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## US Equal Employment Opportunity Commission, Erika Morales, et al., v. ABM Industries Inc., et al.

Judge Lawrence J. O'Neill

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**US Equal Employment Opportunity Commission, Erika Morales, et al., v. ABM Industries Inc., et al.**

**Keywords**

EEOC, Erika Morales, ABM Industries Inc., 1:07 CV 01428 LJO-JLT, Consent Decree, Sexual Harassment, Sex, Female, Hostile Work Environment, Employment Law, Title VII, Service

1 Anna Y. Park, CA SBN 164242  
 2 Elizabeth Esparza-Cervantes, CA SBN 214158  
 3 Lorena Garcia-Bautista, CA SBN 234091  
 4 EQUAL EMPLOYMENT  
 5 OPPORTUNITY COMMISSION  
 6 255 East Temple Street, 4th Floor  
 7 Los Angeles, CA 90012  
 8 Telephone: (213) 894-1068  
 9 Facsimile: (213) 894-1301  
 10 [lado.legal@eoc.gov](mailto:lado.legal@eoc.gov)

11 Attorneys for Plaintiff  
 12 UNITED STATES EQUAL EMPLOYMENT  
 13 OPPORTUNITY COMMISSION

14 Keith Jacoby, CA SBN 150233  
 15 Laura Hayward, CA SBN 204014  
 16 Matthew E. Farmer, CA SBN 190484  
 17 LITTLER MENDELSON  
 18 650 California St., 20<sup>th</sup> Floor  
 19 San Francisco, CA 94108-2693  
 20 Telephone: (415) 433-1940  
 21 Facsimile: (415) 399-8490

22 Attorneys for Defendants  
 23 ABM INDUSTRIES, INC., et al.

24 **UNITED STATES DISTRICT COURT**  
 25 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

26 U.S. EQUAL EMPLOYMENT  
 27 OPPORTUNITY COMMISSION,  
 28 Plaintiff,  
 29 ERIKA MORALES and  
 30 ANONYMOUS PLAINTIFFS ONE  
 31 THROUGH EIGHT,  
 32 v.  
 33 ABM INDUSTRIES INC., ABM  
 34 JANITORIAL SERVICES, INC.;  
 35 ABM JANITORIAL NORTHERN  
 36 CALIFORNIA; JOSE VASQUEZ;  
 37 Does 1-10 inclusive,  
 38 Defendants

Case No. 1:07 CV 01428 LJO-JLT

**Amended Consent Decree; Order**

The Honorable Lawrence J. O’Neill  
 U.S. District Court Judge

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## I. INTRODUCTION

Plaintiff U.S. Equal Employment Opportunity Commission (the “EEOC” or “Commission”) and Defendants ABM Industries Incorporated, ABM Janitorial Services, Inc., ABM Janitorial Services Northern-California (“Employer”); (all defendants are hereinafter collectively referred to as “Defendants” or “ABM”) hereby stipulate and agree to entry of this Consent Decree to resolve the Commission’s First Amended Complaint, filed under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (“Title VII”), alleging that charging parties Erika Morales, Delia DeMejia, and nineteen other women designated as class members in this case by the EEOC (collectively known herein as “Claimants”) were subjected to unlawful employment practices on the basis of sex, female, in violation of Section 706 (f)(1) and 3 and Section 707(f)(1) of Title VII. Nothing in this Decree shall construe or be construed to obligate any subsidiary of ABM Industries Incorporated not named as a defendant in this action.

## II. PURPOSES AND SCOPE OF THE CONSENT DECREE

A. In the interest of resolving this matter, the Commission and Defendants (hereinafter sometimes collectively referred to as “the Parties”) have agreed that this action should be finally resolved by entry of this Consent Decree (“Decree”). This Decree shall be binding on and enforceable against Defendants and their officers, directors, agents, successors and assigns. The Parties have entered into this Decree for the following purposes:

1. To provide appropriate monetary and injunctive relief;
2. To ensure that Defendants’ employment practices comply with federal law;
3. To create a work environment free from hostility and retaliation;
4. To provide training for Employer’s managers, supervisors, and

1 employees with respect to their obligations under Title VII; and  
2 5. To develop an appropriate and effective mechanism for  
3 receiving and handling Employer’s sexual harassment and retaliation  
4 complaints in the workplace.

5 B. In entering into this Consent Decree, Defendants deny that they or  
6 anyone acting on their behalf engaged in actionable conduct. This Decree and  
7 compliance with this Decree shall not be construed as an admission of liability by  
8 Defendants, or as an admission by Defendants of any violation of rights of the  
9 Claimants or of any other person’s allegation of harassment. To the extent that  
10 some of the Claimants intervened as plaintiffs in this action, they have entered into  
11 a separate agreement to which the EEOC is not a party. This Decree is not  
12 contingent upon said separate agreement.

