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July 2013

## United States of America v. Board of County Commissioners of the County of Dona Ana, New Mexico

Judge James O. Browning

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## United States of America v. Board of County Commissioners of the County of Dona Ana, New Mexico

### Keywords

United States of America, Board of County Commissioners of the County of Dona Ana, New Mexico, CIV 08-501 JB/WPL, Consent Decree, Hostile Work Environment, Sex, Female, Other, Employment Law, Title VII

UNITED STATES DISTRICT COURT  
ALBUQUERQUE, N.M. MEXICO

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

MAR 31 2010



**MATTHEW J. DYKMAN**  
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

and

SALLY RAMIREZ,

Plaintiff-Intervenor,

v.

No. CIV 08-501 J B/WPL

BOARD OF COUNTY COMMISSIONERS OF  
THE COUNTY OF DONA ANA, NEW  
MEXICO,

Defendant.

SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES  
AND DONA ANA COUNTY, NEW MEXICO

This action was brought by the United States against Dona Ana County, New Mexico (the "County") 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 of a charge of discrimination filed by Sally Ramirez (Charge Number 453-2006-01716) against the County. This Court, has jurisdiction of the action under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. §§ 1331 and 1345.

In its Complaint, the United States alleges that the County discriminated against Sally Ramirez, and against Graeida Chavez, Piiscilla Lujan, Priscilla Salazar and Maria Isabel

Morales, similarly situated individuals presently or formerly employed by the County, on the basis of their sex, female, in violation of Section 703(a) of Title VII, by maintaining a hostile work environment that adversely affected the Terms, conditions and privileges of their employment.

The County denies that it has discriminated against Sally Ramirez, Graciela Chavez, Priscilla Lujan, Priscilla Salazar and Maria Isabel Morales *in* violation of Title VII on the basis of their sex, female, by maintaining a hostile work environment in violation of Section 703(a) of Title VII. Nevertheless, the United States and the County, desiring that this action be settled 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 County also hereby waive, for purposes of this Agreement only, hearings and findings of fact and conclusions of law on all issues, and further agree to the entry of this Agreement as final and binding between them with regard to the issues raised in the Complaint filed by the United States in this case.

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

The paragraphs which appear below reflect a cooperative agreement between the United States and Dona Ana County to resolve this litigation. In resolution of this action, the parties hereby AGREE to, and the Court expressly APPROVES, ENTERS and ORDERS, the following: b

#### PARTIES AND DEFINITIONS

1. The parties to this Agreement are the United States, by the Department of Justice

("United States"), and Dona Ana County, New Mexico.

2. Dona Ana County includes its current, former and future agents, employees, officials, designees and successors in interests and is referred hereinafter as "the County."

3. Sally Ramirez, Graeciela Chavez, PriscilJa Lujan, Priscilla Salazar and Maria Isabel Morales collectively are referred to hereinafter as "the complainants."

4. The Equal Employment Opportunity Commission is referred to hereinafter as the "EEOC."

5. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et geg., as amended, is referred to hereinafter as "Title VII."

6. "Supervisory employees" includes all supervisors, managers and directors of the County.

7. "Sex discrimination" includes unlawful harassment based on sex.

#### AGREEMENT

8. The County, by and through its officials, agents, employees and all persons in active concert or participation, with the County in the performance of employment or personnel functions, shall not engage in any act or practice that discriminates against any employee or applicant on the basis of sex in violation of Title VII.

9. The County shall not retaliate against or in any way adversely affect the terms or 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 Agreement.

