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## EEOC v. Mueller Industries, Inc.,

Judge George H. Wu

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## EEOC v. Mueller Industries, Inc.,

### Keywords

EEOC, Mueller Industries, CV 18-5729-GW(GJSx), Consent Decree, disparate treatment, Failure to accommodate, manufacturing, Employment law

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15 **UNITED STATES DISTRICT COURT**  
 16 **CENTRAL DISTRICT OF CALIFORNIA**

17 U.S. EQUAL EMPLOYMENT  
 18 OPPORTUNITY COMMISSION,

19 Plaintiff,

20 vs.

21 MUELLER INDUSTRIES, INC., AND DOES  
 22 1-10, INCLUSIVE,

23 Defendants.

Case No.: CV 18-5729-GW(GJSx)

**CONSENT DECREE AND ORDER**

1 Plaintiff U.S. Equal Employment Opportunity Commission (the “EEOC” or  
2 “Commission”) and Defendant Mueller Industries, Inc. and its subsidiaries hereby stipulate and  
3 agree to entry of this Consent Decree (“Decree”) to resolve the Commission’s complaint against  
4 Defendant in U.S. Equal Employment Opportunity Commission v. Mueller Industries, Inc., et al.  
5 Case No. 2:18-cv-05729-GW-GJS (the “Action”). This Decree applies to Defendant Mueller  
6 Industries, Inc.’s facilities nationwide, including but not limited to its following subsidiaries:  
7 B&K, LLC; Extruded Metals, Inc.; Howell Metal Company, Inc. (only for conduct occurring  
8 after October 17, 2013); Lincoln Brass Works, Inc.; Linesets, Inc.; Micro Gauge, Inc. dba  
9 Microgauge Machining, Inc.; Mueller Brass Company; Mueller Brass Forging Company, Inc.;  
10 Mueller Copper Tube Company, Inc.; Mueller Copper Tube Products, Inc.; Mueller Fittings  
11 Company, Inc.; Mueller Fittings Company, LLC; Mueller Impacts Company, Inc.; Mueller  
12 Packaging, LLC; Mueller Plastics Corporation, Inc.; Mueller Refrigeration, LLC; Mueller  
13 Streamline, Co.; Overstreet-Hughes Co. Inc. dba Fabricated Tube Products; Precision Tube  
14 Company, LLC; Propipe Technologies, Inc.; Sherwood Valve, LLC (only for conduct occurring  
15 after June 18, 2015); Turbotec Products, Inc. (only for conduct occurring after March 30, 2015);  
16 and Westermeyer Industries, Inc. (only for conduct occurring after August 12, 2012); and  
17 Mueller Copper Tube West Co., (only for conduct occurring after March 20, 2017) (collectively  
18 referred as “Defendant”).

19 On June 28, 2018, Plaintiff filed this Action in the United States District Court, Central  
20 District of California, for violations of the Americans with Disabilities Act of 1990 (“ADA”), as  
21 amended by the ADA Amendment Act of 2008 (“ADAAA”), and Title I of the Civil Rights Act  
22 of 1991. The Action alleges Defendant discriminated against George Molina, Brandon  
23 Pickelhaupt, and a class of similarly aggrieved individuals due to their disabilities when  
24 Defendant failed to excuse disability-related absences, or provide additional time off as a  
25 reasonable accommodation to individuals with disabilities, or individuals that were perceived as  
26 disabled that lead to their termination.

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**I. PURPOSES AND SCOPE OF THE DECREE**

A. The EEOC and Defendant (collectively, the “Parties”) agree that this Action should be fully and completely resolved by entry of this Decree. This Decree shall be binding on and enforceable against Defendant and its parents, subsidiaries, officers, directors, agents, successors, and assigns.

B. The Parties have entered into this Decree for the following purposes:

- 1. To provide appropriate monetary and injunctive relief;
- 2. To ensure that Defendant’s employment practices comply with federal law;
- 3. To ensure a work environment free from discrimination, specifically as it relates to the manner in which leave of absence and attendance policies are administered as to individuals with disabilities;
- 4. To modify Defendant’s leave of absence and attendance policies, procedures, and practices regarding time away from work necessary for individuals with disabilities;
- 5. To ensure training for Defendant’s employees with respect to the pertinent laws regarding the interplay between leave of absence and attendance policies and their applicability to individuals with disabilities;
- 6. To provide an appropriate and effective mechanism for handling complaints related to the application of leave of absence and attendance policies to individuals with actual or perceived disabilities who require time off as an accommodation;
- 7. To ensure effective record-keeping procedures; and
- 8. To avoid the expensive and protracted costs incident to this litigation.

C. The scope of this Decree applies to Defendant’s facilities nationwide unless otherwise indicated in this Decree.

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1 **II. RELEASE OF CLAIMS**

2 A. This Decree fully and completely resolves all issues, claims and allegations raised  
3 by the EEOC against Defendant in this Action.

4 B. Nothing in this Decree shall be construed to preclude any party from bringing suit  
5 to enforce this Decree in the event that any party hereto fails to perform the promises and  
6 representations contained herein.

7 C. Nothing in this Decree shall be construed to limit or reduce Defendant's  
8 obligation to comply fully with the ADA, ADAAA, or any other federal employment statute.

9 D. This Decree in no way affects the EEOC's right to bring, process, investigate, or  
10 litigate charges that may be in existence or may later arise against Defendant in accordance with  
11 standard EEOC procedures as this Decree only resolves the issues, claims, and allegations raised  
12 by the EEOC against Defendant in this Action.

13 **III. JURISDICTION**

14 A. The Court has jurisdiction over the Parties and the subject matter of this Action.  
15 The Action asserts claims that, if proven, would authorize the Court to grant the equitable relief  
16 set forth in this Decree.

17 B. The terms and provisions of this Decree are fair, reasonable, and just.

18 C. This Decree conforms to the Federal Rules of Civil Procedure and the  
19 ADA/ADAAA, and is not in derogation of the rights or privileges of any person.

20 D. The Court shall retain jurisdiction of this action during the duration of the Decree  
21 for the purposes of entering any order, judgment, or decree that may be necessary to implement  
22 the relief provided herein.

23 **IV. EFFECTIVE DATE AND DURATION OF DECREE**

24 A. The provisions and agreements contained herein are effective immediately upon  
25 the date which this Decree is entered by the Court ("the Effective Date").

