

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION

\_\_\_\_\_)  
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)  
THE UNITED STATES OF AMERICA, )  
)  
)  
Plaintiff, )  
)  
)  
vs. ) Civil Action No. 2:03-cv-0206  
) JDT-WGH  
)  
)  
THE TOWN OF WEST TERRE HAUTE, )  
)  
)  
Defendant. )  
)  
\_\_\_\_\_)

**CONSENT DECREE**

This action was brought by the United States against the Town of West Terre Haute, Indiana ("Town"), to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., as amended ("Title VII"), following receipt by the United States from the Equal Employment Opportunity Commission ("EEOC") of a charge of discrimination filed by Jana Buchanan (EEOC Charge No. 240-A1-0356). This Court has jurisdiction of the action under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1345.

In its Complaint, the United States alleges that the Town discriminated against Jana Buchanan, a female formerly employed

by the Town's Police Department ("Police Department"), because of her sex, in violation of Section 703(a) of Title VII, among other ways, by:

- (a) Creating, maintaining, and condoning sexual harassment and a sexually hostile work environment in the Town's Police Department;
- (b) Subjecting Ms. Buchanan to sexual harassment during her employment with the Town's Police Department, which created an intimidating, hostile or offensive work environment and which adversely affected the terms, conditions and privileges of her employment;
- (c) Subjecting Ms. Buchanan to sexual harassment during her employment with the Town's Police Department, which created an intimidating, hostile or offensive work environment which was so intolerable that it caused her to resign her position; and
- (d) Failing or refusing promptly and effectively to investigate, remedy or prevent the sexual harassment.

The Town denies that it has discriminated against Ms. Buchanan in violation of Title VII. Nevertheless, the United States and the Town, desiring that this action be settled by an appropriate Consent Decree, and without the burden and risks of

protracted litigation, agree to the jurisdiction of this Court over the parties and the subject matter of this action. The United States and the Town also hereby waive, for purposes of this Consent Decree only, hearings and findings of fact and conclusions of law on all issues, and further agree to the entry of this Consent Decree as final and binding between them with regard to the issues raised in the Complaint filed by the United States in this case.

This Consent Decree, being entered into with the consent of the United States and the Town, shall in no way constitute an adjudication or finding on the merits of the case, nor be construed as an admission by the Town or a finding of any wrongdoing or violation of any applicable federal law or regulation.

Lastly, the date of entry of the Consent Decree shall be the date on which the Court approves and enters this Consent Decree as an order of the Court.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

GENERAL INJUNCTIVE RELIEF

1. The Town, by and through its officials, agents, employees and all persons in active concert or participation with the Town in the performance of employment or personnel

functions, shall not engage in any act or practice that discriminates against any employee or applicant for employment because of that employee's or applicant's sex in violation of Title VII.

2. The Town shall not retaliate against or in any way adversely affect the terms and conditions of employment of any person because that person has opposed any practice made unlawful by Title VII, filed a charge with the EEOC, or testified, assisted or participated in any manner in an investigation, proceeding or hearing under Title VII, including this case or this Consent Decree.

3. Within thirty (30) days from the date of entry of this Consent Decree, the Town shall provide the United States with a proposed written policy governing sexual harassment for the Town's Police Department. That proposed policy shall include at least the following provisions:

- (a) Police Department employees may submit complaints of sexual harassment to a supervisor, the Town Marshal or directly to the Town Council;
- (b) All complaints of sexual harassment, including those made to or about supervisors or the Town Marshal, will be promptly and objectively investigated by the Town

Council;

(c) The results of any investigation into a complaint of sexual harassment will be provided to the complaining party, as well as to the alleged harasser, no later than thirty (30) days from the date the complaint was made; and

(d) The Town will maintain the confidentiality of any complaint of sexual harassment, except to the extent that disclosure of a complaint and the alleged supporting facts is necessary to the investigation and resolution of such complaint.

4. Within thirty (30) days from the date of its receipt of the Town's proposed written policy governing sexual harassment for the Town's Police Department, the United States shall provide written notification to the Town as to whether the United States believes the Town's proposal complies with Paragraph 3 above. If the United States notifies the Town that the United States believes that the Town's proposal does not comply with Paragraph 3 above, the parties shall have thirty (30) days to agree upon a revised written policy, after which time either party may submit the issue to this Court for resolution.