13 **III. RELEASE OF CLAIMS**

14 A. The Parties agree that this Decree resolves EEOC’s First Amended  
15 Complaint filed in this action in the United States District Court, Eastern District  
16 of California on July 17, 2009, captioned *U.S. Equal Employment Opportunity*  
17 *Commission, Erika Morales, and Anonymous Plaintiffs One Through Eight vs.*  
18 *ABM Industries Incorporated; ABM Janitorial Services, Inc.; and ABM Janitorial*  
19 *Services-Northern California*; Case No. 1:07 CV01428-LJO-BAK (GSA)  
20 (hereafter “the Action”). The Parties further agree that this Decree constitutes a  
21 complete resolution of all EEOC claims of sexual harassment under Title VII made  
22 in this Action.

23 B. Nothing in this Decree shall be construed to limit or reduce  
24 Defendants’ obligation to comply fully with Title VII or any other federal  
25 employment statute.

26 C. Nothing in this Decree shall be construed to preclude the EEOC from  
27 bringing suit to enforce this Decree in the event that any party hereto fails to  
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1 perform the promises and representations contained herein.

2 D. This Decree in no way affects the EEOC’s right to bring, process,  
3 investigate or litigate other charges that may be in existence or may later arise  
4 against Defendants other than the charges specifically identified in this Release of  
5 Claims section. As of the date that the parties executed this Decree, the Claimants  
6 do not have any open charges of harassment related to the allegations raised by the  
7 Claimants in this action against Defendants.

8 **IV. JURISDICTION**

9 A. The Court has jurisdiction over the parties and the subject matter of  
10 this action. The First Amended Complaint asserts claims that, if proven, would  
11 authorize the Court to grant the relief set forth in this Decree. The terms and  
12 provisions of this Decree are fair, reasonable, and just. This Decree conforms to  
13 the Federal Rules of Civil Procedure and Title VII and is not in derogation of the  
14 rights or privileges of any person. The entry of this Decree will further the  
15 objectives of Title VII and will be in the best interest of the Parties.

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

19 **V. EFFECTIVE DATE AND DURATION OF DECREE**

20 A. The provisions and agreements contained herein are effective  
21 immediately upon the date which this Decree is entered by the Court (“the  
22 Effective Date”).

23 B. Except as otherwise provided herein, this Decree shall remain in  
24 effect for three (3) years after the Effective Date, provided that Defendants have  
25 substantially complied with the terms of this Decree. In the event that Defendants  
26 have not substantially complied, the duration of this Decree may be extended by  
27 Court order in order to effectuate its purposes.

1 **VI. DECREE ENFORCEMENT**

2 A. If the Commission has reason to believe that Defendants have  
3 breached this Decree, the Commission may bring an action before this Court to  
4 enforce the Decree. Prior to initiating such action, the Commission will notify  
5 Defendants and their legal counsel of record, in writing, of the nature of the  
6 dispute. This notice shall specify the particular provision(s) that the Commission  
7 believes Defendants have breached. Absent a showing by either party that the  
8 delay will cause irreparable harm, Defendants shall have forty-five (45) days from  
9 the date of notice (“Dispute Resolution Period”) to attempt to resolve or cure the  
10 breach.

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

13 C. After the expiration of the Dispute Resolution Period, the  
14 Commission may initiate an enforcement action in this Court, seeking all available  
15 relief, including an extension of the duration of the Decree for such time as the  
16 Defendants are shown to be in breach of the Decree.

17 D. The Commission may petition this Court for compliance with this  
18 Decree at any time during which this Court maintains jurisdiction over this action.  
19 Should the Court determine what the Defendants have not complied with this  
20 Decree, in whole or in part, it may impose appropriate relief, including an  
21 extension of the duration of this decree, the imposition of Commission’s costs and  
22 attorneys’ fees incurred in securing compliance with the Decree, and other relief  
23 the court deems appropriate.

24 **VII. MODIFICATION AND SEVERABILITY**

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

2 B. If one or more provisions of the Decree are rendered unlawful or  
3 unenforceable, the parties shall make good faith efforts to agree upon appropriate  
4 amendments to this Decree in order to effectuate the purposes of the Decree. If the  
5 Parties are unable to reach agreement, the Court shall order appropriate alternative  
6 provisions in order to effectuate the purposes of the Decree. Should one or more  
7 provisions of this Decree be deemed unlawful, all other lawful and enforceable  
8 provisions will remain in full force and effect.