26 B. Except as otherwise provided herein, this Decree shall remain in effect for two  
27 and a half (2.5) years after the Effective Date.

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1                                   **V.     MODIFICATION AND SEVERABILITY**

2           A.     This Decree constitutes the complete understanding of the Parties with respect to  
3 the matters contained herein. No waiver, modification, or amendment of any provision of this  
4 Decree will be effective unless made in writing and signed by an authorized representative of  
5 each of the Parties.

6           B.     If one or more of the provisions of the Decree are rendered unlawful or  
7 unenforceable, the parties shall make good faith efforts to agree upon appropriate amendments to  
8 this Decree in order to effectuate the purposes of the Decree. In any event, the remaining  
9 provisions will remain in full force and effect unless the purposes of the Decree cannot, despite  
10 the Parties' best efforts, be achieved.

11          C.     By mutual agreement of the Parties, this Decree may be amended or modified in  
12 the interests of justice and fairness in order to effectuate the provisions of the Decree.

13                                   **VI.     COMPLIANCE AND RESOLUTION**

14          A.     The Parties agree that if the EEOC has reason to believe that Defendant has failed  
15 to comply with any provision of this Decree, the EEOC may bring an action before this Court to  
16 enforce the Decree. Prior to initiating such action, the EEOC will notify Defendant and its legal  
17 counsel of record, in writing, of the nature of the dispute. This notice shall specify the particular  
18 provision(s) that the EEOC believes Defendant has breached. Defendant shall have sixty (60)  
19 days from the written notice to attempt to resolve or cure the breach. The Parties may agree to  
20 extend this period upon mutual consent.

21          B.     After sixty (60) days to resolve or cure the breach referenced in Section VI.A.,  
22 have passed from the written notice with no resolution or agreement to extend the time, the  
23 EEOC may petition this Court for resolution of the dispute, seeking all available relief, including  
24 an extension of the term of the Decree for such period of time that the Court finds the Decree  
25 was not complied with and/or any other relief that the Court may deem appropriate.

26          C.     In the event of exigent circumstances, EEOC may petition the Court for resolution  
27 of the dispute without the adhering to provisions described in Section VI.

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1 **VII. MONETARY RELIEF**

2 Defendant agrees to pay a total gross sum of \$1,000,000.00 to resolve this Action. The  
3 total gross sum is inclusive of all individual monetary relief and “Class Fund” monetary relief, as  
4 defined and specified below. The EEOC has full and complete discretion under the terms of this  
5 Decree to determine who is a Claimant and to determine the amount and characterization of any  
6 payment, if any, to the Charging Parties and/or Claimants.

7 A. Monetary Relief for Charging Parties and Identified Claimants

- 8 1. The EEOC shall provide to Defendant a Distribution List designating each  
9 Charging Party and Identified Claimant’s portion and amount of monetary  
10 relief, if any, as well as the name and address to which each Identified  
11 Claimant’s portion and amount of monetary relief shall be delivered.
- 12 2. Within fifteen (15) business days of receiving the EEOC’s Distribution  
13 List, Defendant shall send a check, via first class, certified mail, in the  
14 amount designated in the EEOC’s Distribution List, to each Identified  
15 Claimant. Within five (5) business days of mailing the afore-mentioned  
16 payments, Defendant shall submit a copy of the checks and any related  
17 correspondence as well as a report regarding the mailing of the checks to  
18 Anna Y. Park, Regional Attorney, U.S. Equal Employment Opportunity  
19 Commission, 255 East Temple Street, 4<sup>th</sup> Floor, Los Angeles, California  
20 90012. The report shall show the amount of the check, the date the check  
21 was mailed, the person to whom the check was mailed, and the address to  
22 which the check was mailed. If Defendant becomes aware that any of the  
23 checks issued in this case are returned or otherwise not executed,  
24 Defendant shall immediately notify the EEOC and cooperate with the  
25 EEOC to make ensure the checks are reissued.
- 26 3. The EEOC has designated that payments to the Identified Claimants will  
27 be paid to each in a non-wage compensation check, and no tax  
28 withholding shall be made. Defendant shall prepare and distribute 1099



1 tax reporting forms to each Identified Claimant and shall make any  
2 appropriate reports or payments for each to the Internal Revenue Service  
3 and other tax authorities. Defendant shall be solely responsible for any  
4 costs associated with the issuance and distribution of a 1099 tax reporting  
5 form to the Identified Claimants. Within five (5) business days of the  
6 issuance of any 1099 form, Defendant shall provide a copy of the related  
7 correspondence to the Regional Attorney, Anna Y. Park, U.S. Equal  
8 Employment Opportunity Commission, 255 East Temple Street, 4th Floor,  
9 Los Angeles, CA 90012

10 B. “Class Fund” for Unidentified Claimants

- 11 1. The payment, if any, to the Unidentified Claimants shall be triggered by  
12 the EEOC’s issuance of a Distribution List designating each Unidentified  
13 Claimant’s portion and amount of monetary relief as well as the name and  
14 address to which the checks are to be delivered. Anyone eligible to  
15 receive monies shall be determined after a claims process is undertaken  
16 which is set forth below. The EEOC has full and complete discretion  
17 under the terms of this Decree to determine who is eligible and to  
18 determine the amount of any payment, if any, to be given to an  
19 Unidentified Claimant.
- 20 2. Within fifteen (15) business days of receiving the EEOC’s Distribution  
21 List(s), Defendant shall send a check, via first class, certified mail, in the  
22 amount designated in the EEOC’s Distribution List(s), to each  
23 Unidentified Claimant at the addresses provided by the EEOC in its  
24 Distribution List(s). Within five (5) business days of mailing the afore-  
25 mentioned payments, Defendant shall submit a copy of the checks and any  
26 related correspondence as well as a report regarding the mailing of the  
27 checks to Anna Y. Park, Regional Attorney, U.S. Equal Employment  
28 Opportunity Commission, 255 East Temple Street, 4<sup>th</sup> Floor, Los Angeles,

1 California 90012. The report shall show the amount of the check, the date  
2 the check was mailed, the person to whom the check was mailed, and the  
3 address to which the check was mailed. If Defendant becomes aware that  
4 any of the checks issued in this case are returned or otherwise not  
5 executed, Defendant shall immediately notify the EEOC and cooperate  
6 with the EEOC to make ensure the checks are reissued.

