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EEOC v. Mercury Air Centers, Inc.

Judge A. Howard Matz

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EEOC v. Mercury Air Centers, Inc.

Keywords

EEOC, Mercury Air Centers, 2:08-cv-06332-AHM-E, Consent Decree, Hostile work environment, sexual harassment, race, Asian, African-American, National Origin, Latino, Aerospace, Employment Law, Title VII

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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 v.

21 MERCURY AIR CENTERS, INC., et
22 al,

23 Defendant.

Case No CV-08-06332 AHM (EX)

**[PROPOSED] CONSENT DECREE;
ORDER**

HONORABLE A. HOWARD MATZ

24 Plaintiff U.S. Equal Employment Opportunity Commission (the "EEOC" or
25 "Commission") and Mercury Air Centers, Inc. (hereafter "Defendant" or "MAC")
26 hereby stipulate and agree to entry of this Consent Decree to resolve the
27 Commission's complaint, filed under Title VII of the Civil Rights Act of 1964, as
28 amended, 42 U.S.C. § 2000e et seq. ("Title VII"), alleging that Defendant and
Does 1 - 10 subjected Charging Party Chandler Srivilas and other employees to
race harassment (Asian and African-American), national origin harassment

1 (Filipino and Latino) and/or sexual harassment resulting in a hostile work
2 environment.

3 **I.**

4 **PURPOSES AND SCOPE OF THE CONSENT DECREE**

5 A. The parties to this Consent Decree (“Decree”) are the EEOC and MAC. The
6 scope of the injunctive relief of this Decree is MAC’s Burbank facility (Mercury
7 Air Center Burbank, Inc.), and shall be binding upon and enforceable against the
8 officers, directors, agents, successors, and assigns of MAC's Burbank facility.

9 B. The parties have entered into

10 C. this Decree for the following purposes:

11 1. To provide monetary and injunctive relief;

12 2. To confirm and ensure that its employment practices will comply with
13 federal law;

14 3. To confirm and ensure that there will be a work environment free
15 from hostility and retaliation;

16 4. To provide training for Defendant’s managers and employees with
17 respect to their obligations under Title VII; and

18 5. To confirm and ensure that there will be a mechanism for handling
19 discrimination complaints in the workplace in an appropriate and effective manner.
20

21 **II.**

22 **RELEASE OF CLAIMS**

23 A. This Decree fully and completely resolves all issues, claims and allegations
24 by the EEOC against MAC that are raised in the Complaint filed in this action in
25 the United States District Court, Central District of California on September 25,
26 2008, captioned *U.S. Equal Employment Opportunity Commission v. Mercury Air*
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1 *Centers, Inc. and Does 1-10*; Case No. CV -08-06332 AHM (EX) (the
2 “Complaint”).

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

6 C. Nothing in this Decree shall be construed to limit or reduce MAC’s
7 obligation to comply fully with Title VII or any other federal employment statute.

8 D. This Decree in no way affects the EEOC’s right to bring, process,
9 investigate or litigate other charges that may be pending or may later arise against
10 MAC in accordance with standard EEOC procedures.

11 **III.**

12 **JURISDICTION**

13 A. The Court has jurisdiction over the parties and the subject matter of this
14 lawsuit. The Complaint asserts claims that, if proven, would authorize the Court to
15 grant the equitable relief set forth in this Decree. The terms and provisions of this
16 Decree are fair, reasonable and just. This Decree conforms with the Federal Rules
17 of Civil Procedure and Title VII and is not in derogation of the rights or privileges
18 of any person.

19 B. The Court shall retain jurisdiction of this action during the duration of the
20 Decree for the purposes of entering all orders, judgments and decrees that may be
21 necessary to implement the relief provided herein.

22 **IV.**

23 **EFFECTIVE DATE AND DURATION OF DECREE**

24 A. The provisions and agreements contained herein are effective immediately
25 upon 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
27 two (2) years after the Effective Date. The Decree will expire on its own terms
28 unless the Court grants an extension upon Motion by the EEOC.

