

PREET BHARARA
United States Attorney
Southern District of New York
By: DAVID J. KENNEDY
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USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: <u>2-27-13</u>

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA, : CONSENT DECREE
 :
Plaintiff, : *1293*
 : 13 Civ. (*PAC*)
-against- :
 :
CITY OF NEW YORK, :
 :
Defendant. :
----- X

WHEREAS, this Consent Decree resolves a civil action brought by Plaintiff United States against Defendant the City of New York ("City"), to enforce the provisions of Title I of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12111 et seq., and its implementing regulations, 29 C.F.R. § 1630.1 et seq.;

WHEREAS, the United States alleges that the City, through the New York City Police Department ("NYPD") discriminated against Regina Sessoms-Skeete ("Skeete"), a person with a disability, in violation of 42 U.S.C. §§ 12112(a) and (d)(2), by engaging in a pre-employment medical examination without first providing a conditional offer of employment, and in failing to provide Skeete with a reasonable accommodation to her request to attend the medical examination at an alternative site;

WHEREAS, this matter was initiated by the charge filed by Skeete (Charge Number 520-2006-02862) with the U.S. Equal Employment Opportunity Commission ("EEOC") on July 26, 2006;

WHEREAS, the EEOC investigated Skeete's charge and found reasonable cause to believe that the allegations of discrimination on the basis of disability were true, and after attempts at conciliation failed, the EEOC referred the charge to the United States Department of Justice;

WHEREAS, the City and the NYPD agree and acknowledge that the ADA, in 42 U.S.C. § 12112(d)(2)-(3), provides that employers "shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability," unless it is "after an offer of employment has been made," although the employer "may condition an offer of employment on the results of such examination," provided certain other conditions are met;

WHEREAS, the City and the NYPD agree and acknowledge that the NYPD required Skeete to undergo a medical examination prior to extending her a written conditional offer;

WHEREAS, the City and the NYPD deny any and all liability arising out of the allegations in the Complaint;

WHEREAS, as a result of ongoing discussion, the United States and the City (collectively, "the parties") have reached agreement that it is in the parties' best interests, and the United States believes that it is in the public interest, to resolve this lawsuit on mutually agreeable terms without further litigation;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 2000e-2 and 28 U.S.C. § 1345. The parties agree that venue is appropriate pursuant to 28 U.S.C. § 1391.

2. The United States has authority to initiate legal proceedings to enforce Title I of the ADA through litigation. 42 U.S.C. § 12117.

3. The City and NYPD are persons within the meaning of 42 U.S.C. § 12111(7) and 42 U.S.C. § 2000e(a), and the City is an employer within the meaning of 42 U.S.C. § 12111(5), and a covered entity within the meaning of 42 U.S.C. § 12111(2).

INJUNCTIVE RELIEF

4. The NYPD, by and through its officials, agents, employees, and all persons in active concert or participation with NYPD 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 on the basis of disability in violation of Title I of the ADA. Specifically, within 30 days of the effective date of this Consent Decree, the NYPD shall adopt a policy that provides that:

- (a) the NYPD shall not conduct any pre-employment medical or psychological testing of applicants for School Crossing Guard positions, before making a conditional offer of employment;
- (b) the NYPD will make inquiries of an applicant for a School Crossing Guard position only about his or her ability to perform a job in question and will not inquire during the application process, including on

application forms or materials, whether an applicant is an individual with a disability;

- (c) the NYPD will not make any inquiry as to the medical or psychological condition or history of an applicant for a School Crossing Guard position before a conditional offer of employment has been extended;
- (d) to the extent that NYPD requires medical or psychological examinations for all entering School Crossing Guard employees, such examinations will be conducted only after a conditional offer of employment has been extended;
- (e) to the extent that the NYPD requires all applicants for School Crossing Guard positions to undergo medical or psychological examinations after such individuals have been given a bona fide conditional offer of employment, the NYPD will use the results of such medical and psychological examinations in a manner that is job-related and consistent with business necessity in compliance with Title I of the ADA.