- 7 3. The EEOC has designated that payments to the Unidentified Claimants  
8 will be paid to each in a non-wage compensation check, and no tax  
9 withholding shall be made. Defendant shall prepare and distribute 1099  
10 tax reporting forms to each Unidentified Claimant and shall make any  
11 appropriate reports and payments for each to the Internal Revenue Service  
12 and other tax authorities. Defendant shall be solely responsible for any  
13 costs associated with the issuance and distribution of a 1099 tax reporting  
14 form to the Unidentified Claimants. Within five (5) business days of the  
15 issuance of any tax form(s), Defendant shall provide a copy of the related  
16 correspondence to the Regional Attorney, Anna Y. Park, U.S. Equal  
17 Employment Opportunity Commission, 255 East Temple Street, 4<sup>th</sup> Floor,  
18 Los Angeles, CA 90012.

19 C. Claims Administrator

- 20 1. Within thirty (30) days of the Effective Date, Defendant shall hire and  
21 appoint a specific professional individual or organization (“Claims  
22 Administrator”), approved by the EEOC, to oversee the payment of the  
23 Class Fund for Unidentified Claimants as designated by the EEOC  
24 pursuant to this Decree. If the Claims Administrator initially appointed by  
25 Defendant thereafter declines to serve or to carry out its duties under this  
26 Decree, Defendant shall have five (5) business days to notify the EEOC in  
27 writing of the need for a replacement Claims Administrator and the EEOC  
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1 shall provide Defendant with three (3) new Claims Administrators from  
2 which Defendant shall select a replacement.

- 3 2. Defendant shall pay all costs associated with the selection and retention of  
4 the Claims Administrator as well as the performance of the Claims  
5 Administrator's duties under this Decree.

6 D. Claims Notice Process

- 7 1. Within sixty (60) days of the Effective Date, Defendant shall provide to  
8 the Claims Administrator a list of all employees who were terminated or  
9 resigned while taking a leave of absence for medical reasons and/or  
10 terminated for having accrued maximum points allowed pursuant to  
11 Defendant's Attendance policy in cases where points were awarded for  
12 taking any leave or time off, at any time between January 3, 2012, to the  
13 present. The list provided by Defendant shall include the employee's  
14 and/or former employee's last known address(es), phone number(s), and  
15 any other person identifying information to assist in identifying the  
16 unidentified potential claimant.
- 17 2. Within ninety (90) days of the Effective Date, the Claims Administrator  
18 shall, for any employee or former employee identified in Paragraph D.1,  
19 provide notice as follows:
- 20 a. send a questionnaire and Notice Letter provided by the EEOC via  
21 certified, first class mail (1) notifying the Potential Claimant of his  
22 or her ability to file a claim for monetary relief; (2) providing the  
23 Potential Claimant with instructions on how to file a claim on-line  
24 with the claims administrator; (3) providing the Potential Claimant  
25 with the opportunity to seek assistance in completing the on-line  
26 claim; (4) enclosing a claim form or forms; (5) providing contact  
27 information for the EEOC; and (6) informing Potential Claimants  
28 of their ability to seek reinstatement by informing them that they

1 will be considered for any position(s) open with Defendant for  
2 which they apply and are qualified, with or without  
3 accommodation.

4 b. Defendant or its Claims Administrator shall provide to the EEOC  
5 certification that the Claims Administrator mailed a questionnaire  
6 and Notice Letter to each such potential claimant.

7 c. Defendant or its Claims Administrator shall instruct the USPS to  
8 notify Defendant or its Claims Administrator of any undeliverable  
9 Notice Letters.

10 d. Should any letters be returned undeliverable, within twenty (20)  
11 days of any questionnaire and/or Notice Letter being returned to  
12 sender as undeliverable, Defendant or its Claims Administrator  
13 shall:

14 i. research such Potential Claimant's most-recent address and  
15 further use its best efforts, including a search of a database  
16 such as Accurint, to locate such employee,

17 ii. if Defendant or its Claims Administrator finds a more  
18 recent address for any such employee, resend the  
19 questionnaire and Notice Letter to the new address; and/or

20 iii. if Defendant or its Claims Administrator fails to find a  
21 more recent address for any such employee, Defendant or  
22 its Claims Administrator shall, within thirty (30) day  
23 intervals following the re-mailing of the questionnaire and  
24 Notice Letter provide to the EEOC information outlining  
25 efforts to locate such employee(s).

26 E. Claims Distribution Process

27 1. At thirty (30) day intervals after mailing the first group of questionnaires  
28 and Notice Letters, Defendant or its Claims Administrator shall forward to

1 the EEOC any submitted claim forms received from any Potential  
2 Claimant. The Claims Administrator shall provide Defendant and the  
3 EEOC electronic access to the claims forms filed on-line. Defendant shall  
4 ensure that the Claims Administrator has access to the EEOC and that the  
5 Claims Administrator works with the EEOC to identify qualifying eligible  
6 claimants in accordance with the EEOC's criteria which are set forth in the  
7 questionnaire and Notice Letter. The EEOC shall have the sole discretion  
8 to determine who is an eligible claimant.

9 2. The EEOC shall have the sole discretion to designate the amount of the  
10 Class Fund to be distributed to each Eligible Claimant. The EEOC shall  
11 issue a Distribution List(s) to Defendant and the Claims Administrator.  
12 Within ten (10) days of receipt of the EEOC's Distribution List, Defendant  
13 or its Claims Administrator shall forward via first class mail the full  
14 amounts to all individuals listed in the Distribution List(s). Each check  
15 will remain valid for 180 days. To the extent, the checks need to be  
16 reissued, EEOC will notify Defendant or its Claims Administrator.

17 3. At least every thirty (30) days after Defendant or its Claims Administrator  
18 issue checks pursuant to the Distribution List(s), Defendant or its Claims  
19 Administrator shall provide the EEOC with a copy of each canceled  
20 check, and identify any check not negotiated or returned non-negotiated to  
21 Defendant or its claim administrator, to enable the parties to track  
22 remaining funds for redistribution.