9 **VIII. MONETARY RELIEF**

10 A. Defendants agree to pay a total of Five Million, Eight Hundred  
11 Thousand Dollars (\$5,800,000.00) in full resolution of this Action to be distributed  
12 amongst twenty-one women that the EEOC has identified as Claimants to the  
13 EEOC’s suit, some of whom separately intervened. The distribution to the  
14 Claimants shall be at the sole discretion of the EEOC and is not subject to review.  
15 The EEOC shall provide Defendants with a list of the name and address to which  
16 the Claimants monetary relief should be delivered (hereafter “Distribution List”).  
17 Where indicated in the EEOC’s Distribution List as monetary relief being  
18 delivered to Claimants represented by Intervenor’s counsel, Defendants shall remit  
19 said amounts to the third Party administrator, in accordance with the Settlement  
20 Agreement executed by Defendants and Plaintiff-Intervenor’s.

21 B. Defendants shall forward, via certified mail, a check to each  
22 individual identified by EEOC pursuant to Section VIII.A above within ten (10)  
23 business days of their receipt of EEOC’s Distribution List and a signed W-9 Form.  
24 The EEOC has designated the monies to be paid to the Claimants as non-wage  
25 compensation under Title VII and no tax withholding shall be made. Defendants  
26 shall make appropriate reports to the Internal Revenue Service and other tax  
27 authorities. Defendants shall be solely responsible for any costs associated with  
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1 the issuance and distribution of the 1099 tax reporting forms to each of the  
2 Claimants. Claimants shall be solely responsible for taxes payable, if any, on their  
3 respective portion of settlement proceeds. The tax handling and reporting of the  
4 monies paid to Plaintiff-Intervenors is set out in that separate Settlement  
5 Agreement. Nothing in this Decree constitutes tax advice nor meant to replace each  
6 Claimant's responsibility to consult a tax expert with any relevant tax questions.

7 In some instance, the EEOC has designated that some claimants have claims  
8 that have resulted in personal injury. Those individuals shall be identified in the  
9 Distribution List accordingly. EEOC did not seek wage loss damages in settlement  
10 of this Action.

11 C. Within three (3) business days of the issuance of each and every  
12 settlement check, Defendants shall submit a copy of each check and related  
13 correspondence to the Regional Attorney, Anna Y. Park, U.S. Equal Employment  
14 Opportunity Commission, 255 East Temple Street, 4th Floor, Los Angeles, CA  
15 90012. Within five (5) business days of the issuance of each and every 1099 Form  
16 to the Claimants, Defendants shall submit a copy of each 1099 Form and related  
17 correspondence to the Regional Attorney, Anna Y. Park, U.S. Equal Employment  
18 Opportunity Commission, 255 East Temple Street, 4th Floor, Los Angeles, CA  
19 90012.

## 20 **IX. CLAIMANT SPECIFIC INJUNCTIVE RELIEF**

21 Within ten (10) days of the Effective Date of this Decree, ABM Industries  
22 Incorporated and/or the Employer as applicable shall:

23 A. remove from the personnel files of each identified Claimant's and, to  
24 the extent applicable, their supervisors, all negative complaints, reports, criticisms,  
25 and any other documents reflecting negatively on her job performance issued or  
26 recommended by the Claimant's accused harasser for the suit's relevant time  
27 period from 2000 to the present or references to the charges of discrimination filed  
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1 against Defendants or their participation in this action;

2 B. to the extent that ABM Industries Incorporated and/or the Employer  
3 must keep records of the charges of discrimination or each Claimants involvement  
4 in the Action in order to effectuate this Decree, maintain said records separately  
5 and segregated from Claimants' personnel files;

6 C. refrain from providing negative references and limit employment  
7 reference inquiries related to Claimants to verifying whether the identified  
8 Claimant was employed by the Employer and the time period of such employment;

9 D. to the extent they continue to work for Defendants, ensure that they  
10 are monitored against harassment and retaliation; and

11 E. Change any termination of the Claimants to voluntary resignations.

12 **X. DESIGNATION OF A MONITOR**

13 A. Equal Employment Opportunity Monitor

14 Within thirty days (30) after the Effective Date, ABM shall retain an outside  
15 Equal Employment Opportunity Monitor("Monitor") of the EEOC and  
16 Defendants' choosing with demonstrated experience in the area of employment  
17 discrimination and sexual harassment issues, to implement and monitor  
18 compliance with Title VII and the provisions of this Decree. The parties have  
19 agreed that the designated Monitor shall be Michael Robbins from EXTTI,  
20 Incorporated. In the event that Michael Robbins of EXTTI, Incorporated is no  
21 longer able to perform his services as Monitor in this matter, the Commission shall  
22 provide ABM with a list of at least three suggested successor monitor candidates  
23 acceptable to the Commission. If the parties can not agree to a successor monitor  
24 from the EEOC's list, the parties will be required to file a joint motion for  
25 appointment of a monitor with both sides suggesting candidates and providing  
26 background information for the Court to select the Monitor. The Employer shall  
27 bear all reasonable costs associated with the selection and retention of the Monitor

