

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. 0:23-cv-3583
v.)	
)	
CITY OF BLAINE, MINNESOTA,)	
)	
Defendant.)	
_____)	

CONSENT DECREE

I. INTRODUCTION

1. This Consent Decree resolves this action brought by Plaintiff, United States of America, against Defendant, City of Blaine (collectively, the “Parties”), under Title I of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. §§ 12111-12117, which incorporates, through 42 U.S.C. § 12117(a), the powers, remedies, and procedures set forth in Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e–17. Title I of the ADA prohibits employment discrimination based on disability and Complainant is a person with a disability. 42 U.S.C. § 12102(1); 29 C.F.R. § 1630.2(g).

2. The United States filed this action against Defendant to enforce Title I of the ADA after receiving a timely charge of discrimination that Complainant filed with the U.S. Equal Employment Opportunity Commission (EEOC).

3. In its Complaint, the United States alleges that Defendant discriminated against Complainant in the terms, conditions, and privileges of his employment in violation Title I of the ADA by requiring him to pay for alcohol/drug testing and evaluation based on his disability, and

by discriminating against any other similarly situated employees by requiring the same. 42 U.S.C. § 12112; 29 C.F.R. § 1630.4.

4. Defendant denies the allegations in this matter and specifically denies it has violated the ADA. It is understood and agreed this Consent Decree does not constitute and shall not be construed as an adjudication or finding on the merits or an admission of wrongful conduct or liability.

5. The Parties agree to resolve this action through entry of this Decree to avoid the expense and uncertainty of litigation. For purposes of this Decree, and subject to its approval and entry by the Court, the Parties agree to the entry of this Decree as final and binding between themselves as to all issues raised in the United States' Complaint.

II. FINDINGS

6. Having examined the provisions of this Decree and the United States' Complaint, the Court finds the following:

- a. This Court has jurisdiction over the Parties and the subject matter of this action under 42 U.S.C. §§ 12117(a), 42 U.S.C. § 2000e-5(f), and 28 U.S.C. §§ 1331 and 1345.
- b. Venue is appropriate in this judicial district under 28 U.S.C. § 1391.
- c. Defendant is a person within the meaning of 42 U.S.C. §§ 2000e(a), 12111(7), and 29 C.F.R. § 1630.2(c), an employer within the meaning of 42 U.S.C. §§ 2000e(b), 12111(5), and 29 C.F.R. § 1630.2(e), and a covered entity within the meaning of 42 U.S.C. § 12111(2) and 29 C.F.R. § 1630.2(b).

Accordingly, the Parties hereby AGREE and the Court expressly APPROVES, ENTERS, AND ORDERS THE FOLLOWING:

III. INJUNCTIVE RELIEF

7. General Nondiscrimination Obligation: Defendant, by and through its officials, agents, legal representatives, employees, and contractors, shall not engage in any act or practice that discriminates against any applicant or employee on the basis of disability in violation of Title I of the ADA and its implementing regulation.

8. Written Policies, Practices, and Procedures: Defendant shall revise its policies, practices, and procedures to ensure that it does not discriminate on the basis of disability in its employment practices, including with respect to medical testing, services, and examinations, in violation of the ADA. Specifically, Defendant will revise its policies, practices, and procedures to provide that it will pay for services of a Substance Abuse Professional (“SAP”) and testing required by a SAP where: (1) an employee either voluntarily discloses alcohol use disorder, discloses other information indicating a disability, and/or participates in a drug or alcohol educational or treatment program; (2) the employee possesses a commercial driver’s license (CDL) and is subject to U.S. Department of Transportation (“DOT”) laws and regulations; and (3) A CDL driver does not self-identify as misusing alcohol or controlled substances in order to avoid testing under the requirements of the applicable DOT regulation.

- a. Within ninety (90) days of the entry of the Decree, Defendant shall send its revised policies, practices, and procedures to the United States for approval, which shall not be unreasonably withheld. The United States may review and provide comments on Defendant’s proposed revisions to its policies, practices, and procedures, and identify any additional provisions that should be included. If the Parties are not able to reconcile any differences, they will follow the dispute resolution process outlined in Paragraphs 16 and 17.