5. The NYPD will (i) provide training on Title I of the ADA, including the duty to make reasonable accommodations, to all NYPD Employee Management Division ("EMD") and Applicant Processing Division ("APD") supervisory employees who participate in making hiring decisions for School Crossing Guard positions, within ninety (90) days of the effective date of this Consent Decree; and (ii) issue a memorandum, within 30 days of the effective date of this Consent Decree, to the Deputy Commissioner of Personnel, directing that conditional offers of employment must be issued to applicants for School Crossing Guard positions before they are asked to report for medical or psychological testing of any kind; the Deputy Commissioner of

Personnel will then instruct and advise all EMD and APD staff who participate in the recruiting and hiring process for School Crossing Guard positions concerning that directive.

INDIVIDUAL RELIEF

6. Skeete shall execute and deliver to Defendant's attorney (a) the Affidavit Concerning Liens attached hereto as Exhibit A; (b) the General Release attached hereto as Exhibit B; and (c) a substitute Form W-9, attached hereto as Exhibit C. Following receipt of these documents, the City will pay Skeete \$65,000.00 (sixty-five thousand dollars) in compensatory damages within ninety (90) days of the effective date of this Consent Decree. The City shall provide documentary evidence of having paid Skeete by mailing a photocopy of the check evidencing payment together with proof of mailing to undersigned counsel for the United States.

7. The NYPD shall extend a conditional offer of employment to Skeete as a School Crossing Guard within ten (10) days of the effective date of this Consent Decree.

8. The NYPD shall provide Skeete with all APD-required forms associated with the background investigation within ten (10) days of the effective date of the Consent Decree. Within thirty (30) days of the effective date of this Consent Decree, the NYPD shall arrange for Skeete to meet with her assigned APD investigator, at a time and location in New York City acceptable to Skeete and the NYPD, to begin the background investigation.

9. Because NYPD policy requires updated medical examinations for applicants where more than two years has passed since their last medical examination was conducted, and because Skeete has not yet undergone the drug testing normally required for School Crossing Guards, the City may require Skeete to undergo the medical examination normally required for School Crossing Guards (vision, hearing, EKG, blood pressure, and drug test) at a time and location in New York City that is acceptable to Skeete and the NYPD. The NYPD and Skeete

will schedule the medical examination described in this Paragraph within thirty (30) days of the effective date of this Consent Decree. If the offered location(s) is/are not acceptable, this deadline may be extended by mutual agreement of the parties.

10. Skeete has provided the NYPD and/or the New York City Law Department with authorizations for the release of relevant medical records. The NYPD and/or the Office of the Corporation Counsel of the City of New York shall promptly request the records from Skeete's care providers pursuant to the authorizations.

11. The NYPD shall conduct a psychological examination of Skeete within sixty (60) days of receiving Skeete's medical records from Skeete's care providers as described in Paragraph 10, above, at a time and location in New York City acceptable to Skeete and the NYPD.

12. The NYPD shall make a decision on whether Skeete is qualified for the School Crossing Guard position within thirty (30) days of completion of the background investigation and examinations described in Paragraphs 8–11 above, unless this deadline is extended by mutual written agreement of the parties. If the NYPD determines that Skeete is qualified for the position, she will be hired into the next incoming class of School Crossing Guards and will receive an assignment to a vacant position in the precinct of her residence or an adjacent precinct at that time.

13. For and in consideration of the relief being provided to her as described in paragraphs 6–12 of this Consent Decree, Skeete releases and discharges the City and the NYPD from the claims identified in the Complaint filed in this case and the complaint Skeete filed with the EEOC, Charge Number 520-2006-02862. This release shall not be construed to extend to any claims that may arise after the effective date of this Consent Decree.

