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U.S. Equal Employment Opportunity Commission, Plaintiff, v. Temcor, Inc., Defendant.

Judge Wm. Matthew Byrne

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**U.S. Equal Employment Opportunity Commission, Plaintiff, v. Temcor, Inc.,
Defendant.**

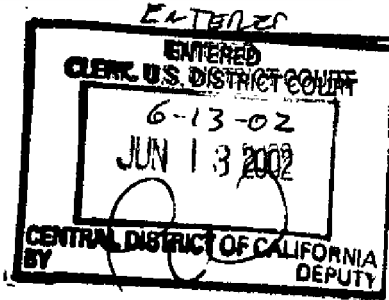
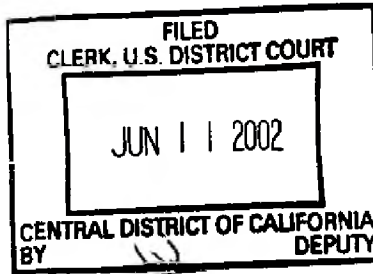
Keywords

U.S. Equal Employment Opportunity Commission, Temcor, Inc., 2:01-cv-08351-WMB-RNB, Consent decree / Settlement, Disparate Treatment, Failure to Accommodate, Termination, Other physical impairment disability, Hearing, Manufacturing, Employment Law, ADA

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14 page ii



- Priority
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- JS-5/JS-6
- JS-2/JS-3

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 U.S. EQUAL EMPLOYMENT
18 OPPORTUNITY COMMISSION,

19 Plaintiff,

20 v.

21 TEMCOR, INC.,

22 Defendant.

23 FRED ROBISON

24 Plaintiff/Intervenor

25 v.

26 TEMCOR, INC.,

27 Defendant.

28 CASE NO. CV 01-8351 WMB (RNBx)

~~PROPOSED~~ CONSENT DECREE

- Docketed
- Copies NTC Sent
- JS - 5 / JS - 6
- JS - 2 / JS - 3
- CLSD

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I.

INTRODUCTION

Fred Robison, a hearing impaired 62 year old man, filed a charge of discrimination with Plaintiff Equal Employment Opportunity Commission ("EEOC" or "Commission") on December 1, 1997, against his former employer Defendant Temcor Inc., ("Temcor" or "defendant") alleging that Temcor discriminated against him because of his hearing impairment.

The EEOC investigated the charge of discrimination and found that there was reasonable cause to believe that Temcor had violated the Americans with Disabilities Act ("ADA") by discharging Robison because of his hearing impairment and by failing to engage in the interactive process of reasonable accommodation required under the ADA. The EEOC invited Temcor to conciliate the matter. Conciliation, however, was not successful.

On September 27, 2001, the EEOC filed the instant lawsuit alleging two violations of the ADA, *i.e.* discriminatory discharge and failure to engage in the interactive process of reasonable accommodation. On December 4, 2001, Plaintiff Intervenor Robison filed a motion to intervene and alleged that Defendant had also discriminated against Robison because of his disability in violation of the California Fair Employment and Housing Act, Cal. Govt. Code § 12940 et seq., ("FEHA").

II.

JURISDICTION

The Court has jurisdiction over the parties and the subject matter of this lawsuit, pursuant to 28 U.S.C. Sections 451, 1331, 1337, 1343, 1367 and 42 U.S.C. Section 12117(a). The Court shall retain jurisdiction of this action during the duration of the Decree for the purposes of entering all orders, judgments and decrees which may be necessary to implement the relief provided herein.

III.

PURPOSES OF THE CONSENT DECREE AND FINDINGS

The parties have entered into this Decree for the following purposes:

- A. To provide appropriate monetary and injunctive relief;

- 1 B. To ensure that defendant's employment practices comply with federal law;
- 2 C. To ensure training for defendant's managers and employees with respect to their
- 3 obligations under the ADA;
- 4 D. To provide an appropriate and effective mechanism for handling requests for
- 5 accommodation in the workplace;
- 6 E. To avoid the time, risk and expense of protracted litigation; and
- 7 F. To provide a final and binding settlement upon the parties as to all ADA and
- 8 FEHA claims alleged in the Complaint filed in this action.