1 and the performance of his/her duties. The Monitor shall assist in the following:

2 1. Developing or, if deemed necessary by the Monitor, revising  
3 procedures to handle complaints under Title VII of harassment and  
4 retaliation;

5 2. If deemed necessary by the Monitor, revising, and re-  
6 distributing any revised version of the anti- harassment policy and  
7 reporting procedure;

8 3. Review ABM's training materials and assist ABM training its  
9 employees to ensure a workplace free of harassment and retaliation;

10 a. The Monitor shall work with Defendants to develop an  
11 appropriate and effective method of providing Employer's employees  
12 with anti-harassment and retaliation training to Employer's hourly  
13 employees, to include training on ABM Inc.'s policies and procedures  
14 relating to sex harassment and retaliation.

15 4. Assist or ensure proper training of ABM employees who are  
16 involved in overseeing or addressing Employer's employees' sex  
17 harassment complaints on their rights and responsibilities under Title  
18 VII, including but not limited to the responsibilities to provide a  
19 workplace free of harassment and retaliation;

20 5. Ensure that appropriate and consistent disciplinary policies  
21 exist to hold employees and managers accountable for failing to take  
22 appropriate action and/or for engaging in conduct prohibited under  
23 this Decree;

24 6. Ensuring the maintenance of an effective centralized system of  
25 tracking, harassment, and retaliation complaints;

26 7. Monitoring class members and witnesses who participated in  
27 this lawsuit and who continue to be employed by the Employer to  
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1 ensure that they have not been subjected to any retaliation or  
2 harassment. The Monitor shall contact these individuals at least every  
3 three (3) months;

4 8. Ensuring that audits are conducted properly to ensure that  
5 Employer's employees, managers, supervisors, and leads are held  
6 accountable and to implement Defendants' zero tolerance policy with  
7 respect to harassment and retaliation; and

8 9. Further ensuring compliance with the terms of this Decree.

9 **XI. GENERAL INJUNCTIVE RELIEF**

10 A. Non-Discrimination

11 1. Discrimination Based on Sex

12 Defendants, their officers, agents, management (including all supervisory  
13 employees), successors, assigns, and all those in active concert or participation  
14 with them, or any of them, hereby agree not to: (a) discriminate against persons on  
15 the basis of sex in the terms and conditions of employment; (b) engage in or be a  
16 party to any action, policy or practice that is intended or is known to them to have  
17 the effect of harassing or intimidating any employee on the basis of sex; and (c)  
18 create, facilitate or permit the existence of a work environment that is hostile to  
19 female employees.

20 2. Retaliation

21 Defendants, their officers, agents, management (including all supervisory  
22 employees), successors, assigns, and all those in active concert or participation  
23 with them, or any of them, hereby agree not to engage in, implement or permit any  
24 action, policy or practice with the purpose of retaliating against any current or  
25 former employee or applicant of Defendants, or either of them, because he or she  
26 has in the past, or during the term of this Decree: (a) opposed any practice made  
27 unlawful under Title VII; (b) filed a charge of discrimination alleging such

1 practice; (c) testified or participated in any manner in any investigation (including  
2 without limitation, any internal investigation undertaken by any of the  
3 Defendants), proceeding in connection with this case and/or relating to any claim  
4 of a Title VII violation; (d) was identified as a possible witness or claimant in this  
5 action; (e) asserted any rights under this Decree; or (f) sought and/or received any  
6 relief in accordance with this Decree.

7 B. Posting

8 Within ten (10) business days after the Effective Date and throughout the  
9 term of this Decree, the Employer shall post a notice (attached as “Exhibit A”) of  
10 the terms of this Decree, in English and in Spanish, in a clearly visible place at  
11 Employer’s locations frequented by its employees where permitted by owner(s) of  
12 facilities where ABM provides janitorial services. The notice shall be posted in  
13 English and Spanish, and remain posted for the duration of this Decree. In the  
14 alternative, Defendants can disseminate the posting to each of Defendant’s  
15 employees within sixty (60) days of the effective date on an annual basis for the  
16 term of the Decree.