10. The United States and the County acknowledge that the County already has made and implemented many changes to its policies and procedures regarding sexual harassment, including but not limited to the following changes: a) clarifying types of behavior that may constitute harassment; b) making clear that harassment based on gender is sexual harassment; c) incorporating timelines into the EEO complaint and investigative process to help ensure a prompt response to any discrimination that may have occurred; d) providing for the discipline of individuals who receive complaints of discrimination and do not take appropriate action under the revised EEO policies; e) clarifying the potential avenues through which an employee may lodge an EEO complaint; and 1) augmenting the prior training program on discrimination, including sexual harassment. Nevertheless, within twenty-five (25) business days after entry of this Agreement, the County will submit to the United States a Spanish translation of the policies and procedures outlined in Appendix A and the County's internal EEO Complaint Form. The United States will provide in writing any comments or proposed changes to the County's proposed translations within twenty (20) days after receipt, and the parties shall confer in good faith to reach a final agreement regarding these translations. Within thirty (30) days after the United States approves a Spanish version of Appendix A and the County's Internal EEO Complaint form, the County shall adopt and apply these new policies and procedures with respect to the County's Department of Public Works ("DPW") and the County's Department of Human Resources ("DHR").

11. In accordance with County procedures, the County will use its Internal Affairs investigators to investigate EEO complaints as set forth in Appendix A. In consultation with the United States, the County will select an appropriate national provider to train its Internal Affairs

investigators. The County identifies Guadalupe Quezada and Kim Stewart as its Internal Affairs investigators. Should these persons change, or additional investigators be added during the term of this Agreement, the County agrees to advise the United States of those changes within seven (7) days of said change.

12. Dissemination of and training on the modified Human Resources Policies and Procedures:

- (a) The County agrees that within ten (10) business days after the County adopts the policies and procedures set forth in Appendix A, the County will distribute copies of the modified Human Resources Policies and Procedures in English and Spanish, to all employees and supervisory employees, and shall post the modified Human Resources Policies and Procedures in English and Spanish, in all places used for posting information to employees and Supervisory employees, including but not limited to any County internet or intranet sites used for that purpose;
- (b) No later than one hundred twenty (120) days after the date of entry of this Agreement, the County will provide, at its own cost, three mandatory trainings, as described in Sections 12(c)-(e) below. Duplicate sessions may be held to accommodate staffing needs. Such trainings shall be provided in English and Spanish, as necessary to ensure they can be understood by all trainees, and such trainings shall be provided at least one more time during the term of this Agreement;
- (c) The three mandatory trainings described in Paragraph 12(b) shall consist of one: training for DPW non-supervisory employees; one training, which will last at

- least three (3) hours, for all DPW supervisory employees and any other individuals authorized to receive complaints of sex discrimination; and one training for employees in the DHR;
- (d) The DHR training described in Paragraph 12(c) shall include, at a minimum, an explanation of the law of equal employment opportunity, the County's Human Resources Policies and Procedures, modified as set forth in Appendix A, what constitutes sex discrimination, and the Department's role in the investigative process;
- (e) The DPW trainings for employees and supervisory employees described in Paragraph 12(c) shall, at a minimum, include an explanation of the County's Human Resources Policies and Procedures, modified as set forth in Appendix A, the employees or supervisory employees' rights and/or obligations under those policies and procedural guidelines, how to provide an environment free from sex discrimination, and what constitutes sex discrimination;
- (f) The County will select, with the concurrence of the United States, a qualified individual or group of individuals to conduct the trainings outlined in Paragraphs 12(b)-(e). The County shall submit its proposed trainer and training program, including any existing training materials it wishes to propose, no later than sixty (60) days after the date of entry of this Agreement and the United States shall have twenty (20) days to accept or reject the proposed trainer and training program, which the United States will do only for good cause;
- (g) Within forty-five (45) days after the training sessions described in Paragraphs



12(b)-(c), the County Manager or County Attorney and Human Resources Director shall speak to the employees and supervisory employees in the DPW about: (1) potential discipline that can be taken against employees and supervisory employees who commit acts of sex discrimination or who allow sex discrimination to occur in the workplace; (2) the importance to the County of maintaining an environment free of sex discrimination; and (3) the employer's complaint procedures for complaints of sex discrimination and the employee's right also to complain to other entities, such as the EEOC. This presentation shall be translated into Spanish to the extent necessary to ensure it can be understood by all attendees;