ENFORCEMENT

14. The United States may review compliance with this Consent Decree for a period of one year and may enforce this Consent Decree if the United States believes that the Consent Decree or any requirement thereof has been violated. If the United States believes that this Consent Decree or any portion of it has been violated, the United States will raise its concerns with the City and the parties will attempt to resolve the concerns in good faith. The United States will give the City thirty (30) days to cure the violation prior to instituting any court action, starting from the date that the United States notifies the City of any violation of this Consent Decree.

15. Failure by the United States to enforce any provision of this Consent Decree shall not be construed as a waiver of the United States' right to enforce other provisions of this Consent Decree.

16. This Consent Decree does not purport to remedy any other potential violations of the ADA or any other law that is not specifically addressed herein, nor does it affect the City's continuing responsibility to comply with all aspects of the ADA.

17. This Consent Decree shall remain in effect for one year from the effective date. The Court shall retain jurisdiction to enforce this Consent Decree.

18. The effective date of this Consent Decree is the date on which the Court enters this Consent Decree.

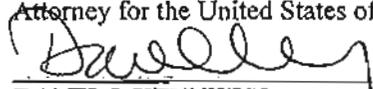
19. This Consent Decree constitutes the entire agreement between the parties. No other statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written Consent Decree shall be enforceable.

20. This Consent Decree shall be binding on the City, its agents and employees.

21. The individuals signing this Consent Decree represent that they are authorized to bind the parties to this Consent Decree.

Dated: New York, New York
February 26, 2013

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for the United States of America

By: 
DAVID J. KENNEDY
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel. No.: (212) 637-2733
Fax No.: (212) 637-0033
Email: david.kennedy2@usdoj.gov

Dated: New York, New York
February 25, 2013

CITY OF NEW YORK

By: 
KERI R. McNALLY
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, NY 10007
Tel. No.: (212) 788-0922
Fax No.: (212) 788-8877
Email: kmcnally@law.nyc.gov

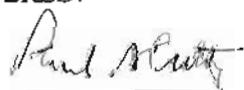
SO ORDERED: 2-27-13

UNITED STATES DISTRICT JUDGE *cm*

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

CITY OF NEW YORK,

Defendant.

: AFFIDAVIT
: CONCERNING LIENS

: 13 Civ. 1293 (PAC)

STATE OF NEW YORK)
COUNTY OF Bronx) : SS.:

REGINA SESSOMS-SKEETE, being duly sworn, deposes and says:

1. I am over 18 years of age and make this affidavit in connection with settlement of this proceeding.

2. The City of New York has no outstanding bills or liens against me or my property for obligations owed for Parking Violations. The City of New York has no outstanding bills or liens against me or my property for obligations owed for treatment received at a New York City Health and Hospitals Corporation facility, nor for the receipt of Workers' Compensation or New York State Disability benefits, as a result of incidents underlying the above captioned lawsuits.

3. I have never been a recipient of public assistance from the New York City Department of Social Services and do not owe child support.

4. My date of birth is [REDACTED] and my Social Security number is [REDACTED]

Regina Sessoms-Skeete
REGINA SESSOMS-SKEETE

Sworn to before me this
16 day of February, 2013.

Mary C Rodriguez
NOTARY PUBLIC

MARY C RODRIGUEZ
Notary Public - State of New York
NO. 01RO6169628
Qualified in Bronx County
My Commission Expires 6/25/15

EXHIBIT B

GENERAL RELEASE

KNOW THAT I, REGINA SESSOMS-SKEETE, the Complainant on whose behalf the proceeding entitled United States of America v. City of New York, in the United States District Court for the Southern District of New York, Docket No. 13-cv-1293, was filed, for and in consideration of the relief being provided to me as described in paragraphs 6-12 of this Consent Decree, including the total payment to me by the City of New York of sixty-five thousand dollars (\$65,000.00), release and discharge the City and the NYPD from the claims identified in the Complaint filed in this case and the complaint filed with the EEOC, Charge Number 520-2006-02862, including, without limitation, any and all claims which were or could have been alleged by me or on my behalf in this action arising out of the events alleged in the complaint herein, including any claims for damages of any kind, including, but not limited to, emotional distress damages, backpay, personal injury damages, costs, disbursements, and attorneys' fees. This Release may not be changed orally. This Release shall not be construed to extend to any claims that may arise after the effective date of this Consent Decree.