23 4. The EEOC may subsequently issue additional Distribution List(s), as  
24 necessitated by further notice from Defendant or its Claims Administrator  
25 that any check issued to an identified class member or similarly-aggrieved  
26 individual was not negotiated within 90 days after issuance or was  
27 returned non-negotiated to Defendant or its Claims Administrator.  
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1           5.     On a quarterly basis throughout the duration of this Decree, Defendant  
2                 will notify the EEOC of any funds remaining in term of this Decree. The  
3                 EEOC may subsequently issue additional Distribution List(s).

4           6.     The EEOC shall designate a “Final Distribution List” which shall include,  
5                 in addition to any additional eligible individuals to be paid, any additional  
6                 amounts to be remitted to eligible individuals previously paid.

7                 No further Distribution List shall be issued by the EEOC after the Final  
8                 Distribution List is provided to Defendant or its Claims Administrator.

9           7.     Within sixty (60) days of receipt of the EEOC’s Final Distribution List,  
10                 Defendant or its Claims Administrator shall forward via first class mail to  
11                 each eligible individual payment for a gross amount equal to the full  
12                 amount set forth in the Final Distribution List. Within five (5) business  
13                 days of mailing the afore-mentioned payments, Defendant or its Claims  
14                 Administrator shall submit a copy of the checks and any related  
15                 correspondence to Anna Y. Park, Regional Attorney, U.S. Equal  
16                 Employment Opportunity Commission, 255 East Temple Street, 4th Floor,  
17                 Los Angeles, California 90012.

18           8.     Within sixty days (60) after issuance of payments according to the Final  
19                 Distribution List, any remaining monies in the Class Fund can be donated  
20                 to a charity agreed upon by the Defendant and the EEOC that focuses on  
21                 issues involving disabilities.

22                                 **VIII. GENERAL INJUNCTIVE RELIEF**

23           A.     Non-Discrimination

24                 Defendant, its officers, agents, management (including all non-bargaining unit  
25                 supervisory employees), successors, assigns and all those in active concert or participation with  
26                 them, or any of them, are hereby enjoined from: (a) implementing Attendance or Leave of  
27                 Absence policies which do not provide exceptions when appropriate to provide reasonable  
28                 accommodation to employees who are qualified individuals with disabilities and properly engage

1 in the interactive process; (b) suspending, terminating or taking any other adverse action against  
2 any employee pursuant to such Attendance or Leave of Absence policies based on an absence  
3 which should not be “chargeable” because it is required due to the employee being a qualified  
4 individual with a disability or perceived as or having a record of a disability<sup>1</sup>.

5 B. Non-Retaliation

6 Defendant, its officers, agents, management (including all non-bargaining unit  
7 supervisory employees), successors, assigns and all those in active concert or participation with  
8 them, or any of them, are hereby enjoined from engaging in, implementing or permitting any  
9 action, policy or practice with the purpose of retaliating against any current or former employee  
10 or applicant of Defendant or its successors, or either of them, for his or her participation in the  
11 EEOC process relating to a charge contained within the scope of this matter, the investigation by  
12 the EEOC into this matter, participation in the Lawsuit, complaining about or opposing any  
13 employment practice made unlawful by the ADA relating to this matter or for asserting any  
14 rights under this Consent Decree.

15 C. Unlawful Maximum Leave and/or Attendance Policies

16 Defendant, its officers, agents, management (including all non-bargaining unit  
17 supervisory employees), successors, assigns and all those in active concert or participation with  
18 them, or any of them, are hereby enjoined implementing any policy, procedure, or practice  
19 whereby they limit the amount of leave any employee or group of employees may take, and are  
20 instead enjoined to engage in the interactive process with any employee with a disability who  
21 requests leave as a reasonable accommodation and provide a reasonable accommodation where  
22 such an accommodation does not pose an undue hardship to Defendant.

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<sup>1</sup> Nothing in this Decree creates an obligation to accommodate anyone with a perceived disability.

1 **IX. SPECIFIC INJUNCTIVE RELIEF**

2 A. Reinstatement

3 Throughout the term of this Decree, Defendant shall make an effort to reinstate any  
4 Claimant in this case, to the extent that there are positions available for which they apply, and for  
5 which they are qualified, with or without reasonable accommodation. Any decision to rehire any  
6 former employee is within the sole discretion of Defendant. Defendant shall report reinstatement  
7 information to the EEOC as required below in Section IX.H.8.

8 B. ADA Coordinator

9 Within thirty (30) days after the Effective Date, Defendant shall appoint, with the  
10 EEOC's approval which will not be unreasonably denied, a Mueller employee, as the ADA  
11 Coordinator ("ADA Coordinator") to oversee Mueller's implementation of the terms of this  
12 Consent Decree. The ADA Coordinator shall possess the knowledge, capability, organizational  
13 authority, and resources to monitor and ensure Mueller's compliance with the terms of this  
14 Consent Decree. The ADA Coordinator shall also have a base of knowledge regarding the ADA  
15 and human resources. Defendant shall assign the ADA Coordinator the responsibility of  
16 monitoring and ensuring Decree compliance and shall further hold the ADA Coordinator  
17 accountable for carrying out his or her responsibilities. The ADA Coordinator shall be trained in  
18 how to carry out his or her duties.

19 The ADA Coordinator's responsibilities shall include the following:

- 20 1. Reviewing and revising Defendant's policies and practices to ensure  
21 compliance with the ADA and ADAAA as required by Sections IX.C. and IX. D. of this  
22 Decree.
- 23 2. Working with Defendant's human resources managers concerning  
24 employee requests for extended medical leaves of absence or other time off requests so  
25 that the policies and practices continue to conform with the ADA, ADAAA, employment  
26 anti-discrimination laws and the provisions of this Decree;
- 27 3. Ensuring the posting and/or distribution of the revised Policy as required  
28 by Sections IX.C. and IX. D. of this Decree;



1           4.     Ensuring that effective training is provided to Defendant's employees on  
2 their rights and responsibilities under the ADA and ADAAA as required by Section  
3 IX.H.1 of this Decree;

4           5.     Ensuring that effective training is provided to Defendant's supervisory  
5 employees, human resources staff as required by Sections IX.H.2 and IX.H.3 of this  
6 Decree;

7           6.     Holding supervisory employees and human resources personnel,  
8 accountable for failing to engage in the interactive process with regard to leave of  
9 absence and time off requests, or failing to comply with Defendant's policies and  
10 procedures regarding leaves of absence and other related absence requests as a  
11 reasonable accommodation for qualified individuals with disabilities, as required by  
12 Section IX.F;

13           7.     Ensuring that Defendant creates a centralized system of tracking requests  
14 for leaves of absence and other absence requests that are sought as an accommodation for  
15 qualified individuals with disabilities, as well as monitoring such requests in an  
16 Accommodation Log as required by Sections IX.E. and IX.I. of this Decree;

17           8.     Preparing annual reports to the EEOC on Defendant's compliance as  
18 required by Section IX.J. of this Decree;

19           9.     Ensuring that all reports required by this Decree are accurately compiled  
20 and timely submitted;

21           10.    Monitoring and ensuring the retention and maintenance of any documents  
22 or records required by this Decree; and

23           11.    Monitoring and ensuring the distribution of any documents and posting of  
24 notice as required by this Decree.