9 Having examined the terms and provisions of this Decree and based on the pleadings,
10 record and stipulation of the parties, the Court finds the following:

- 11 A. The Court has jurisdiction over the parties and the subject matter of this action.
12 The Complaint asserts claims that, if proven, would authorize the Court to grant
13 the relief set forth in this Decree.
- 14 B. The terms and provisions of this Decree are adequate, fair, reasonable, equitable
15 and just. The rights of the defendant, the Commission and those for whom the
16 Commission seeks relief are protected adequately by this Decree.
- 17 C. This Decree conforms with the Federal Rules of Civil Procedure, and the ADA
18 and is not in derogation of the rights and privileges of any person. The entry of this
19 Decree will further the objectives of the ADA and will be in the best interests of
20 the parties.

21 **IV.**

22 **RELEASE OF CLAIMS**

- 23 A. This Decree fully and completely resolves all issues, claims and allegations
24 concerning discrimination based upon Fred Robison's disabilities.
- 25 B. Nothing in this Decree shall be construed to limit or reduce defendant's
26 obligations to fully comply with the ADA.
- 27 C. The parties shall use their best efforts to defend this Decree from any legal
28 challenge whether by appeal, collateral attack or objection.

V.

NON-DEROGATION OF EEOC RIGHTS

A. This Decree in no way effects the EEOC's rights to proceed against the defendant nor does it in any way effect the EEOC's rights to process charges against the defendant not otherwise covered by this Decree in accordance with standard EEOC procedures and to commence civil action on any such charges.

B. Under no circumstances shall the EEOC, by commenting or electing not to comment upon proposed policies or procedures pursuant to Section IX (Injunctive Relief), be deemed to have waived its right to investigate or litigate any alleged adverse effects of said policy upon equal employment opportunities. Nor shall the EEOC, by commenting or electing not to comment upon said policies or procedures, be considered to have accepted the validity of, or approved, the provisions adopted by defendant.

VI.

DECREE ENFORCEMENT

A. It is expressly agreed that if the Commission has reason to believe that the Decree has been breached, the Commission may bring an action before this Court to enforce the Decree. Prior to initiating such action, the Commission will notify the defendant and its legal counsel of record, in writing, of the nature of the dispute. This notice shall specify the particular provision(s) that the Commission believes has/have been breached, and a concise factual statement of the issues in dispute. A thirty (30) day dispute resolution period will be provided from the date of notice prior to the institution of any legal proceeding, absent a showing by either party that the delay will cause irreparable harm.

B. The parties agree to cooperate with each other and use their best efforts to resolve any dispute referenced in the EEOC notice.

C. After the expiration of the thirty (30) day dispute resolution period, the Commission may initiate an enforcement action in this Court, seeking all available relief, including an extension of the Decree for such time as the defendant is shown to be out of compliance.

///

1 D. The Commission may petition this Court for compliance with this Decree at any time
2 during which this Court maintains jurisdiction over this action. Should the Court determine that
3 the defendant has not complied with this Decree, in whole or in part, it may impose appropriate
4 relief, including but not limited to the imposition of costs on the defendant and extension of the
5 duration of this Decree for such a period as may be necessary to remedy the defendant's non-
6 compliance.

7 **VII.**

8 **MODIFICATION AND SEVERABILITY**

9 A. This Decree constitute the complete understanding of the parties with respect to
10 the matters contained within it. No waiver, modification or amendment of any provision of this
11 Decree will be effective unless made in writing and signed by an authorized representative of
12 each of the parties.

13 B. If one or more provisions of the Decree are rendered unlawful or unenforceable,
14 the parties shall make good faith efforts to agree upon appropriate amendments to this Decree in
15 order to effectuate the purposes of the Decree. If the parties are unable to reach agreement, the
16 Court shall order appropriate alternative provisions in order to effectuate the purposes of the
17 Decree. Should one or more provisions of this Decree be deemed unlawful, all other lawful and
18 enforceable provisions will remain in full force and effect.

19 **VIII.**

20 **EFFECTIVE DATE AND DURATION OF DECREE**

21 A. This Decree shall be deemed effective as of the Date of Final Approval of this Decree
22 by the Court. The Date of Final Approval means the date upon which the Court approves the
23 Decree. This Decree shall remain in effect for three (3) years.

24 **IX.**

25 **INJUNCTIVE RELIEF**

26 **A. Non-Discrimination**

27 The defendant, its officers, agents, employees, successors, assigns and all persons in
28 active concert or participation with it are enjoined for the duration of the Decree from

1 discriminating against any individual because of his or her disability or failing to reasonably
2 accomodate an individual with a disability.

3 **B. Equal Employment Opportunity Consultant**

4 1. Within thirty (30) days of the Effective Date of this Decree and for a period of three
5 (3) years from the Effective Date of this Decree, defendant shall designate its President as its
6 Equal Employment Opportunity Consultant ("EEO Consultant") to implement and monitor
7 defendant's compliance with the ADA and with the provisions of this Decree.