5. Within thirty (30) days from the date that a revised written policy governing sexual harassment for the Town's Police Department has been agreed to by the United States and the Town or, absent agreement, ordered by this Court, the Town shall: adopt and implement such policy; publicize that revised policy by posting it in all Police Department facilities which are commonly used for posting notices; and distribute a copy of that revised policy to each full-time and part-time employee of the Town's Police Department.

6. The Town thereafter shall ensure that each new Police Department employee receives a copy of the revised written policy governing sexual harassment for the Town's Police Department at the time of the new employee's hire. Each new Police Department employee shall sign an acknowledgment that she or he has read and understood the sexual harassment policy, and this acknowledgment shall be placed in each employee's personnel file.

7. During the life of this Consent Decree the Town shall retain all documents received or generated by the Town, its officials, agents or employees, that relate to complaints against the Town's Police Department or any of its employees of: discrimination in employment on the basis of sex; retaliation as

defined in Paragraph 2 above; or the Town's investigation and/or resolution of any such complaints.

8. The United States shall have the right to inspect and copy any documents that are relevant and necessary to monitor the Town's compliance with this Consent Decree, including, but not limited to, any confidential documents outlined in Paragraph 7 above, upon thirty (30) days notice to the Town and without further order of this Court.

#### SPECIFIC REMEDIAL RELIEF

9. Without admitting the allegations of the United States as set forth in its Complaint, and in settlement of the claims of the United States for relief on behalf of Ms.

Buchanan:

(d) The Town shall offer to pay Ms. Buchanan a monetary award of forty-three thousand dollars (\$43,000.00). This award shall be considered to be compensatory damages, as would fully compensate her for injuries caused by the Town's alleged discriminatory conduct against her, pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. No portion of this award is to be considered as backpay or wages. No withholdings may be made by the Town from this award, although the

Town shall issue an Internal Revenue Service (IRS) 1099-Misc Form to Ms. Buchanan and report this award to the IRS and any other applicable taxing authority.

- (e) No later than ten (10) days from the date of entry of this Consent Decree, the Town shall notify Ms. Buchanan of the terms of this Consent Decree by mailing to her, by certified mail, return receipt requested, a copy of this Consent Decree, a notice letter in the form set forth in Appendix A hereto, and a copy of a release in the form set forth in Appendix B hereto. The Town shall send a copy of the notice letter referred to herein to the United States at the same time it sends such notice letter to Ms. Buchanan.

10. In order to receive the relief offered her by the Town under this Consent Decree, Ms. Buchanan must execute the release form provided with the notice letter and return it to the Town within thirty (30) days from the date she receives the notice letter.

11. The Town shall provide the United States with a copy of Ms. Buchanan's executed release form within ten (10) days after its receipt thereof. Within ten (10) days from the date



of its receipt of Ms. Buchanan's executed release form, the Town shall mail to her a certified or bank check made payable to Jana Buchanan in the amount of forty-three thousand dollars (\$43,000.00). If Ms. Buchanan fails or refuses to execute the release form, she waives any and all right to receive any relief under this Consent Decree, but she does not waive her right to intervene in this cause of action on her own behalf.

#### DISPUTES

12. The parties to this Consent Decree shall attempt to resolve informally any disputes that may occur under this Consent Decree. If the United States and the Town are unable to reach agreement after informally seeking to resolve a dispute, the issue may be submitted by either party to the Court for resolution upon at least thirty (30) days written notice to the other party.

13. All documents required to be delivered under this Consent Decree by the Town to the United States shall be sent by express mail to the attention of:

Chief  
Employment Litigation Section  
Civil Rights Division  
U.S. Department of Justice  
601 D. Street, N.W., Room 4040  
Washington, D.C. 20004

14. All documents required to be delivered under this

Consent Decree by the United States to the Town shall be sent by express mail to the attention of:

Jeremy Dilts, Esq.  
Miller, Carson, Boxberger & Murphy  
3100 John Hinkley Place, Suite 106  
Bloomington, IN 47408

RETENTION OF JURISDICTION

15. The Court shall retain jurisdiction over this Consent Decree and this cause of action for the purposes of implementing the relief provided herein, and resolving any disputes or entering any orders that may be necessary to implement the relief provided herein.

16. This Consent Decree shall dissolve and this cause of action shall be dismissed, without any further order of this Court, at the end of one year from the date of its approval and entry by the this Court.

17. The United States and the Town shall bear their own costs in this action, including attorney's fees, except that the parties shall retain the right to seek costs for any matter which, in the future, may arise from this Consent Decree and require resolution by the Court.