25        C.     Policies and Procedures

26        To the extent not already done so, within ninety (90) days of the Effective Date of this  
27 Consent Decree, Defendant shall review and, if necessary, revise its Leave of Absence and  
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1 Attendance plans, policies, procedures and guidelines to include measures for accommodating  
2 qualified individuals with disabilities. The revised policies and procedures shall include:

- 3 1. Clear and objective criteria which expressly prohibit disability  
4 discrimination, specifically related to discharge on the basis of requesting  
5 and/or requiring time off as a reasonable accommodation, retaliation, and  
6 failure to engage in the interactive process;
- 7 2. Assurance that employees who request or require time off as a reasonable  
8 accommodation due to disability or make a complaint of disability  
9 discrimination regarding the denial of time off or provide information  
10 related to such complaints will be protected against retaliation;
- 11 3. Assurance that properly trained human resources personnel shall be  
12 involved in the process of reviewing leave of absence and time off  
13 requests as part of the reasonable accommodation/interactive process;
- 14 4. A description of Defendant's process for requesting time off as a  
15 reasonable accommodation including: to whom an employee may make  
16 requests for accommodation (including the name, address, telephone  
17 and/or e-mail of the proper decision makers), the procedures for  
18 communicating such requests to the proper decision makers, identification  
19 of who is the decision maker in granting or denying a request for time off  
20 as request for accommodation, whom an employee may contact if they  
21 have questions about the process or if they need to follow up regarding a  
22 request for accommodation; a clear explanation of employees' rights and  
23 responsibilities under the ADA, the ADAAA, and this Decree, including  
24 that federal law requires Defendant to timely provide an available  
25 effective reasonable accommodation with regard to all terms, conditions,  
26 benefits, and privileges of employment, which includes trainings,  
27 performance evaluations, discipline meetings, interactive processes,  
28 investigations, staff meetings, office equipment, company facilities, and

1 company events like award ceremonies, team-building activities, and  
2 formal social events where presentations are made;

3 5. Assurance that the Defendant will make its best efforts to establish  
4 reasonable accommodation leave of absence and time off policies  
5 consistent with the ADA, including but not limited to utilizing any  
6 discretion available in creating and negotiating future collective  
7 bargaining agreements;

8 6. A clear explanation of how employees qualify for a reasonable  
9 accommodation, including a fast-track process for certain physical or  
10 mental impairments that should be easily be concluded to be disabilities as  
11 listed at 29 C.F.R. § 1630.2(j)(3)(iii);

12 7. A clear explanation of the duties of supervisory and human resources  
13 employees and Defendant's ADA Coordinator have in timely engaging in  
14 the interactive process with and providing effective reasonable  
15 accommodations to employees who are deemed disabled, pursuant to the  
16 guidance regarding what constitutes a disability set forth in 29 C.F.R. §  
17 1630.2;

18 8. A clear requirement that Defendant, including supervisory employees or  
19 human resource personnel or Defendant's ADA Coordinator, shall engage  
20 in open and frequent communication with its employees throughout the  
21 interactive process, including an early meeting with the applicant or  
22 employee to discuss possible effective accommodations and the provision  
23 of the name of the contact person that the applicant or employee can  
24 contact with questions or concerns at any time in the process;

25 9. A clear requirement that Defendant, including supervisory employees or  
26 human resource personnel or Defendant's ADA Coordinator, shall review  
27 any accommodation decision with the applicant or employee, including a  
28

1 written communication to the applicant or employee of the decision and  
2 reasons for the denial of accommodation request;

3 10. A clear explanation of the duties of supervisory and human resources  
4 employees and/or Defendant's ADA Coordinator in conducting a follow-  
5 up meeting with the applicant or employee to evaluate the continued  
6 effectiveness of any accommodation provided and to discuss whether  
7 further engagement in the interactive process if necessary.

8 11. Assurance that Defendant look at each leave request and time off request  
9 made by a qualified individual with a disability on an individualized basis,  
10 that Defendant will engage in a good faith interactive process with the  
11 employee in attempting to provide the requested accommodation, and that  
12 requests for accommodations shall only be denied if granting the request  
13 would pose an undue hardship upon Defendant;

14 12. Removal of requirement that employees who are on leave due to a medical  
15 condition for a specified time period be terminated and assurance that  
16 Defendant and its ADA Coordinator will consider additional leave as a  
17 form of accommodation and will consider the duration of such leave on a  
18 case by case basis pursuant to Defendant's obligation to engage in  
19 interactive process and provide a reasonable accommodation under the  
20 ADA. Defendants confirm that the requirements will be removed within  
21 90 days from the effective date;

22 13. To the extent permissible under Union contracts, assurance that if there is  
23 no reasonable accommodation that will enable an employee seeking an  
24 accommodation to perform the essential functions of their position,  
25 Defendant will consider reassignment to a vacant position that the  
26 employee is qualified to perform the essential functions with or without a  
27 reasonable accommodation. Defendant shall attempt to first identify  
28 position(s) equivalent in pay, hours, and benefits to which an employee

1 may be transferred and if there is no equivalent position(s), Defendant will  
2 provide opportunity for reassignment to lower position(s). When seeking  
3 reassignment of employees, Defendant will be responsible for identifying  
4 vacant and open positions for which the employee is qualified;

5 14. Emphasizing that Defendant's revised policies under the ADA contains no  
6 requirement that employees be released to work without restriction or  
7 released to full duty. Assurance that Defendant will consider whether the  
8 employee can perform the essential functions of their position with or  
9 without reasonable accommodation;

10 15. A procedure for communicating with the employee in writing regarding  
11 the status of his/her request for additional leave as reasonable  
12 accommodation;

13 16. Assurance that Defendant will take immediate and appropriate corrective  
14 action when it determines that discrimination or retaliation has occurred  
15 due to an employee's request for additional leave as a reasonable  
16 accommodation; and

17 17. Assurance that Defendant will institute a procedure to ensure  
18 accountability by its managers and supervisors upon discovery of any  
19 violation of the ADA.