- b. Within thirty (30) days of the United States' final approval of the revised policies, practices, and procedures, Defendant shall implement the revised policies, practices, and procedures, including by distributing copies of these policies to all employees whose work may be affected by such policies, practices, or procedures.
 - c. For the duration of this Decree, Defendant shall, within thirty (30) days of the appointment or retention of an applicable employee whose work may be affected by such policies, practices, or procedures, provide that individual with copies of the policies, practices, and procedures.
9. Training: Within ninety (90) days of the United States' final approval of all policies, practices, and procedures revised pursuant to Paragraph 8, Defendant shall submit to the United States for approval, which shall not be unreasonably withheld, the name of the trainer or trainers it seeks to use, including their Curriculum Vitae or resume, as well as an outline of the training content. Within six (6) months of the United States' final approval of all policies, practices, and procedures revised pursuant to Paragraph 8, and annually throughout the term of this Decree, Defendant shall provide training on Title I of the ADA, and its implementing regulations, and Defendant's revised policies, practices, and procedures, to employees who are involved in personnel decisions. The training shall also be provided to such applicable employees who are hired or promoted during the term of this Decree, within sixty (60) days of the start of their positions with Defendant. All trainings shall be conducted by trainers knowledgeable about Title I of the ADA, who Defendant has selected and the United States has approved. Trainings may be in-person, remote, and/or pre-recorded.
10. Reports: Six (6) months after the entry of the Decree, and every six (6) months thereafter during the term of this Decree, Defendant shall provide a written report (Report) to the

United States regarding Defendant's efforts to comply with this Decree. A final additional report shall be provided one (1) month before the termination of the Decree. The Report shall include, for the preceding six-month period:

- a. Any new or revised policies, practices, or procedures regarding Title I of the ADA, or that relate to Paragraph 8 above;
- b. A list of the applicable employees who received copies of the policies described in Paragraph 8;
- c. Written acknowledgment that Defendant has, for the instant reporting period, complied with the training requirements set forth in Paragraph 9 above;
- d. Attendance logs reflecting the dates of the trainings and names and job titles of individuals who attended the trainings set forth in Paragraph 9 above;
- e. Notification regarding any lawsuit, discrimination charge filed with the Equal Employment Opportunity Commission (EEOC) or Minnesota Department of Human Rights (MDHR), or grievance alleging that Defendant has violated Title I of the ADA. Such notice will include a description of the nature of the allegation, the name of the individual making the allegation, and all documentation in the possession, custody, or control of Defendant relevant to the allegation. The first Report filed with the United States under this Decree shall include all ADA Title I lawsuits, and all charges or grievances of which Defendant is aware and that are pending or otherwise unresolved at the time the first Report is made. All subsequent reports shall include notice of all relevant lawsuits, charges, and grievances made subsequent to the immediately previous Report, as well as those reported in previous Reports that remain pending.

IV. INDIVIDUAL RELIEF

11. Within fifteen (15) days of the entry of the Decree, Defendant shall offer Complainant a total monetary amount of \$13,229.07, which includes:
 - a. A monetary amount of \$1,979.07, which is designated as out-of-pocket costs. This amount shall not be subject to withholding deductions, and Defendant shall issue an IRS Form 1099 to Complainant for this amount.
 - b. A monetary amount of \$11,250.00, which is designated as compensatory damages. This amount shall not be subject to withholding deductions, and Defendant shall issue an IRS Form 1099 to the complainant for this amount.
12. Within fifteen (15) days of the entry of the Decree, Defendant shall notify Complainant of the individual relief offered to him under this Decree by mailing to him, by certified mail, return receipt requested, a Notice Letter and Release of Claims Form (attached as Exhibits 1 and 2 respectively), a postage pre-paid return envelope, and a copy of this signed Decree. In order to accept the relief offered by Defendant, Complainant must execute the Release of Claims Form (Exhibit 2) and return the form to Defendant, using the postage pre-paid return envelope, within thirty (30) days of receiving the Notice Letter (Exhibit 1). Complainant must also provide a W9 form to Defendant. Defendant shall send the United States a copy of the Notice Letter and Release of Claims Form at the same time that they are sent to Complainant.
13. Within fifteen (15) days of receipt of Complainant's signed Release of Claims Form and W9 tax form, Defendant shall pay the monetary sums specified in Paragraph 11 to Complainant by bank check.

14. Within fifteen (15) days of paying the monetary sums specified in Paragraph 11 to Complainant, Defendant shall send the United States proof of payment and a copy of Complainant's signed Release of Claims Form.