1 V.

2 **MODIFICATION AND SEVERABILITY**

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

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

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

15 VI.

16 **COMPLIANCE AND DISPUTE RESOLUTION**

17 A. The parties expressly agree that if the Commission has reason to believe that
18 MAC has failed to comply with any provision of this Consent Decree, the
19 Commission may bring an action before this Court to enforce the Decree. Prior to
20 initiating such action, the Commission will notify MAC and its legal counsel of
21 record, in writing, of the nature of the dispute. This notice shall specify the
22 particular provision(s) that the Commission believes MAC has breached. Absent a
23 showing by either party that the delay will cause irreparable harm, MAC shall have
24 thirty (30) days to attempt to resolve or cure the breach.

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

27 C. After thirty (30) days have passed with no resolution or agreement to extend
28 the time further, the Commission may petition this Court for resolution of the

1 dispute, seeking all available relief, including an extension of the term of the
2 Decree, the Commission's costs incurred in securing compliance with the Decree,
3 and any other relief the Court deems appropriate.

4 **VII.**

5 **MONETARY RELIEF**

6 A. In settlement of this lawsuit, MAC shall pay a total of \$600,000.00. Any
7 amounts remaining after Chandler Srivilas and presently identified class members
8 receive their share of monetary relief, shall be designated as the "Class Fund" for
9 unidentified class members. The designation of monetary relief to the Charging
10 Party, any identified class member, and to any unidentified class member(s) shall
11 be made at the sole discretion of the EEOC.

12 B. Following Court approval of this Consent Decree, once the EEOC gives
13 MAC a distribution list for the Charging Party and the identified class members,
14 accompanied by an executed Release Agreement (in the form attached as Exhibit
15 D) for Charging Party and identified class members, MAC shall forward, via
16 certified mail, a check to the Charging Party and any identified class members
17 within twenty (20) business days. All amounts are to be designated as
18 compensatory damages and no withholding will be made. MAC shall prepare and
19 distribute 1099 tax reporting forms to the Charging Party and identified class
20 members, and shall make appropriate reports to the Internal Revenue Service.

21 C. Within twenty (20) business days from the EEOC giving MAC a
22 distribution list for the Charging Party and the identified class members, MAC
23 shall allocate the remaining funds to fund/create the Class Fund which will be used
24 to distribute monetary payments among all eligible class members (as defined
25 below), all in accordance with the provisions of this Decree. The Class Fund shall
26 be used solely to make payments to individuals who submit claims ("potential
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1 class members”) and whom the EEOC determines to be eligible to receive
2 monetary relief in this lawsuit (“class members”).

3 Within twenty (20) business days from the EEOC giving MAC a distribution
4 list for the Charging Party and the identified class members, MAC shall provide
5 the EEOC with written verification of the funding/creation of this account. MAC
6 shall be ultimately responsible for all costs and fees connected with the creation
7 and maintenance of this account deemed the Class Fund.

8 a. Notification of Settlement/Claims Process

9 Within twenty (20) business days following the entry of this Decree, MAC
10 shall forward to the EEOC and the Claims Administrator the names, telephone
11 numbers, last known addresses, social security number, emergency contact
12 information and any known subsequent employment for all employees (“Potential
13 Class Member List”) known to have been employed by MAC anytime during the
14 time period of May 24, 2004 to January 11, 2007 (“Class Time Period”). MAC
15 shall provide all such information within its possession, custody or control.

16 Within forty (40) business days following the entry of this Decree, MAC
17 shall send each individual identified in the Potential Class Member List a letter and
18 a questionnaire, attached as Exhibits “A,” and “D” respectively, notifying him/her
19 of the instant Title VII action, the existence of the Class Fund, class member
20 eligibility criteria, and EEOC contact information should he/she be interested in
21 participating as a class member. MAC shall concurrently send to the EEOC’s Los
22 Angeles District Office, Attn: Elizabeth Esparza-Cervantes, Trial Attorney, 255
23 East Temple Street, 4th Floor, Los Angeles, CA 90012, a copy of all
24 correspondence to the individuals identified in the Potential Class Member List.

25 If these employees’ addresses are not current, the EEOC shall provide notice
26 of the identities of those individuals whose address is not current and/or the mail
27 was returned. MAC shall conduct a data base search for the Potential class
28 member’s current addresses at MAC’s own cost and notify the EEOC’s Los

1 Angeles District Office, Attn: Elizabeth Esparza-Cervantes, Trial Attorney, 255
2 East Temple Street, 4th Floor, Los Angeles, CA 90012, of a new address within
3 thirty (30) days of receiving notice from the EEOC.