20 18. Notwithstanding the foregoing, it is understood that any obligations under  
21 this Consent Decree related to leaves of absence and other absent requests  
22 plan may be subject to a bargaining obligation under the National Labor  
23 Relations Act. Accordingly, if necessary to satisfy a bargaining  
24 obligation, the timetable for compliance by Defendant set forth in this  
25 Consent Decree may be extended as long as necessary.

26 D. Complaint Procedure  
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1 Defendant, with the assistance of its ADA Coordinator, shall also review and, if  
2 necessary, revise its written policies and procedures regarding its complaint procedure for  
3 complaints of disability discrimination. Such revised policies and procedures shall include:

4 1. A clearly described complaint process that provides accessible and confidential  
5 avenues of complaint with the contact information, including name, address, and telephone  
6 number, of persons both internal (i.e. human resources and/or Defendant's ADA Coordinator)  
7 and external to Defendant (i.e. the EEOC) to whom employees or applicants for employment  
8 may report discrimination including a written statement that the employee may report the  
9 discriminatory behavior to designated persons outside their chain of management.

10 2. Assurance that employees who make complaints of disability discrimination or  
11 provide information related to such complaints will be protected against retaliation;

12 Within thirty (30) days of the Effective Date of this Decree, Defendant shall provide to  
13 the EEOC a copy of the revised Policy as required by Sections IX.D. and IX.E.

14 Within sixty (60) days of the Effective Date, and on an annual basis thereafter, Defendant  
15 shall ensure that it has distributed the revised Policy required by Sections IX.D. and IX.E. to all  
16 employees, including management/supervisory employees. Defendant shall collect  
17 acknowledgments from each employee who receives the revised policy as required by Sections  
18 IX.D. and IX.E.

19 Within thirty (30) days of the hire date of any person hired after the initial distribution but  
20 within the term of the Decree, Defendant shall ensure that it has distributed revised the Policies  
21 and Procedures to that person. On an annual basis through the term of the Decree, Defendant  
22 shall submit to the EEOC a statement confirming the distribution of the Policy to any person  
23 hired after the initial distribution but within the term of the Decree.

24 Such policy shall also be included in any relevant policy or employee manuals distributed  
25 to employees by Defendant.

26 Within ninety (90) days of the Effective Date, Defendant shall submit to the EEOC a  
27 statement confirming the distribution of the Policy.

28

1           Within ninety (90) days of the Effective Date and throughout the duration of the Decree,  
2 Defendant shall ensure that it has physically posted the revised Policy in legible font in a  
3 conspicuous place at all of Defendant's facilities in an area accessible to all employees. Within  
4 ninety (90) days of the Effective Date, Defendant shall submit to the EEOC a statement  
5 confirming the posting of the Policy. Defendant shall annually affirm to the EEOC the Policy  
6 has been posted in the manner described above.

7           E.     Accommodation Log

8           Defendant's ADA Coordinator shall create and maintain an Accommodation Log that  
9 documents any time off or leave requested by a qualified individual with a disability as an  
10 accommodation for that employee. Defendant's ADA Coordinator shall retain all documents  
11 relating to any accommodation requests identified in the Accommodation Log. In the event an  
12 employee makes any subsequent request to modify an accommodation by requesting additional  
13 time off or an additional leave of absence, Defendant's ADA Coordinator shall include in the  
14 Accommodation Log the information required by this section. The Accommodation Log shall  
15 include the following information:

- 16           1.     Name of person making the request;
- 17           2.     Date of the request;
- 18           3.     Physical or mental impairment;
- 19           4.     Any person to whom the request for accommodation was made;
- 20           5.     Accommodation(s) requested, if any;
- 21           6.     Any person involved in the interactive process;
- 22           7.     Any records or documents made or reviewed in the course of engaging in  
23                 the interactive process;
- 24           8.     Any person involved in the decision-making process regarding the request  
25                 for accommodation;
- 26           9.     Accommodation provided, if any;
- 27           10.    The reason for the decision to provide or refuse any accommodation;

28

- 1 11. Complaints made by individuals regarding accommodation issues, issues  
2 regarding being denied leave request due to disability, or issues related to  
3 retaliation arising from complaining about the denial of disability time off,  
4 and
- 5 12. Whether any modification or additional accommodations in conjunction  
6 with the original accommodation were sought and if such requests were  
7 granted or denied.

8 Defendant shall make the afore-mentioned records available to the EEOC within ten (10)  
9 business days following a written request by the EEOC beyond the annual reporting requirement.

10 F. Posting of Notice of Consent Decree and Settlement

11 Within ten (10) days of the Effective Date, and throughout the first year of the Effective  
12 Date of this Decree, Defendant shall ensure that it has posted the Notice of Consent Decree and  
13 Settlement (attached to this Decree as Exhibit A) in a conspicuous place accessible to all non-  
14 union employees. Within thirty (30) days of the Effective Date, Defendant shall submit to the  
15 EEOC a statement confirming the posting of the Notice of Consent Decree and Settlement.