17 **XII. SPECIFIC INJUNCTIVE RELIEF REMEDIES**

18 A. OVERSIGHT AND MONITORING

19 The Vice-President of Human Resources for ABM Janitorial Services, Inc.,  
20 currently Amado Hernandez, shall oversee and ensure that at all times Employer  
21 has access to an adequate number of trained investigators which shall include at  
22 least 2 additional investigators, totaling no less than eight investigators. At least  
23 half of the investigators shall be bilingual in their ability to speak English and  
24 Spanish. The investigators shall be experienced and trained in conducting  
25 harassment and retaliation investigations. The investigators shall conduct  
26 investigations into allegations of harassment or retaliation promptly. The Vice-  
27 President will ensure that immediate corrective and preventative measures are  
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1 g. Enforce all policies to foster a workplace free of sexual harassment,  
2 and retaliation. This includes taking measures to ensure that no retaliation is taken  
3 against persons engaging in protected activity by monitoring the matter as directed  
4 by the Monitor; and

5 h. Ensure that all reports required by this Decree are accurately compiled  
6 and timely submitted;

7 i. Create appropriate and consistent disciplinary policies to hold  
8 employees and managers accountable for failing to take appropriate action and/or  
9 for engaging in conduct prohibited under this Decree;

10 j. Create a centralized system of tracking, harassment, and retaliation  
11 complaints;

12 C. POLICIES AND PROCEDURES

13 Pursuant to this Decree, ABM has submitted to the EEOC and to the  
14 Monitor, who has already been agreed upon by the parties, ABM's 2009 revised  
15 Policy Against Workplace Harassment and CEO Video Message. The Monitor will  
16 be consulted prior to implementing any changes to this policy during the pendency  
17 of the Decree. At all times, the sexual harassment policy or other written practices  
18 shall, at a minimum, include the following:

- 19 1. A strong and clear commitment to a workplace free of sexual  
20 harassment and retaliation;
- 21 2. A clear and comprehensive description of "sexual harassment"  
22 both quid pro quo and hostile work environment, including examples;
- 23 3. A statement encouraging employees to come forward if they  
24 believe that they have been harassed or retaliated against for  
25 complaining about discrimination;
- 26 4. A description of the possible consequences up to and including  
27 termination that will be imposed upon violation of the policy against  
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1 sexual harassment and retaliation;

2 5. A statement of commitment to maximally feasible  
3 confidentiality for persons who bring complaints about sexual  
4 harassment or retaliation;

5 6. An assurance that persons who complain about sexual  
6 harassment they experienced or witnessed or that persons who provide  
7 information related to such complaints will not be subject to  
8 retaliation;

9 7. A statement that the sexual harassment policy applies to all  
10 persons, including management officials, supervisors, vendors,  
11 suppliers, third parties, and customers;

12 8. A clearly described complaint process that provides accessible  
13 and confidential avenues of complaint with the contact information  
14 including name (if applicable), address, and telephone number of  
15 persons both internal (i.e., human resources department and Hotline,  
16 managers) and external to Defendants (i.e., EEOC) to whom  
17 employees may report Title VII harassment and retaliation, including  
18 a written statement that the employee may report the discriminatory  
19 behavior to designated persons outside of their chain of management;

20 9. A statement that employees are not to engage in or discuss  
21 sexual conduct and/or sexual jokes while at work.

22 10. A complaint process that provides a prompt, thorough, and  
23 impartial investigation;

24 11. A procedure for communicating with the complainant in  
25 writing regarding the status of the complaint/investigation, results of  
26 the investigation, and any remedial action taken;

27 12. Assurance that bilingual staff in Spanish and English are  
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1 available for receiving complaints;

2 13. Assurance that immediate and appropriate corrective action will  
3 be taken after a determination that harassment/ and/or retaliation has  
4 occurred; and

5 14. Assurance that disciplinary policies hold employees and  
6 managers accountable for failing to take appropriate action or for  
7 engaging in conduct prohibited under this Decree.

8 This policy shall promptly be distributed in English and Spanish to all of  
9 Employer's employees (including management/supervisory staff and hourly  
10 employees), and shall be included in any relevant policy or employee manuals  
11 distributed to employees. The Employer shall collect written or electronic  
12 acknowledgments from each employee who receives the policy in either English or  
13 Spanish, depending on the language preference of each employee. Employees  
14 needing the policy in Spanish, shall solely sign the acknowledgement page that is  
15 in Spanish. This policy shall be disseminated on a semi-annual basis for the term  
16 of the Decree.

17 All employees will be given a copy of the policy with their  
18 acknowledgement signature in a language appropriate to their language needs.  
19 Throughout the term of this Decree, ABM and the Employer shall make accessible  
20 and post the policy, in English and Spanish, in a legible font, at all of Employer's  
21 offices and locations where feasible and permitted by owner(s) of facilities where  
22 ABM provides janitorial services.

