consideration that the United States shall ever receive for entering into and executing this Agreement and for agreeing to dismissal of the lawsuit with prejudice.

VI. CHOICE OF LAW

27. All questions regarding the construction of this Agreement will be governed by the laws of New Mexico.

VII. DURATION OF AGREEMENT

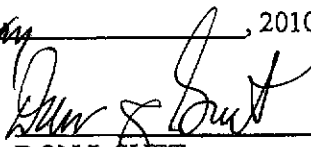
28. This Agreement shall expire without further action by the Court or by either party in one (1) year after the date it is entered by the Court.

VIII. DISPUTE RESOLUTION, FEES AND COSTS

29. The parties will attempt to resolve informally any dispute that may arise under this Agreement. If the parties are unable to resolve the dispute expeditiously, either party may move the Court to enforce the provisions of this Agreement.

30. The parties agree that they are each responsible for their respective fees and costs.

It is so ORDERED, this 11 day of May, 2010.


DON J. SVET
United States Magistrate Judge


By consent:

On behalf of Plaintiff
United States of America

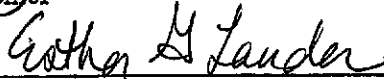
On behalf of Defendant
Luna Community College

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division


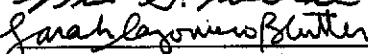
By:



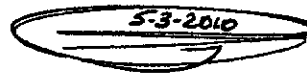
JOHN M. GADZICHOWSKI
Chief



ESTHER G. TAMBURO-LANDER
Deputy Chief

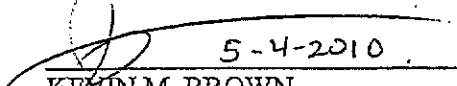
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DR. PETE CAMPOS
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