- (b) All persons who undergo the training and attend the presentation described in Paragraphs 12(b)-(e) and 12(g), above, shall sign an acknowledgment of attendance. Within ten (10) days of such training and presentation, the County shall provide the United States with written confirmation that all employees and supervisory employees attended the training and presentation;
- (i) All future orientation sessions, which shall be mandatory for all new employees and supervisory employees in the DPW and DRR, shall include the distribution and review of the modified Human Resources Policies and Procedures, as described in Appendix A, as well as the viewing of a videotape of whichever of the three trainings set forth in Paragraphs 12(b)-(c) is most applicable and of the presentation described in Paragraph 12(g). This Paragraph does not preclude the County from providing any other training that is consistent with the training

described in this Agreement;

- (j) All future orientation sessions for new employees and supervisory employees in the DPW and DHR, as well as all distributed materials relating to the County's modified Human Resources Policies and Procedures, shall be provided in English and Spanish, as necessary to ensure that they are understood by all attendees; and
- (k) At the time of the orientation session, each new employee and supervisory employee in the DPW shall be provided a list of the name, office location, e-mail address and telephone number of each individual within his or her chain of command, the DHU, the County Attorney's Office and County Manager's Office authorized to receive complaints of sex discrimination. Updated lists shall be posted on bulletin boards within the DPW and the Human Resources Department on June 1 and December 1 during each year of the duration of this Agreement if any individuals identified on the List, have changed since the prior distribution. The document described above will contain language stating that the specific individuals listed in these positions may change and that employees should consult the employee bulletin boards for updated lists.

13. Compliance Monitoring:

- (a) Upon reasonable notice, the United States has the right to review compliance with this Agreement at any time. As part of that review, the County shall provide copies of any documents relevant to the County's compliance with this Agreement, upon the request of the United States, including but not limited to the documents described in Paragraph 13(b) and (c) below, and any modifications,

revocations or additions to its Human Resources Policies and Procedures that concern or affect the subject of sex discrimination or the complaint process related thereto. To the extent the United States determines it needs to interview employees to evaluate the County's compliance with this Agreement, the County will make such employees available with reasonable notice;

- (b) Among the documents that the United States may review are documents related to: (1) formal or informal complaints of sex discrimination from an employee or supervisory employee in the DPW; (2) all actions taken to investigate the complaint; and (3) the results of that investigation, and, if the complaint has been found to be meritorious, the corrective measures the County will take or has taken with respect to the matter;
- (c) The County shall retain at least during the term of this Agreement all documents, in paper or electronic form (including electronic mail), that come into its possession that are: (a) related to complaints of sex discrimination (formal or informal, verbal or written) made by employees or supervisory employees in the DPW; and/or (b) related to the trainings and presentation provided for under this Agreement. To the extent this Agreement has different retention requirements than those required by state law, the terms of the Agreement shall govern during the life of the Agreement;
- (d) The parties acknowledge that, as of the entry of this Agreement, the County's Symantec Enterprise Vault archives all emails sent to or received by the individuals listed below. Within seven days of the Court's approval and entry of

this Agreement, the County will instruct in writing the following employees not to delete or destroy any documents, in paper or electronic form (including electronic mail), that are: (a) related to complaints of sex discrimination (formal or informal, verbal or written) made by employees or supervisory employees in the DPW; and/or (b) related to the trainings and presentation provided for under this Agreement:

- 1) Internal Affairs investigators;
- 2) All Human Resources personnel;
- 3) All individuals in the Risk Management Department;
- 4) All individuals within the Legal Department;
- 5) County Manager;
- 6) Assistant County Manager;
- 7) Department Head of the Department of Public Works;
- 8) Manager/Director of the Department of Parks and Facilities;
- 9) Supervisors within the Department of Parks and Facilities.