IT is so ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

UNITED STATES DISTRICT JUDGE

AGREED AND CONSENTED TO:

For plaintiff  
United States of America:

R. ALEXANDER ACOSTA  
Assistant Attorney General  
Civil Rights Division

BY:



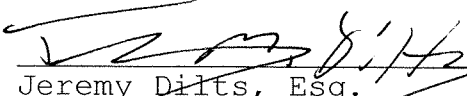
JOHN M. GADZICHOWSKI [WI Bar # 1014294]  
Deputy Chief  
BENJAMIN BLUSTEIN [DC Bar # 418930]  
SARA LEWENBERG [MA Bar # 634257]  
Attorneys  
U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, N.W.  
Employment Litigation Section  
PHB, Fourth Floor  
Washington, D.C. 20530  
Telephone: (202) 514-4073

For defendant Town of West Terre Haute:



Member, Town Council  
Town of West Terre Haute

MILLER CARSON BOXBERGER & MURPHY



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Jeremy Dilts, Esq.  
Edward J. Liptak, Esq./#9821-02  
3100 John Hinkle Place, Ste. 106  
Bloomington, IN 47408  
Telephone: (812) 333-1225  
Facsimile: (812) 333-1925

**APPENDIX A**

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Jana Buchanan  
129 N. 8<sup>th</sup> Street  
West Terre Haute, IN 47885

Re: United States of America v. Town of West Terre Haute;  
Civil Action No. 2:03-cv-0206 (S.D.IN)(J.Tinder)

Dear Ms. Buchanan:

The United States and the Town of West Terre Haute ("Town") have entered into a Consent Decree settling the case of United States v. Town of West Terre Haute, Civil Action No. 2:03-cv-0206. A copy of the Consent Decree, which was approved and entered by the Honorable John D. Tinder, United States District Judge in the Southern District of Indiana on \_\_\_\_\_, is enclosed.

Pursuant to the Consent Decree, the Town is offering to pay you \$43,000.00, to compensate you for your claims of discrimination. You should be aware that all or a portion of the monetary amount may be subject to federal, state and/or local income tax, for which you will be responsible.

In order to receive the relief the Town is offering, you must execute the enclosed Release and return it, within thirty (30) days of your receipt of this letter, to the Town's counsel at:

Jeremy Dilts, Esq.  
Miller, Carson, Boxberger & Murphy  
3100 John Hinkle Place, Suite 106  
Bloomington, IN 47408

The Town will pay the entire monetary amount offered to you within ten (10) days of its receipt of your executed Release.

If you fail to timely provide the Town with the executed Release, or if you decline the relief offered by the Town, the Town will nevertheless have satisfied its obligation to the United States pursuant to the Consent Decree.

If you have any questions concerning the Consent Decree or the Town's offer to you, you may contact one of the following attorneys at the U.S. Department of Justice:

Benjamin Blustein  
Sara Lewenberg  
Senior Trial Attorneys  
Employment Litigation Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530  
(202) 514-4073

Sincerely,

Jeremy Dilts, Esq.

Enclosure

**APPENDIX B**

**RELEASE OF ALL CLAIMS**

For and in consideration of the acceptance of all or any part of the relief offered to me by the Town of West Terre Haute ("Town"), pursuant to the provisions of the Consent Decree entered by the Honorable John D. Tinder, United States District Judge for the Southern District of Indiana, on \_\_\_\_\_ in United States v. Town of West Terre Haute, Civil Action No.2:03-cv-0206, I, Jana Buchanan, forever release and discharge the Town, and all current, former and future agents, employees, officials, designees, predecessors and successors in interest from all legal and equitable claims, arising out of the Complaint filed in the above-captioned civil action and EEOC charge number 240-A1-0356, accrued prior to the date of this release. I further agree that I will not institute a civil action or seek to intervene against the Town in any pending civil action alleging employment discrimination on the basis of EEOC charge number 240-A1-0356, or any other EEOC charges filed against the Town before the date of this release, or the Complaint in Civil Action No. 2:03-cv-0206, or any of the facts alleged in EEOC charge number 240-A1-0356 or any other EEOC charge, as amended, or Complaint filed before the date of this release against the Town and/or any of its agents, employees, officials, designees, and predecessors and successors in interest.

I acknowledge that a copy of the Consent Decree in this action has been made available to me for my review.

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 \_\_\_\_\_, 2004.

\_\_\_\_\_  
JANA BUCHANAN  
Social Security No. \_\_\_\_\_

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2004

\_\_\_\_\_

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

Notary Public