8 2. The EEO Consultant's responsibilities shall include:

9 a. Assisting defendant in developing an anti-discrimination policy addressing ADA
10 issues, including but not limited to a prohibition against discrimination on the
11 basis of disability, a prohibition against retaliation for engaging in activities
12 protected under the ADA, and a description of the employer's obligation to
13 reasonably accommodate persons covered under the ADA;

14 b. Assisting defendant in developing a complaint procedure whereby disability
15 discrimination complaints are received and processed, which procedure shall
16 require that all complaints be referred to the EEO Consultant for his/her direct
17 attention and resolution;

18 c. Assisting defendant in developing a reasonable accommodation procedure
19 whereby the need for reasonable accommodation is identified, potential reasonable
20 accommodations are identified, and appropriate reasonable accommodations are
21 selected, which procedure shall require that all issues of reasonable
22 accommodation be referred to the EEO Consultant for his/her direct attention and
23 resolution;

24 d. Assisting defendant in training defendant's managerial and personnel employees
25 on their responsibilities under the ADA; and

26 e. Ensuring that all reports required by this Decree are accurately compiled and
27 timely submitted, and further ensuring compliance with the terms of this Decree.

28 ///

1 3. The EEOC shall be notified withing sixty (60) days of the Effective Date of this
2 Decree of all policies and procedures required under this Section. The EEOC shall have thirty
3 (30) days after notification to comment upon such policies and procedures prior to their
4 implementation.

5 4. Temcor shall bear all costs associated with the performance of the EEO Consultant's
6 duties.

7 **C. Training**

8 1. The defendant shall submit to the EEOC proposed non-discrimination training pro-
9 grams and identify the person(s) and/or organization(s) conducting the non-discrimination
10 training programs for the instruction of all currently employed human resources and management
11 personnel. Trainings shall be conducted on an annual basis for the duration of the Decree, with
12 the first training taking place within 3 months of the Effective Date of this Decree. The
13 defendant shall notify the EEOC of the dates, times and locations at least ten (10) business days
14 prior to each of the training sessions, and the EEOC shall have the right to attend or participate in
15 any or all such training.

16 2. At a minimum, the non-discrimination training programs shall include the following:

17 a. instruction on the requirements of all applicable equal employment opportunity
18 ("EEO") laws including, but not limited to the ADA including accomodation
19 responsibilities;

20 b. a review of defendant's non-discrimination, non-retaliation and reasonable
21

22 c. training of management and human resources personnel in dealing with discrimination
23 complaints and reasonable accommodation requests.

24 **D. Reporting and Record Keeping**

25 **1 Document Preservation**

26 For the duration of the Decree, defendant agrees to maintain such records as are necessary
27 to demonstrate their compliance with this Decree, including but not limited to the documents
28 specifically identified below, and to verify that the reports submitted are accurate.

X**MONETARY RELIEF**

1
2
3 In settlement of all monetary claims of the Individually Named Intervenor, other than
4 attorneys' fees and costs, defendant shall pay \$135,000.00 to Plaintiff Intervenor Fred Robison,
5 14% of which constitutes backpay and 86% of which constitutes compensation for physical
6 injury. The parties agree that the Intervenor suffered physical injury within the meaning of 26
7 U.S.C. Section 104(a)(2), in the form of an infection and attendant physical disabilities suffered
8 as a result of the cochlear implant surgery which Robison contends Temcor required him to
9 undergo in order to keep his employment with Temcor. Defendant shall pay to Mr. Robison fifty
10 thousand dollars (\$50,000.00) within 15 days of the parties signing this Consent Decree, of which
11 seven thousand dollars (\$7,000.00) constitutes backpay and forty-three thousand dollars
12 (\$43,000.00) constitutes damages for physical injury. Defendant shall pay the balance of eighty-
13 five thousand dollars (\$85,000.00) to Mr. Robison in January of 2003, of which eleven thousand
14 nine hundred dollars (\$11,900.00) constitutes backpay and seventy-three thousand one hundred
15 dollars (\$73,100.00) constitutes damages for physical injury. FICA and federal and state
16 withholding taxes shall be deducted from the backpay amount only. Temcor shall issue Form
17 1099s to Mr. Robison for those amounts which constitute compensation for physical injury.
18 Defendant shall pay the employer's share of FUTA and FICA on the backpay amount and shall
19 not deduct it from the settlement amount.

