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## Equal Employment Opportunity Commission, Plaintiff, and Adrian Bellman, Plaintiff-Intervenor, v. Kroger Texas, L.P., Defendant.

Judge Samuel B. Kent

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**Equal Employment Opportunity Commission, Plaintiff, and Adrian Bellman,  
Plaintiff-Intervenor, v. Kroger Texas, L.P., Defendant.**

**Keywords**

Equal Employment Opportunity Commission, Adrian Bellman, Kroger Texas L.P., G-01-226, Consent decree / Settlement, Disparate Treatment, Failure to Accommodate, Constructive Discharge, Other mental impairment disability, Service, Employment Law, ADA



C. The Kroger Co. and Kroger Texas deny the allegations and contends that The Kroger Co. offered Bellman an opportunity to confer with his job coach and mother before accepting his resignation, and that it encouraged him to accept suspension pending investigation.

D. Prior to the initiations of this action, Kroger Texas assumed the liabilities of The Kroger Co., and the parties stipulate that Kroger Texas is the only proper defendant in this action.

E. The EEOC and Kroger Texas have a bona fide dispute concerning liability. Kroger Texas denies all liability and by consenting to this Consent Decree does not admit to any wrong-doing. Further, Kroger Texas contends that at all times it and The Kroger Co. have complied with their obligations under state and federal laws that prohibit discrimination against qualified persons with disabilities, including the Americans with Disabilities Act.

F. The EEOC and Kroger Texas consent to this order.

Accordingly, the court orders the following:

1. This consent decree is a full and complete settlement of any and all claims arising from Adrian Bellman's charge of discrimination, and applies only to Kroger Texas' stores in District No. 1.

2. Kroger Texas shall continue to comply with its obligations under the Americans with Disabilities Act. Kroger Texas shall not engage in any unlawful employment practices which discriminate against individuals protected by the ADA with

respect to compensation, terms, conditions or privileges of employment because of such individual's disability, and will not retaliate against any individual who has opposed any practice unlawful under the ADA, or who has made a charge, or participated in any investigation, proceeding or hearing under the ADA.

3. Kroger Texas shall provide all managers and co-managers assigned to work in its District No. 1 with at least 2 hours of training concerning its obligations under the Americans with Disabilities Act. At such training, Kroger Texas shall read a short statement prepared by the EEOC concerning its contention that employers should provide mentally retarded employees an opportunity to confer with a job coach or parent prior to terminating such an employee for disciplinary reasons. This provision in no way is an acknowledgment by this court or Kroger Texas that such an accommodation is reasonable, the court having not reached the merits of the case. Kroger Texas will prepare the training in consultation with an attorney of its choosing and will provide the training by December 31, 2002.


4. If any employee assigned to District No. 1 and known to Kroger Texas to be mentally retarded commits a terminable offense, Kroger Texas shall follow its procedures under the collective bargaining agreement and suspend the employee pending investigation. If such employee chooses to immediately resign in lieu of suspension, the resignation shall become effective three (3) days following notice of the resignation, to enable the employee to confer with a job coach or parent concerning the decision. The 3-day period is exclusive of weekends and federal holidays. Such a resignation is revokable only during the 3-day period, and if revoked, the provisions of the collective bargaining agreement shall govern

subsequent employment actions. This provision shall not apply to resignations that are not associated with possible terminable offenses.

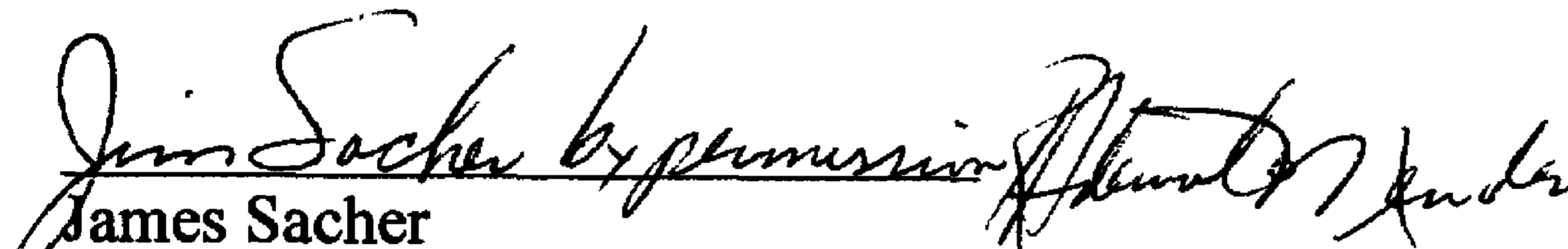
5. In the event that a known mentally retarded employee in District No. 1 resigns under suspicions that he or she has committed a terminable offense, Kroger Texas shall provide the employee and the union steward a notice in plain English stating that the employee may revoke the resignation within 3 days, exclusive of weekends and federal holidays, and the name, telephone number, and telecopier number of the person who should receive notice of the revocation. Kroger Texas will also notify the employee that he should immediately present the notice to his parent or job coach.

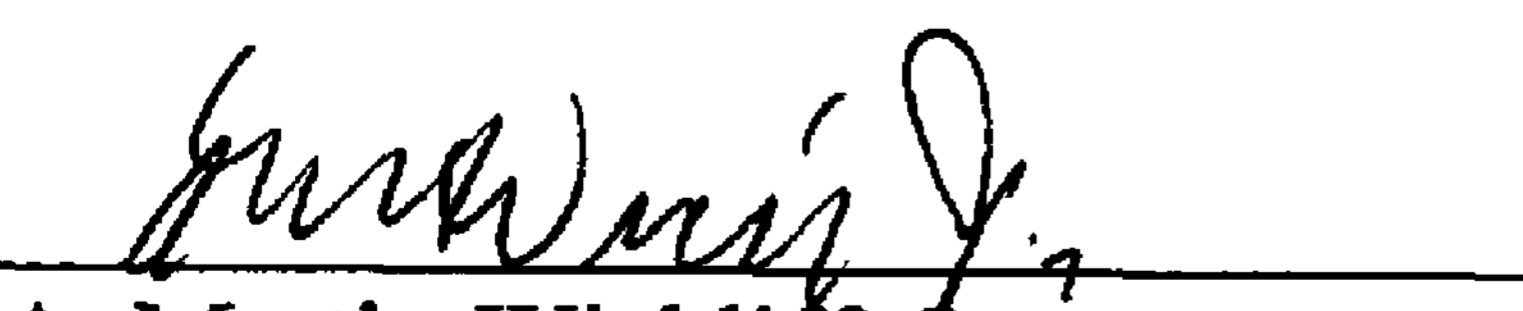
6. Kroger Texas obligations under paragraphs 2 through 5 shall expire two (2) years from the date of this order. Until such expiration date, the court shall retain jurisdiction to enforce the provisions of this order.

Signed this 3<sup>rd</sup> of January 2002.

  
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SAMUEL B. KENT  
United States District Judge

Agreed:

  
James Sacher  
Attorney for EEOC

  
\_\_\_\_\_  
A. Martin Wickliff, Jr.  
Attorney for The Kroger Texas, L.P.