23 ABM has submitted the 2009 sex harassment and retaliation policies for the  
24 EEOC's review.

25 D. Establishment of Harassment/ Retaliation Hotline

26 Within sixty (60) days of the Effective Date of this Decree, Defendants shall  
27 establish, or, if existing, certify existence of a sexual harassment/ retaliation  
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1 Hotline in both English and Spanish, which number shall be published in the  
2 sexual harassment policy and the posting. The Hotline shall be in operation seven  
3 days per week, 24 hours per day. ABM will ensure that all employees, irrespective  
4 of remoteness of work location and language needs, are advised of the harassment  
5 hotline. Any acknowledgement forms signed by employees regarding the  
6 existence of said hotline, shall be signed on the page containing the policy in the  
7 language that the employee understands.

8 Defendants with the Monitor shall ensure that a mechanism by which all  
9 hotline inquiries and response time are tracked for response timeliness exists.  
10 Similarly, Defendants and Monitor will ensure policies and procedures exist so that  
11 all complaints are timely addressed and investigated.

12 E. COMPLAINT PROCEDURE

13 Within sixty (60) days of the Effective Date, ABM shall certify that it has  
14 publicized an internal complaint procedure to provide for the filing, investigation  
15 and, if appropriate, remedying of complaints of sex harassment or retaliation.  
16 ABM shall establish a toll-free number that shall be disseminated to all ABM  
17 employees informing them that a complaint can be logged at any time. The (800)  
18 number reports shall be processed by ABM Industries, Incorporated's Human  
19 Resources department and it shall monitor the effectiveness of the process. The  
20 Monitor shall review the monitoring efforts to ensure prompt, immediate, and  
21 effective response. The Monitor shall also ensure that ABM Industries  
22 Incorporated publicizes the complaint procedure and monitor the investigation  
23 and resolution of such complaints.

24 The Employer shall also publicize the EEOC complaint line number of (800)  
25 669-4000.

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1 F. THE INTERNAL COMPLAINT PROCEDURE SHALL  
2 INCORPORATE THE FOLLOWING ELEMENTS:

- 3 1. A policy describing how investigations will be conducted;
- 4 2. A prompt commencement and thorough investigation by an ABM  
5 employee or hired professional trained to conduct such investigations who is not  
6 connected with the complaint;
- 7 3. A statement that an investigation should include interviews of all  
8 relevant witnesses, including the complainant, and reviews of all relevant  
9 documents;
- 10 4. A written record of all investigatory steps, and any findings and  
11 conclusions, and any actions taken;
- 12 5. Provision for the reasonably prompt resolution of such complaints;
- 13 6. An opportunity for a the complainant to review and respond to  
14 tentative findings, except in those circumstances in which it is necessary to take  
15 immediate action;
- 16 7. Confidentiality of the complaint and investigation to the extent  
17 possible;
- 18 8. Appropriate communication of the final conclusions of the  
19 investigation provided to the complainant;
- 20 9. An appeal procedure to an appropriate ABM representative, should  
21 the complainant be dissatisfied with the results of the investigation; and
- 22 10. In conjunction with the dissemination of this Decree, Employer shall  
23 send a notice that employees complaining of harassment may use the internal  
24 complaint procedure and contact information for the EEOC. The notice shall also  
25 state that filing an internal complaint does not relieve the complainant of meeting  
26 any applicable deadline for the filing of a charge or complaint with EEOC.
- 27 11. The parties acknowledge that employees in Employer's Central  
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1 California branches are not unionized but other employees of Employer are  
2 covered by collective bargaining agreements. The existence of a Collective  
3 Bargaining Agreement is, however, not to be interpreted as a reason not to comply  
4 with Title VII. If any concern arises as to whether Defendants' conduct conflicts  
5 with Title VII and/or the Collective Bargaining Agreement, the Monitor will  
6 resolve the issue.

7 12. Leads and Supervisors will be trained on a regular basis, as specified  
8 below, on their responsibilities for recognizing sex harassment in the workplace  
9 and promptly reporting it to human resources when recognized or reported.

10 G. ELEMENTS OF THE INTERNAL COMPLAINT PROCEDURE

11 ABM shall ensure that its Internal Complaint Procedure contains  
12 the following elements:

13 1. A statement that it is unacceptable to retaliate against any employee  
14 for use of the Internal Complaint Procedure, for assisting in the investigation of a  
15 complaint, or for otherwise assisting in the utilization of the procedure.

16 2. A statement that if an allegation of sex harassment or retaliation  
17 against a manager or other employee is substantiated, then such conduct will  
18 result in appropriate discipline, up to and including discharge.

19 H. TRAINING

20 1. Supervisors, Managers

21 No later than November 30, 2010, all of Employer's managerial/supervisory  
22 employees shall be required to attend an intensive in- person or live training  
23 program.

24 The training shall be at least two (2) hours in duration. Thereafter, the  
25 training shall be conducted annually live for a duration of two (2) hours.