V. IMPLEMENTATION

15. Delivery of Reporting Materials: All materials sent to the United States pursuant to this Decree shall be sent by e-mail to Elaine.Grant@usdoj.gov (or to any other e-mail address that the United States designates during the term of this Decree). The e-mail shall include a subject line referencing City of Blaine and DJ No. 205-39-14.

16. Enforcement: 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 any documents that are relevant and necessary to monitor Defendant's compliance with this Decree. Unless otherwise specified in this Decree, Defendant shall produce any requested documents or make them available for inspection and copying within thirty (30) days of a written request by the United States. The Parties shall attempt to resolve any disputes concerning compliance with this Decree prior to seeking a resolution from the Court. If a dispute cannot be resolved informally, the United States shall give Defendant at least thirty (30) days written notice of any dispute or breach of this Decree before moving for review by the Court. In the event the United States contends that there has been a failure by Defendant, whether willful or otherwise, to perform in a timely manner any act required by this Decree or otherwise to act in conformance with any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity, including an order requiring performance of such act, and an award of any damages, costs, and reasonable attorneys' fees, which may have been occasioned by the violation or failure to perform.

17. Retention of Jurisdiction: During the term of this Decree, this Court shall retain jurisdiction over this action to enforce the terms of the Decree, including resolving any disputes, issuing any orders necessary to implement the relief provided for in this Decree, and extending the term of the Decree if Defendant fails to comply with the provisions herein.

18. Severability: If any provision of this Decree is determined to be unenforceable by any court, only the specific provision in question shall be affected and all other provisions of this Decree shall remain in full force and effect.

19. Non-Waiver: Failure by the United States to enforce any provision or deadline in this Decree shall not be construed as a waiver of the right of the United States to enforce any deadline or provision of this Decree.

20. Extensions: Any time limits for performance imposed by this Decree may be extended only by the mutual written consent of the Parties. With respect to any of the deadlines specified in this Decree, Defendant shall notify the United States at least ten (10) business days before any deadline of an anticipated inability to meet the deadline, or as soon as possible if such inability is not known within this time frame, and the reasons why, and shall request an extension of time to a specific date. However, any extension of the termination date of this Decree shall require Court approval.

21. Successor Liability: This Decree shall be binding upon Defendant, its officers, agents, employees, contractors, successors, assigns, and any other person under the authority or control of Defendant.

22. Authority: A signatory to this document in a representative capacity for Defendant represents that she or he is authorized to bind Defendant to this Decree.

23. Entire Agreement: This Decree, including its attachments, constitutes the entire agreement between the United States and Defendant on the matters raised herein and 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 Decree, including its attachments, shall be enforceable.

24. Limitation: This Decree is limited to resolving claims under Title I of the ADA related to the facts specifically set forth in Paragraphs 1 through 3 above and the Complaint. Nothing in this Decree relates to other provisions of the ADA or affects Defendant's obligations to comply with any other law, including those relating to nondiscrimination against individuals with disabilities. This Decree does not affect Defendant's continuing responsibility to comply with all aspects of the ADA.

25. Counterparts: This Decree may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same Decree, notwithstanding that each Party is not a signatory to the original or the same counterpart.

26. Effective Date: The effective date of this Decree shall be the date that the Court approves and enters the Decree. Unless otherwise specified, all time periods designated for an action run from the entry of the Decree.

27. Term: This Decree shall terminate, and this action shall be dismissed without further order of this Court, thirty (30) months from the entry of the Decree.

28. Publicity: This Decree and any amendment hereto shall be public documents. A copy of this Decree or any information contained herein may be made available to any person, and Defendant shall provide a copy of this Decree to any person upon request.

29. Litigation Hold: The parties agree that, as of the date of entry of this Decree, litigation is not "reasonably foreseeable" concerning the matters alleged in the complaint and

described in this Decree. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to these matters, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Decree.

30. Records: For the term of this Decree, Defendant shall preserve all records related to this Decree.

31. Costs and Fees: The United States and Defendant shall bear the cost of their own fees and expenses incurred in connection with this Decree.

For City of Blaine

/s/ Jana O’Leary Sullivan
Jana O’Leary Sullivan
Attorney & Assistant Litigation Supervisor
League of Minnesota Cities
145 University Ave. West
St. Paul, MN 55103

Date: 11/14/2023

For the United States of America

Rebecca B. Bond, Chief
/s/ Elaine Grant
Elizabeth S. Westfall, Deputy Chief
Elaine Grant, Senior Trial Attorney
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
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Washington, D.C. 20530

Date: 11/20/2023