16 G. Training

- 17 1. Training of All Employees (Managers, Supervisors, HR, But Also  
18 Including Non-Managerial, Non-Supervisory, Non-HR):  
19 Mandatory One-Hour Video Training

20 Within one hundred and twenty (120) days of the Effective Date and annually thereafter  
21 for the duration of the Decree, Defendant shall provide training via customized video  
22 presentation lasting at least sixty (60) minutes to all Defendant's employees containing the  
23 content outlined in this subsection. This training shall be moderated in order to allow questions  
24 and answers, shall be delivered in a language the employees understand, and shall include  
25 coverage of:

- 26 a. The role and purpose of the ADA/ADAAA and its prohibitions and  
27 provisions, including the prohibition against unlawful discrimination,  
28



1 harassment and retaliation, and the requirement that employers provide  
2 reasonable accommodations to qualified individuals with disabilities;

3 b. Examples of qualifying disabilities (pursuant to the guidance found in 29  
4 C.F.R. § 1630.2) and reasonable accommodations, with emphasis on  
5 requests for extended medical leave of absence;

6 c. Defendant's ADA policies and process for requesting accommodations,  
7 including: to whom an employee may make requests for accommodation  
8 (including the identity and contact information for Defendant's Internal  
9 Monitor and/or proper decision makers), the procedures for  
10 communicating such requests to the proper decision makers, and whom an  
11 employee or applicant may contact if they have questions about the  
12 process or if he/she needs to follow up regarding a request for  
13 accommodation;

14 d. Other relevant Company policies and procedures, including those related  
15 to leaves of absence and other requests for absences and the potential for  
16 qualified individuals with disabilities to request time off as a reasonable  
17 accommodation; and

18 e. How to report concerns about potential disability discrimination, the  
19 interactive process, improper denial of a reasonable accommodation, and  
20 retaliation.

21 This customized video presentation will be recorded and available for viewing within the  
22 time-frame set forth in this Subsection. Defendant will also provide such training to any newly  
23 hired employee as part of new hire orientation within 60 days of beginning employment, or at  
24 the annual training within the term of the Decree, whichever comes first. All persons required  
25 to attend such training shall verify their attendance in writing.

26 2. Training of Managers and Supervisors—One-Hour Live Webinar With  
27 Moderator. Plus One-Hour Video Training (Total Training for This Group  
28 = Two Hours)

1           Within one hundred and twenty (120) days of the Effective Date and annually thereafter  
2 for the duration of the Decree, in addition to the one-hour video training for all employees  
3 outlined in Subsection (1) above, Defendant shall also provide training via live, interactive  
4 webinar lasting at least sixty (60) minutes to all managers and supervisors. In addition to a recap  
5 of the content outlined in Subsection (1) above, this training will further cover:

- 6           a. The prohibition against discrimination, harassment and retaliation under  
7           the ADA in supervisory/management decision making;
- 8           b. Types of possible accommodations, including leaves of absence;
- 9           c. Importance of the confidentiality of employee medical information and  
10           manager/supervisor responsibilities in this regard;
- 11           d. How to recognize employee requests or need for accommodation, the  
12           supervisor's/manager's role in the interactive process, and how to engage  
13           Defendant in assisting an employee through that process;
- 14           e. Revised Company policies concerning the ADA, including, but not limited  
15           to: policies on leaves of absence as potential reasonable accommodations  
16           under the ADA and how they apply to qualified individuals with  
17           disabilities who require time off of work due to their disabilities (whether  
18           or not FMLA applies), and requests for return to work following such a  
19           medical leave of absence; and
- 20           f. The manager's/supervisor's role in implementing and monitoring the  
21           effectiveness of provided accommodations.

22           This live webinar will be recorded for supervisors/managers who are unable to attend the  
23 originally scheduled session. Defendant will present, with the presence of a moderator for  
24 questions and answers, the recorded webinar training quarterly for any newly hired employee or  
25 any employee newly promoted to a supervisor/manager position, or such employees shall  
26 participate in the annual live webinar training within the term of the Decree if such training  
27 comes first. All persons required to attend such training shall verify their attendance in writing.  
28

1           3.     Training of Human Resources—Live, Interactive Three-Hour Training  
2                     (Total Training for This Group = Five Hours)

3           Within one hundred and twenty (120) days of the Effective Date and annually thereafter  
4 for the duration of the Decree, in addition to the one-hour video training for all employees  
5 outlined in Subsection (1) above and the one-hour webinar training for supervisors/managers  
6 outlined in Subsection (2) above, Defendant shall also provide live, interactive training lasting at  
7 least three hours to all human resources personnel, and any other staff members who are  
8 responsible for handling requests for reasonable accommodation. In addition to a recap of the  
9 content outlined in Subsections (1) and (2) above, this training will further cover:

- 10                     a. The history and purpose of the ADA and the most recent amendments;
- 11                     b. How the interactive process works, including the importance of  
12                     communicating with the employee and his/her managers/supervisors to  
13                     assess the needs of the employee and the operational realities of the work  
14                     environment;
- 15                     c. Documentation issues, including requesting information from appropriate  
16                     healthcare providers, confidentiality, and scope of requests for medical  
17                     information;
- 18                     d. The importance of monitoring accommodations to ensure employees are  
19                     effectively accommodated and to ensure accountability of all parties  
20                     involved in the accommodation process;
- 21                     e. Complex accommodation issues, such as managing the performance of  
22                     employees, requests for schedule or task changes, and reassignment  
23                     discussions;
- 24                     f. Handling complaints/concerns raised by employees or  
25                     managers/supervisors about potential discrimination, harassment,  
26                     retaliation, or the accommodation process;
- 27                     g. Defendant's obligations under this Decree, including the duties regarding  
28                     the Accommodation Log; and

1 h. Reviewing and assessing whether the interactive process was properly  
2 conducted, including determining the needs of disabled individuals to  
3 ensure they were provided a meaningful opportunity to engage in the  
4 interactive process.

5 This live, interactive training will be recorded for human resources employees and any  
6 other staff members who are responsible for handling requests for reasonable accommodation  
7 who are unable to attend the originally scheduled session. Individuals identified for training in  
8 this section will participate in such training within 60 days of either the originally scheduled  
9 session or of being hired (with the assistance of a moderator for questions and answers), or will  
10 participate in the annual live training within the term of the Decree if such training comes first.  
11 All persons required to attend such training shall verify their attendance in writing.

12 4. Verification of Training

13 Within one hundred and eighty (180) days of the Effective Date and annually thereafter,  
14 Defendant shall produce to the EEOC reasonable documents verifying the occurrence of all  
15 training sessions conducted as required under this Decree, including any written training  
16 materials used, a list of the individuals who conducted the training, and a list of the names and  
17 job titles of attendees at each training session. The EEOC shall have the right to attend the  
18 trainings described in the Decree. Thirty (30) days prior to any live training, Defendant shall  
19 provide written notice to EEOC including the time, location, and name and contact information  
20 of the trainer. The written notice shall be sent via U.S. Mail to the attention of Anna Y. Park,  
21 Regional Attorney, U.S. Equal Employment Opportunity Commission, 255 East Temple Street,  
22 4th Floor, Los Angeles, California, 90012.