26 The training shall include coverage of the subjects of equal employment  
27 opportunity rights and responsibilities, harassment, retaliation, and ABM's policies  
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1 and procedures for reporting and handling complaints of, harassment and  
2 retaliation.

3 The training for managers, supervisors shall also include: (1) training on  
4 how to identify harassment and retaliation, (2) their exposure and responsibility  
5 under Title VII and state law; (3) how to properly handle complaints of  
6 harassment and/or retaliation, and (4) their obligation to prevent and to take  
7 corrective measures.

8 For the remainder of the term of this Decree, all new managerial and human  
9 resources employees of Employer and all employees recently promoted from an  
10 hourly to a managerial position shall receive the one hour of anti-harassment  
11 training within sixty (60) days of hire or promotion. This training can be provided  
12 online or on video, with the understanding that he/she will attend a two hour live  
13 training program the next time it is offered.

14 All employees required to attend such training shall verify their annual  
15 attendance in writing.

16 The training for Employer shall be provided in both English and  
17 Spanish for the duration of the Decree or a language that all managers,  
18 supervisors, and leads best understand.

19 The Monitor shall work with the Employer to ensure that a sufficient  
20 number of “trainers” are trained within ABM and the Employer to ensure  
21 compliance under Title VII and this Decree.

22 Within forty-five (45) days after the Effective Date or twenty (20) days after  
23 hiring the Monitor, whichever is later, ABM shall submit to the Monitor a  
24 description copy and description of the training to be provided and an outline of  
25 the curriculum developed for the trainees. Any disputes between ABM and the  
26 Monitor shall be reported to the EEOC for resolution.

27 The EEOC shall be given a minimum of ten (10) business days' advance  
28

1 written notice of the date, time and location of each training program provided  
2 pursuant to this Decree, and agrees that an EEOC representative may attend any  
3 such training program.

4 2. Human Resources

5 Human Resources employees and all persons involved in the complaint  
6 process shall receive the training outlined above, but also an additional two  
7 hours of specialized training on how to effectively investigate complaints of  
8 harassment and retaliation. The trainer for this aspect of the training shall  
9 have specialized training on how to conduct investigations in compliance with  
10 Title VII.

11 This training shall also be taken by anyone who will be tasked with  
12 investigating complaints for the Employer. Until this training is taken, no  
13 individual who has not already been trained shall be allowed to investigate  
14 complaints of sex harassment, or retaliation under this Decree.

15 3. Leads.

16 Employees of Employer designated as leads or forepersons, shall receive at  
17 least 45 minutes of training annually on how to identify sex harassment and  
18 retaliation in the workplace and how to properly handle such complaints.

19 4. Service Workers<sup>1</sup>

20 All Employer's service workers shall be trained on an annual basis in  
21 English and in Spanish to ensure that the training is effective. All such employees'  
22 training shall include coverage of the subjects of equal employment opportunity  
23 rights and responsibilities, with an emphasis on sex harassment, retaliation, and  
24 ABM's policies and procedures for reporting and handling complaints of,  
25 harassment and retaliation. The training should focus on aiding employees in  
26

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27 <sup>1</sup> Service workers are defined herein as janitorial employees who are not managers, supervisors, or leads.

1 identifying what is harassment and retaliation and how to utilize ABM's policies  
2 and procedures. The employees shall also be informed of external means, like the  
3 EEOC, to complain about harassment and retaliation. Employer shall also  
4 emphasize ABM's expectations of holding leads, supervisors, and managers  
5 accountable.

6 Defendants will work with the Monitor to determine the best way to conduct  
7 training to effectively reach the employees. Development of any plan shall be  
8 submitted to the EEOC for comment.

9 4. Emphasis of Zero Tolerance and Accountability

10 ABM shall play a video or DVD message from the CEO of ABM Industries  
11 Incorporated emphasizing its zero tolerance for harassment and retaliation at all of  
12 its training. The message shall include a commitment towards accountability of its  
13 workforce and its commitment to the safety of its workforce. The Employer shall  
14 play the video in English and translate it into Spanish at each training for the  
15 duration of the Decree.

16 I. EEO COMPLIANCE AUDITS

17 The ABM Industries Incorporated Corporate HR or Internal Audit  
18 Departments shall conduct unannounced audits at multiple Employer sites per year  
19 including sites in the Fresno, Visalia and Bakersfield branches to ensure that leads,  
20 supervisors, and managers are held accountable and to encourage employees to  
21 report problems of harassment, discrimination, or related retaliation.

22 Auditors shall speak with hourly employees and ensure compliance with  
23 anti-harassment and retaliation policies and procedures. To seek employee input,  
24 the audits will be conducted outside the presence of management, supervisors, and  
25 leads, without any onsite lead or supervisors' advance knowledge of the audit.