4 After evaluating all the claims submitted by the Potential Class Members,
5 the EEOC shall forward to MAC the names, mailing addresses, and monetary
6 allocation of the eligible class members ("Final Distribution List"). EEOC has the
7 sole discretion in determining class member eligibility, and the allocation of
8 monetary amount(s) from the Class Fund to each class member. EEOC's
9 determination of these issues is final, and MAC agrees that it will neither
10 participate in, nor object to the EEOC's determinations.

11 b. Payment to Eligible Class Members

12 As a condition precedent to entitlement to payment, each eligible class
13 member must execute and deliver to the EEOC (for further delivery to MAC), an
14 executed Release Agreement in the form attached as Exhibit D. Within twenty
15 (20) business days after the EEOC has forwarded the Final Distribution List and
16 Release Agreements to MAC, MAC shall forward payment from the Class Fund to
17 each eligible class member by certified mail, return receipt requested as
18 determined by the EEOC. All amounts distributed from the Class Fund constitute
19 "compensatory damages," under the Civil Rights Act of 1991, 42 U.S.C. §1981a.
20 MAC shall issue an IRS Form 1099 to each eligible claimant for all payments
21 disbursed from the Class Fund.

22 Within ten (10) business days of the issuance of each and every settlement
23 check, MAC shall submit a copy of each check and related correspondence to the
24 Regional Attorney, Anna Y. Park, U.S. Equal Employment Opportunity
25 Commission, 255 East Temple Street, 4th Floor, Los Angeles, CA 90012.

26 C. If after every effort has been made to the EEOC's sole satisfaction,
27 monies remain in the Class Fund ("Remainder Funds"), said Remainder Funds
28 shall be donated in the joint name of MAC's parent, Atlantic Aviation Corporation,

1 and Chartis, to a charity that addresses race, national origin and sex discrimination
2 issues, which charity shall be subject to the EEOC's approval.

3 **VIII.**

4 **GENERAL INJUNCTIVE RELIEF**

5 **A. Non-Discrimination**

6 1. Harassment Based on Sex, Race and National Origin

7 The officers, agents, management (including all supervisory employees),
8 successors, assigns of MAC's Burbank facility, and all those in active concert or
9 participation with them, or any of them, are hereby enjoined from: (a)
10 discriminating against persons on the basis of sex, race or national origin in the
11 terms and conditions of employment; (b) engaging in or being a party to any
12 action, policy or practice that is intended or is known to them to have the effect of
13 harassing or intimidating any employee on the basis of sex, race or national origin;
14 and (c) creating, facilitating or permitting the existence of a work environment that
15 is sexually hostile or hostile to Asian, Black or Latino employees.

16 2. Retaliation

17 The officers, agents, management (including all supervisory employees),
18 successors, assigns of MAC's Burbank facility, and all those in active concert or
19 participation with them, or any of them, are hereby enjoined from engaging in,
20 implementing or permitting any action, policy or practice with the purpose of
21 retaliating against any current or former employee or applicant of MAC's
22 Burbank's facility, or either of them, because he or she has in the past, or during the
23 term of this Decree: (a) opposed any practice made unlawful under Title VII; (b)
24 filed a charge of discrimination alleging such practice; (c) testified or participated
25 in any manner in any investigation (including without limitation, any internal
26 investigation undertaken by MAC), proceeding in connection with this case and/or
27 relating to any claim of a Title VII violation; (d) was identified as a possible
28 witness or claimant in this action; (e) asserted any rights under this Decree; or (f)
sought and/or received any relief in accordance with this Decree.

1 **B. Posting**

2 Within twenty (20) business days after the Effective Date and throughout the
3 term of this Decree, MAC shall post a notice (attached as Exhibit “B”) of the terms
4 of this Decree in a clearly visible location frequented by employees at MAC's
5 Burbank facility.

6 **C. EEO Compliance Officer**

7 MAC shall appoint Carole A. Moore, Human Resources Director of MAC's
8 parent organization, Atlantic Aviation Corporation, as EEOC Compliance Officer.
9 Ms. Moore's qualifications will be presented to the EEOC for approval as the EEO
10 Compliance Officer. The EEOC will not unreasonably withhold the approval. The
11 EEO Compliance Officer shall be responsible for implementing the Burbank
12 facility's compliance with Title VII and with the training provisions of this Decree.