23 H. Reporting

24 Defendant through its ADA Coordinator shall provide the following reports annually  
25 throughout the term of the Decree:

- 26 1. The attendance lists for all training sessions required under this Decree  
27 that took place since the previous report;  
28

- 1           2.     Acknowledgments of receipt of the Policy for all employees hired since  
2           the previous report;
- 3           3.     A description of all disability discrimination and/or retaliation complaints  
4           made related to leaves of absence or absenteeism related to a qualified  
5           individual with a disability including under the Attendance policy since  
6           the submission of the immediately preceding report hereunder. This  
7           description shall include the names of the individuals alleging  
8           discrimination or retaliation; the nature of the complaint; the names of the  
9           alleged perpetrators of discrimination or retaliation; the dates of the  
10          alleged discrimination or retaliation; a brief summary of how each  
11          complaint was resolved; and the identity of the employee(s) who  
12          investigated and/or resolved each complaint. If no results have been  
13          reached as of the time of the report, the result shall be included in the next  
14          report;
- 15          4.     Verification that the Notice of Consent Decree and Settlement and Policy  
16          has continued to be posted in a conspicuous place accessible to all  
17          employees;
- 18          5.     In the event Defendant utilizes a temporary staff agency (“TSA”) to  
19          supply workers at its facilities during the term of this Decree, Defendant  
20          agrees that it shall take reasonable steps during the term of the Decree to  
21          ensure that the TSA is in compliance with the ADA and ADAAA, and  
22          Defendant will provide a list of all employees, including but not limited  
23          their name, job title, date assigned to work at Defendant’s facilities and  
24          starting date (if different), last date of assignment with Defendant; who  
25          worked and/or were assigned to work at Defendant’s facilities and whose  
26          assignment with Defendant ended because of a medical reason, and/or  
27          whose assignment with Defendant ended because they violated  
28          Defendant’s leave and/or attendance policies.

- 1           6.     The status of Defendant’s compliance with the terms of the Decree;
- 2           7.     Whether any revisions of Defendant’s policies and procedures regarding
- 3                 reasonable accommodation, specifically leaves of absence and time off
- 4                 related to disability, or retaliation have occurred since the preceding
- 5                 report, including a copy of the revised policies or procedures; and
- 6           8.     All identifying information regarding the Reinstatement Claimant(s)
- 7                 including:
- 8                 (a) the name(s) of the Potential Claimant(s) who seek/sought
- 9                 reinstatement, the date it was notified of the Potential Claimants’ interest
- 10                in reinstatement, and the position(s) they are interested in reinstatement;
- 11                (b) the date Defendant contacted and notified the Potential Claimant(s),
- 12                who indicated that they were interested in reinstatement, to apply’
- 13                (c) its decision as to whether or not it hired the Potential Claimant(s)
- 14                and/or if it still considering the Potential Claimant(s) for re-employment;
- 15                (d) the name(s) of the Potential Claimant(s) who are/were re-employed;
- 16                (e) for any Reinstatement Claimant who requests an accommodation: (i)
- 17                the name of the requesting employee; (ii) accommodations requested; (iii)
- 18                details of the interactive process; (iv) what accommodation was made, if
- 19                applicable; and (v) whether an accommodation was denied and why; and
- 20                (f) if the reinstated Claimant and/or Potential Claimants is later terminated
- 21                by Defendant, Defendant shall notify the Commission the reason(s) for
- 22                such termination;

23           9.     the Accommodation Log; and

24           10.    Defendant shall report to the EEOC what positions are open, the dates and

25 locations for such open positions, and report what efforts were made by Defendant to fill those

26 positions by Potential Claimants who have indicated that they were interested in reinstatement.

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**X. MISCELLANEOUS PROVISIONS**

A. During the term of this Decree, Defendant shall provide any potential successor-in-interest with a copy of this Decree within a reasonable time of not less than thirty (30) days prior to the execution of any agreement for acquisition or assumption of control of any of all of Defendant’s facilities, or any other material change in corporate structure. Defendant shall simultaneously inform the EEOC of any such agreement for acquisition, assumption of control, or other material change in corporate structure.

B. During the term of this Decree, Defendant shall assure that each of its officers, managers, and supervisors is aware of any term(s) of this Decree which may be related to his/her job duties.

C. Unless otherwise stated, all notices, reports and correspondence required under this Decree shall be delivered to the attention of Anna Y. Park, Regional Attorney, U.S. Equal Employment Opportunity Commission, 255 East Temple Street, 4th Floor, Los Angeles, California, 90012; facsimile number (213) 894-1301.

D. This Decree may be signed in counterparts. A facsimile signature shall have the same force and effect of an original signature or copy thereof.

**XI. COSTS AND ATTORNEYS’ FEES**

Defendant shall bear all costs associated with its administration and implementation of its obligations under this Decree, including but not limited to the distribution of the settlement money as well as any costs associated with the claims administration process. Each party shall bear its own costs of suit and attorneys’ fees.

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1 All Parties, through the undersigned, respectfully apply for and consent to the entry of  
2 this Consent Decree Order.

3 Respectfully Submitted,

4 U.S. EQUAL EMPLOYMENT  
5 OPPORTUNITY COMMISSION  
6 Anna Y. Park

7 Date: \_\_\_\_\_

By: \_\_\_\_\_

8 Anna Y. Park  
9 Attorney for Plaintiff  
EEOC

10 Date: \_\_\_\_\_

By: \_\_\_\_\_

11 Helene Wasserman  
12 Attorney for Defendant  
13 Mueller Industries, Inc.

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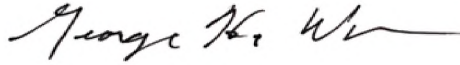
**ORDER**

**GOOD CAUSE APPEARING:**

The Court hereby finds that compliance with all provisions of the foregoing Decree is fair and adequate. The Court hereby retains jurisdiction for the term of the foregoing Consent Decree, and the provisions thereof are hereby approved.

**IT IS SO ORDERED.**

DATED: July 13, 2018



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The Honorable George H. Wu  
United States District Judge

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