By executing this release, I acknowledge that in accordance with the Older Workers Benefit Protection Act (29 U.S.C. § 626), (i) I enter into this release voluntarily and with full understanding and knowledge of its consequences; (ii) I have been advised to consult with an attorney before executing this release; (iii) I have been provided with at least a twenty-one (21) day period to review and consider whether to sign this release and (iv) I have been advised that I have seven (7) days following my execution to revoke it (the "Revocation Period"). This release will not be effective and enforceable until the Revocation Period has expired. Such revocation shall only be effective if an originally executed written notice or revocation is delivered to Defendant's counsel on or before 5:00 p.m. on the seventh day after the date of my execution of this release. If so revoked, this release shall be deemed to be void *ab initio* and have no force or effect.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE, AND FULLY UNDERSTANDS IT.

Regina Sessoms-Skeete
REGINA SESSOMS-SKEETE

STATE OF NEW YORK,)
COUNTY OF NEW YORK,) SS.:

On 16 February, 2013, before me personally came REGINA SESSOMS-SKEETE, to me known, and known to me to be the individual described in, and who executed the foregoing RELEASE, and duly acknowledged to me that he executed the same.

Sworn to before me this

16 day of February, 2013.

Mary C Rodriguez
NOTARY PUBLIC

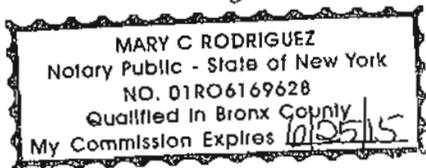
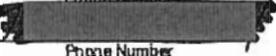
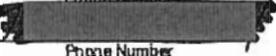
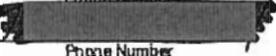