20 Within ten (10) days of making each payment to Mr. Robison, a copy of the checks and
21 documentation showing FICA/FUTA deductions shall be submitted to the Regional Attorney,
22 Equal Employment Opportunity Commission, Los Angeles District Office, 255 East Temple
23 Street, 4th Floor, Los Angeles, California 90012.

XI**ATTORNEYS' FEES AND COSTS**

26 The Plaintiff Intervenor is the prevailing party for purposes of an award of attorneys' fees
27 and costs.

28 ///

1 The parties agree that under Local Rule 54-12, within 30 days of the Court's execution of
2 this Decree, plaintiff intervenor's counsel shall move this Court for an award of attorney's fees
3 and costs. The Court's decision as to the amount of attorney's fees and costs shall be binding
4 upon the parties and shall not be appealable. Defendant, Temcor, shall not raise its financial
5 condition in connection with plaintiff intervenor's counsel's motion for an award of attorney's
6 fees and costs.

7 Defendant shall pay one third (1/3) of the awarded attorney's fees and costs within 15
8 days of the Court's order awarded such fees and costs. Defendant shall pay the balance in
9 January of 2003.

10 The parties agree that fees and costs to compensate the intervenor's counsel belong solely
11 to the plaintiff intervenor's counsel, Litt & Associates, as provided by California law, and shall
12 be paid separately and directly to it. A 1099 shall be issued to Litt & Associates for the amount
13 of the fees, and none shall be issued to the Intervenor directly.

14 Defendant shall bear all costs associated with its administration and implementation of
15 this Decree.

16 XII

17 MISCELLANEOUS PROVISIONS

18 The defendant will provide any potential successor with a copy of this Decree within a
19 reasonable time of not less than thirty (30) days prior to the execution of any document providing
20 for acquisition or assumption of control of the defendant, or any other material change in
21 corporate structure, and shall simultaneously inform the Commission of the same.

22 The defendant and its successors shall assure that, during the term of this Decree, all of
23 its officers, managers, and supervisors are aware of any of the terms of this Decree which relate to
24 their job duties.

25 ///

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XIII

FACSIMILED SIGNATURE

The parties agree that facsimiled signatures to this Decree have the same force and effect as signatures penned in ink.

ORDER

The provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is **HEREBY ORDERED**.

Dated: June 10, 2002

Lee. Mauleen Byrd
Judge United States District Court

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION**
ANNA Y. PARK
DANA C. JOHNSON

Date: June 6, 2002

By: [Signature]
ANNA Y. PARK
Attorneys for Plaintiff

Date: June __, 2002

TEMCOR, INC.

By: _____
C.A. Tourville
President, TEMCOR, INC.

Date: June __, 2002

PLAINTIFF/INTERVENOR

Fred Robison

FROM : TEMCOR

FAX NO. : 9127546728

Jun. 05 2002 03:19PM P2

Sent By: 1199;
May-04-02 09:00am Prod-LEGAL UNIT

1 210 000 4883,

JUN-0-02 12:15PM;

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XIII

FACSIMILED SIGNATURE

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The parties agree that facsimiled signatures to this Decree have the same force and effect as signatures prepared in ink.

ORDER

The provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is **HEREBY ORDERED**.

Date: _____

Judge United States District Court

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
ANNA Y. PARK
DANA C. JOHNSON**

Date: June __, 2002

By: _____
ANNA Y. PARK
Attorney for Plaintiff

Date: June 5, 2002

TEMCOR, INC.

By: _____
C.A. TREVINS
President, TEMCOR, INC.

Date: June 3, 2002

PLAINTIFF/INTERVENOR

Fred Johnson

Sent By: LITC;
May-31-02 12:00pm Firm-LEGAL UNIT

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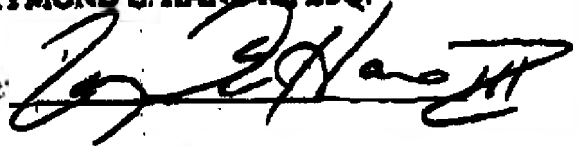
**LITT & ASSOCIATES
BARRETT S. LITT, ESQ.
BRYAN MILLER, ESQ.**

By: 
Bryan Miller

**Attorneys for Plaintiff/Intervenor,
FRED ROBISON**

Date: June 4, 2002

**WALLER LANDEN DORTCH &
DAVIS, LLP
E. LEE HORTON, ESQ.
THOMAS H. LEE, ESQ.
RAYMOND E. HANEHL, ESQ.**

By: 

**Attorneys for Defendant
TEMCOR, INC.**

Date: June 5, 2002