13 The EEOC shall be advised of any proposed changes in the designation of
14 the EEO Compliance Officer thirty (30) days prior to such change. The EEOC and
15 MAC shall use their best efforts to select an EEO Compliance Officer agreeable to
16 both parties.

17 The EEO Compliance Officer’s duties shall include the ensuring that MAC:

- 18 1. has procedures to handle complains of discrimination, harassment and
19 retaliation, and submits the same to the EEOC for comment and review;
- 20 2. trains managerial and staff/hourly employees on their rights and
21 responsibilities under Title VII, including, but not limited to, the responsibilities to
22 provide a workplace free of discrimination and harassment;
- 23 3. trains all employees on policies and procedures relating to harassment
24 based upon sex, race, national origin, and retaliation;
- 25 4. monitors and adequately investigates all complaints of harassment based
26 upon sex, race, national origin, and retaliation;
- 27 5. timely and accurately submits reports required by this Decree;

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1 6. enforces, and ensures the existence of, appropriate and consistent
2 disciplinary policies to hold employees and managers accountable for failing to take
3 appropriate action and/or for engaging in conduct prohibited under this Decree;

4 7. creates a centralized system of tracking discrimination, harassment and
5 retaliation complaints.

6 8. Ensuring compliance with the terms of this Decree.

7 **D. Policies Concerning Discrimination, and Harassment**

8 Within forty-five (45) days of the effective date, MAC shall review and, if
9 necessary, revise its current race and/or national origin discrimination, sex
10 harassment and/or retaliation policies and procedures so that the policies include

11 1. A clear statement explaining that discrimination on the basis of sex,
12 race, national origin and/or, including harassment and retaliation will not be
13 tolerated;

14 2. Assurance that employees who make complaints of
15 harassment/discrimination or provide information related to such complaints will
16 be protected against retaliation;

17 3. A clearly described complaint process that provides accessible and
18 confidential avenues of complaint with contact information including name (if
19 applicable), address, and telephone number of persons both internal (i.e. human
20 resources) and external to MAC Burbank to whom employees may report
21 discrimination and retaliation, including a written statement that the employee may
22 report the discriminatory behavior to designated persons outside their chain of
23 management;

24 4. A hotline number accessible 24 hours and 7 days a week where
25 employees can call with complaints about discrimination and/or retaliation;

26 5. Assurance that the employer will protect the confidentiality of
27 harassment/discrimination complaints to the extent possible;

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1 6. A complaint process that provides a prompt, thorough, and impartial
2 investigation;

3 7. A procedure for communicating with the complainant in writing
4 regarding the status of the complaint/investigation, results of the investigation, and
5 any remedial action taken;

6 8. Assurance that MAC Burbank will take immediate and appropriate
7 corrective action when it determines that harassment/discrimination and/or
8 retaliation has occurred; and

9 9. Otherwise, ensure compliance with the terms of this Decree.

10 If revised, this policy shall immediately be distributed to all of MAC
11 Burbank's employees, including management/supervisory staff, and shall be
12 included in any relevant policy or employee manuals distributed to employees by
13 MAC. MAC shall collect acknowledgments from each employee who receives the
14 policy.

15 E. **Performance Evaluations**

16 MAC shall hold its MAC Burbank managers, supervisors, and human
17 resources personnel accountable for compliance with MAC's equal employment
18 opportunity and anti-retaliation policies.

19 F. **Training**

20 Within six (6) months of the Effective Date, all of MAC Burbank's managerial,
21 supervisory, and staff/hourly employees shall be required to attend an intensive
22 training program of at least four (4) hours for managerial employees and two (2)
23 hours for staff/hourly employees. The training shall be mandatory and occur once
24 every year thereafter for the term of this Decree. One training each year for
25 staff/hourly employees shall be conducted in Spanish, if needed by employees, and
26 one training each year for staff/hourly employees shall be conducted in English.
27 Each staff/hourly employee shall be required to attend one training session each
28 year, in a language that each employee best understands.