The County will provide to the United States a copy of the written instruction referenced above within seven days of its issuance; and

- (e) Upon the approval and entry of this Agreement by the Court, the County agrees to make an image of all electronically stored information that is possessed, maintained or controlled by the County as of the date of the Court's approval and entry of this Agreement, using TBM Ti voli Storage Manager and reliable media to create an "electronic snapshot" of the County's electronically stored information.

The County will secure and not overwrite any of the media containing this initial electronic snapshot for the duration of this Agreement. Additionally, for the duration of the Agreement, the County will rotate its backup media on a seven-day cycle, such that the County maintains the media on which system backups are stored for at least a seven-day period.

#### SPECIFIC REMEDIAL RELIEF

14. 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 Sally Ramirez, Graciela Chavez, Maria Isabel Morales, Priscilla Lujan and Priscilla Salazar, the County shall offer the following relief:

- (a) Sally Ramirez:
  - (1) a monetary award of forty-thousand dollars (\$40,000.00), which will be considered compensatory damages;
  - (2) will not refer in any way to complaints or charges of sexual harassment by Ms. Ramirez or to this lawsuit when communicating with prospective employers seeking a reference for Ms. Ramirez; and
  - (3) in all communications with prospective employers the County will only confirm the length of employment, position, ending rate of pay and, if requested by the prospective employer, past salary history.
- (b) Graciela Chavez: a monetary award of twenty-seven thousand, five hundred dollars (\$27,500.00), which will be considered compensatory damages;
- (c) Maria Isabel Morales:

- (1) a monetary award of twenty-seven thousand, five hundred dollars (\$27,500.00), which will be considered compensatory damages;
  - (2) in all communications with prospective employers the County will only confirm the length of employment, position, ending rate of pay and, if requested by the prospective employer, past salary history; and
  - (3) any future employment application of Ms. Morales will be handled in accordance with the anti-retaliation provision of Paragraph 9.
- (d) Priscilla Lujan: a monetary award of twenty-seven thousand, five hundred dollars (\$27,500.00), which will be considered compensatory damages;
- (e) Priscilla Salazar: a monetary award of twenty -seven thousand, five hundred dollars (\$27,500.00), which will be considered compensatory damages;

15. Within ten (10) days after the date of entry of this Agreement, the County shall notify the complainants of its terms by mailing to each, in care of their counsel where appropriate, via certified mail, return receipt requested, copies of the respective letters as set forth in Appendix B ("Appendix B letters"). The Appendix B letters shall inform each of the complainants that, in order to accept the relief offered to her, she must return the executed Individual Relief and Release of Claims ("Individual Relief and Release") form, a copy of which is set forth in Appendix C, to the County within thirty (30) days of her receipt of the Appendix B letter unless good cause, as determined exclusively by the United States, exists for her failure to do so. A copy of the Individual Relief and Release form and of this Agreement shall be enclosed with the Appendix B letter.

16. The County shall provide the United States with a copy of each executed

Individual Relief and Release form within (JO) days after the receipt thereof. Within twenty-one (21) days from the date of its receipt, of each Individual Relief and Release, the County shall mail to the signatory of that release, in care of her counsel where appropriate, a certified or bank check made payable, respectively, to Sally Ramirez in the amount, of forty-thousand dollars (\$40,000.00), and to Graciela Chavez, Maria Isabel Morales, friscilla Lujan, and Priscilla Salazar each in the amount of twenty-seven thousand, five hundred dollars (\$27,500.00). The County will issue a 1099 form for each complainant within the time required by law and will be responsible for any employer-side taxes that are owed by the County on these payments. The complainants will be responsible for paying any income taxes due on these payments.

•17. At the time of payment specified in Paragraph 16, the County shall provide the United States with a copy of the payments to the complainants and notify the United States of the means of delivery.