EXHIBIT C

<p>DO NOT SUBMIT FORM TO IRS - SUBMIT FORM TO REQUESTING AGENCY.</p> <p>2014 Revision</p>	<p>CITY OF NEW YORK SUBSTITUTE FORM W-9: REQUEST FOR TAXPAYER IDENTIFICATION NUMBER & CERTIFICATION</p>												
<p>TYPE OR PRINT INFORMATION NEATLY. PLEASE REFER TO INSTRUCTIONS FOR MORE INFORMATION.</p>													
<p>Part I: Vendor Information</p>													
<p>1. Legal Business Name: <i>Regina Sessoms-Skeete</i></p>	<p>2. If you use DBA, please list below:</p>												
<p>3. Entity Type (Check one only):</p> <table style="width:100%; border: none;"> <tr> <td><input type="checkbox"/> Non-Profit Corporation</td> <td><input type="checkbox"/> Corporation</td> <td><input type="checkbox"/> Government</td> <td><input type="checkbox"/> City of New York Employee</td> <td><input checked="" type="checkbox"/> Individual / Sole Proprietor</td> <td><input type="checkbox"/> Trust</td> </tr> <tr> <td><input type="checkbox"/> Joint Venture</td> <td><input type="checkbox"/> Partnership</td> <td><input type="checkbox"/> Limited Liability Co.</td> <td><input type="checkbox"/> Resident/Non-Resident Alien</td> <td><input type="checkbox"/> Non-United States Business Entity</td> <td><input type="checkbox"/> Estate</td> </tr> </table>		<input type="checkbox"/> Non-Profit Corporation	<input type="checkbox"/> Corporation	<input type="checkbox"/> Government	<input type="checkbox"/> City of New York Employee	<input checked="" type="checkbox"/> Individual / Sole Proprietor	<input type="checkbox"/> Trust	<input type="checkbox"/> Joint Venture	<input type="checkbox"/> Partnership	<input type="checkbox"/> Limited Liability Co.	<input type="checkbox"/> Resident/Non-Resident Alien	<input type="checkbox"/> Non-United States Business Entity	<input type="checkbox"/> Estate
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<p>Part II: Taxpayer Identification Number (TIN) & Taxpayer Identification Type</p>													
<p>1. Enter your TIN here: (DO NOT USE DASHES)</p>													
<p>2. Taxpayer Identification Type (check appropriate box):</p> <table style="width:100%; border: none;"> <tr> <td><input type="checkbox"/> Employer ID No. (EIN)</td> <td><input checked="" type="checkbox"/> Social Security No. (SSN)</td> <td><input type="checkbox"/> Individual Taxpayer ID No. (ITIN)</td> <td><input type="checkbox"/> N/A (Non-United States Business Entity)</td> </tr> </table>		<input type="checkbox"/> Employer ID No. (EIN)	<input checked="" type="checkbox"/> Social Security No. (SSN)	<input type="checkbox"/> Individual Taxpayer ID No. (ITIN)	<input type="checkbox"/> N/A (Non-United States Business Entity)								
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<p>Part III: Primary 1099 Vendor & Remittance Address</p>													
<p>1. Primary 1099 Vendor Address:</p> <p>Number, Street, and Apartment or Suite Number</p> <p>City, State, and Nine Digit Zip Code or Country</p>	<p>2. Remittance Address:</p> <p>Number, Street, and Apartment or Suite Number</p> <p>City, State, and Nine Digit Zip Code or Country</p> <p><i>New York</i></p>												
<p>Part IV: Exemption from Backup Withholding</p> <p style="text-align: center; font-size: small;">For payees exempt from Backup Withholding, check the box below. Valid explanation required for exemption. See Instructions.</p> <p style="text-align: center;"><input type="checkbox"/> Exempt from Backup Withholding</p>													
<p>Part V: Certification</p> <p>The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding. Under penalties of perjury, I certify that the number shown on this form is my correct Taxpayer Identification Number (TIN).</p> <table style="width:100%; border: none;"> <tr> <td style="width:40%;"> <p>Sign Here: <i>Regina Sessoms-Skeete</i></p> <p><i>Regina Sessoms-Skeete</i></p> <p style="text-align: center; font-size: x-small;">Signature Print Preparer's Name</p> </td> <td style="width:20%;"> <p></p> <p></p> <p style="text-align: center; font-size: x-small;">Phone Number Phone Number</p> </td> <td style="width:40%; text-align: right;"> <p><i>2/16/2013</i></p> <p style="text-align: center; font-size: x-small;">Date</p> </td> </tr> </table>		<p>Sign Here: <i>Regina Sessoms-Skeete</i></p> <p><i>Regina Sessoms-Skeete</i></p> <p style="text-align: center; font-size: x-small;">Signature Print Preparer's Name</p>	<p></p> <p></p> <p style="text-align: center; font-size: x-small;">Phone Number Phone Number</p>	<p><i>2/16/2013</i></p> <p style="text-align: center; font-size: x-small;">Date</p>									
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<p style="text-align: center; font-weight: bold; font-size: small;">FOR SUBMITTING AGENCY USE ONLY</p> <table style="width:100%; border: none;"> <tr> <td style="width:30%;">Submitting Agency Code: _____</td> <td style="width:70%;">Submitting Agency Name: _____</td> </tr> <tr> <td>Contact Person: _____</td> <td>Telephone Number: () _____</td> </tr> <tr> <td colspan="2">Payee/Vendor Code: _____</td> </tr> </table>		Submitting Agency Code: _____	Submitting Agency Name: _____	Contact Person: _____	Telephone Number: () _____	Payee/Vendor Code: _____							
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Contact Person: _____	Telephone Number: () _____												
Payee/Vendor Code: _____													
<p>DO NOT FORWARD W-9 TO COMPTROLLER'S OFFICE. AGENCIES MUST FAX COMPLETED W-9 FORMS TO: (212) 816-8555</p>													