1 MAC represents that it has established and shall maintain a record-keeping
2 procedure that provides for the centralized tracking of discrimination complaints
3 and the monitoring of such complaints to prevent retaliation. The records
4 maintained include:

- 5 1. All documents generated in connection with any complaint,
6 investigation into, or resolution of every complaint of discrimination or retaliation
7 for the duration of the Decree and the identities of the parties involved;
- 8 2. All forms acknowledging employees' receipt of MAC Burbank's
9 discrimination and anti-retaliation policy; and
- 10 3. All documents verifying the occurrence of all training sessions and
11 names and positions of all attendees for each session as required under this Decree.

12 MAC shall make the aforementioned records for MAC Burbank
13 available to the EEOC within ten (10) business days following a written request by
14 the EEOC.

15 **B. Reporting**

16 In addition to the notices to the EEOC specified above, MAC shall
17 provide the following reports to the EEOC in writing, by mail or facsimile:

- 18 1. Within ninety (90) days after the Effective Date, MAC shall submit to
19 the EEOC an initial report regarding MAC's Burbank facility which contains:
 - 20 a. A copy of the discrimination and anti-retaliation policy;
 - 21 b. A summary of the procedures and record-keeping
22 methods developed with the EEOC Compliance Officer for centralized tracking of
23 discrimination complaints and the monitoring of such complaints;
 - 24 c. A statement confirming that the required notices
25 pertaining to this Decree and the revised discrimination and anti-retaliation policies
26 have been posted; and
 - 27 d. Confirmation that all employee acknowledgment forms
28 indicating receipt of the discrimination and anti-retaliation policy were gathered.

1 2. MAC shall also provide the following reports semiannually for the
2 MAC Burbank facility throughout the term of this Decree:

3 a. The attendance lists of all attendees for all training
4 sessions required under this Decree that took place during the previous six months;

5 b. Acknowledgments of receipt of the discrimination and
6 harassment policy for all employees hired during the previous six months; and

7 c. A description of all discrimination and/or retaliation
8 complaints made since the submission of the immediately preceding report
9 hereunder. This description shall include the names of the individuals alleging
10 harassment or retaliation, the nature of the harassment or retaliation, the names of
11 the alleged perpetrators of harassment or retaliation, the dates of the alleged
12 harassment or retaliation, a brief summary of how each complaint was resolved,
13 and the identity of the person(s) who investigated or resolved each complaint. If
14 no results have been reached as of the time of the report, the result shall be
15 included in the next report.

16 3. MAC shall also provide the foregoing report to the EEOC 60 days
17 prior to the two (2) year term of the Decree so that the EEOC can determine,
18 within its discretion, whether MAC has appropriately handled discrimination,
19 harassment and/or retaliation complaints. If the EEOC determines that MAC has
20 appropriately handled said complaints the decree will expire in two (2) years from
21 its Effective Date.

22 4. MAC shall provide a report to the EEOC detailing any changes of the
23 procedures or record-keeping methods for centralized tracking of discrimination
24 complaints and the monitoring of such complaints within thirty (30) days before
25 implementing such changes.

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X.

**COSTS OF ADMINISTRATION AND IMPLEMENTATION
OF CONSENT DECREE**

MAC shall bear all costs associated with its administration and implementation of its obligations under this Consent Decree.

XI.

COSTS AND ATTORNEYS' FEES

Each party shall bear its own costs of suit and attorneys' fees.

XII.

MISCELLANEOUS PROVISIONS

A. During the term of this Consent Decree, MAC shall provide any potential successor-in-interest with a copy of this Consent 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 MAC's Burbank facility, or any other material change in corporate structure, and shall simultaneously inform the EEOC of same.

B. During the term of this Consent Decree, MAC and its successors shall assure that each of its officers, managers and supervisors that oversee the MAC Burbank facility 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 the Regional Attorney, Anna Y. Park, U.S. Equal Employment Opportunity Commission, Los Angeles District Office, 255 E. Temple St., 4th Fl., Los Angeles, CA 90012.

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.

E. The parties agree to entry of this Decree and judgment subject to final approval by the Court.

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

Respectfully submitted,
U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Date: Aug 6, 2010

By: [Signature]
for Anna Y. Park
Elizabeth Esparza-Cervantes
Attorneys for Plaintiff

Date: August 6, 2010

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
By: Michael R Buchanan
Michael Buchannan
Attorneys for Defendant

[PROPOSED] ORDER

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

Date: _____

The Honorable A. Howard Matz
United States District Court Judge