#### NOTIFICATION OF THE PARTIES

18. All documents required to be delivered under this Agreement to the United States shall be sent by express mail to the following address: Chief, Employment Litigation Section, Civil Rights Division. U.S. Department of Justice, 601 D Street, N.W., Room 4912, Washington, D.C. 20579, or, by written consent of the parties, may be sent via electronic mail to the individual designated by the United States.

19. All documents required to be delivered under this Agreement to the County shall be sent, to the following address: Raul Carrillo, Jr., Ksq., Carrillo Law, Firm, I.C., 1\0. Box 457, Las Cruces, NM 88004 or, by written consent of the parties, may be sent via electronic mail to Raul Carrillo.

PJSfUTK RESOLUTION

20. The parties to this Agreement shall attempt to resolve informally any disputes that may occur under this Agreement. If the United States and the County 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.

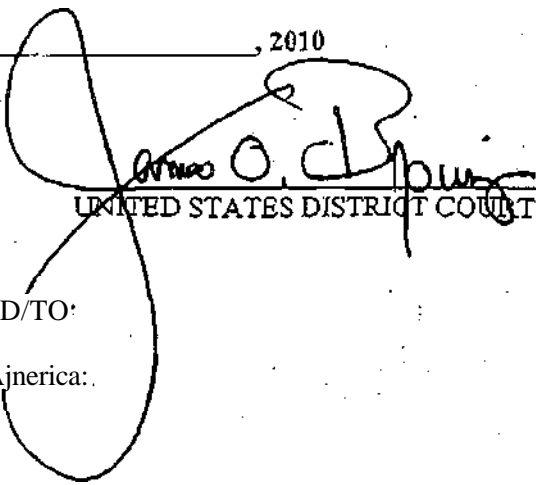
21. The Court shall retain jurisdiction over this Agreement and this cause of action for the purposes of implementing the relief\* provided herein, and resolving any disputes or entering any orders that may be necessary to implement the relief provided herein.

22. This Agreement shall dissolve and this cause of action shall be dismissed, without any further order of this Court, at the end of one (1) year from the date of its approval and entry by this Court.

23. The United States and the County shall bear their own costs and fees in this action, except that the parties shall retain the right to seek costs and fees for any matter which, in the future, may arise from this Agreement and require resolution by the Court.



Entered this \_\_\_\_; day of \_\_\_\_\_, 2010




THOMAS E. PEREZ  
UNITED STATES DISTRICT COURT JUDGE

AGREED AND CONSENTED/TO:


For Plaintiff United States of America:

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division-


By:



JOHN M. GAFOLOCHOWSKI (DC Bar No. 1014294)  
Chief



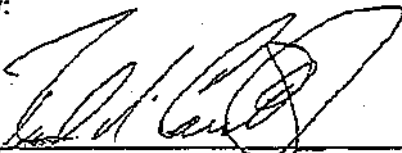
JYDIA DANIS (DC Bar No. 453493)  
Special Counsel

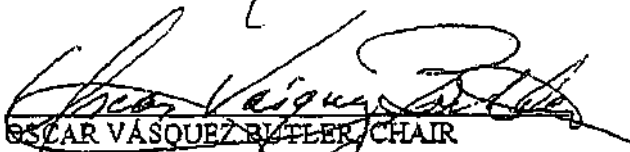


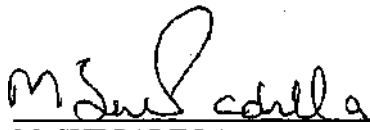
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For Defendant Board of County Commissioners of the County of Dona Ana County:

By:

  
\_\_\_\_\_  
RAUL A. CARRILLO, JR.  
Carrillo Law Firm, P.C.

  
\_\_\_\_\_  
OSCAR VASQUEZ BUTLER, CHAIR  
Dona Ana County Board of County Commissioners

  
\_\_\_\_\_  
M. SUE PADILLA  
Assistant County Manager