26 Audits will be accompanied by a full report about employee feedback. Any  
27 conduct signalling a sexual harassment, or retaliation issue will be subject to  
28

1 prompt and effective remedial action.

2 The results of the audit shall be evaluated and submitted to the Monitor and  
3 to the EEOC in the annual report as set forth below.

4 Audits shall also be done in areas where after monitoring the complaints,  
5 there appears to be issues that require a more fuller examination of the complaints.  
6 The audit shall also try to identify any alleged repeat offenders and shall include  
7 interviewing former and reassigned employees to better understand the dynamics  
8 in that region. ABM shall work with the Monitor on how best to conduct and  
9 structure the audits to be effective, including the frequency and scope of the audits,  
10 provided that they encompass sites in the Fresno, Visalia and Bakersfield branches.

11 J. PERFORMANCE EVALUATIONS

12 The Employer shall develop, implement, or revise its performance  
13 evaluation forms for managers, supervisors, to include as measures for  
14 performance compliance with EEO laws and with ABM's Anti-Discrimination  
15 and Retaliation Policies and Procedures. This shall specially include holding  
16 managers and supervisors accountable for failing to report and/or take appropriate  
17 action as required under ABM policies and procedures or Title VII. Managers and  
18 supervisors shall be specifically held accountable for mishandling of complaints  
19 by the leads.

20 At least forty (40) days prior to implementing the performance evaluation  
21 and discipline system described above, Defendants shall provide the Monitor with  
22 the proposed revisions in order to provide an opportunity for comment regarding  
23 the revisions.

24 **XIII. RECORD-KEEPING**

25 ABM Industries, Inc., and the Employer shall work with the Monitor to  
26 establish a record-keeping procedure that provides for the centralized tracking of  
27 ABM Industries Incorporated's Hotline Complaints, Employer's sex harassment  
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1 complaints and the monitoring of Employers complaints to prevent retaliation.

2 The records to be maintained shall include:

- 3 1. All documents generated in connection with any complaint,  
4 investigation, or resolution of every complaint of harassment or  
5 retaliation against Employer for the duration of the Decree and the  
6 identities of the parties involved;
- 7 2. All forms acknowledging employees' receipt of ABM  
8 Industries' anti-discrimination and anti-retaliation policy; and
- 9 3. All documents verifying the occurrence of all training sessions  
10 and names and positions of all attendees for each session as required  
11 under this Decree;
- 12 4. A list of all Employers' attendees to trainings required under  
13 this Decree;
- 14 5. All documents generated in connection with the monitoring and  
15 counseling of employees determined to have engaged in behavior that  
16 violates policies against sexual harassment and retaliation;
- 17 6. All documents generated in connection with confidential  
18 inquiries into whether any complainant believes he/ she has been  
19 retaliated against by Employer; and
- 20 7. All documents generated in connection with the establishment  
21 or review of performance evaluation measures for Employer's  
22 supervisors and managers.

23 The Employer shall make the aforementioned records available to the EEOC  
24 within ten (10) business days following a written request by the EEOC.

#### 25 **XIV. REPORTING**

26 To demonstrate Consent Decree compliance, the Employer shall submit to  
27 the EEOC periodic reports as outlined herein.

1           1.     Initial Reports

2           a.     Within one hundred twenty (120) days of the Effective  
3           Date of this Decree, or one hundred twenty days after the hiring  
4           of the Monitor, whichever is later, the Employer shall submit to  
5           the Commission a report which contains:

6                     i.     A statement confirming that the required notice of  
7                     the terms of the Decree has been posted or mailed to the  
8                     Employer’s employees;

9                     ii.    The current anti-discrimination and anti-retaliation  
10                    policy; and

11                    iii.   A statement confirming that all employees  
12                    received the sexual harassment and retaliation policy,  
13                    specifying what department provided the employees the  
14                    policy and confirmed distribution of the same and  
15                    assuring that the acknowledgment forms are being  
16                    retained.

17           b.     Confirmation of the establishment of the  
18           harassment/retaliation Hotline in English and Spanish,  
19           and a related tracking system;

20                     i.     The report shall provide a detailed description of  
21                     the tracking system that was developed; and

22                     ii.    A tracking report shall also be provided detailing  
23                     all complaints, response time, and all actions taken  
24                     including but not limited to investigation,  
25                     determination and discipline if any.

26           c.     A summary of the procedures and record-keeping  
27           methods developed with the Monitor for centralized tracking of  
28

1 sex harassment and retaliation complaints and the monitoring of  
2 such complaints;

3 d. Confirmation that the Claimant-Specific injunctive relief  
4 has been carried out;

5 e. A copy of the training materials used for all training  
6 sessions required under this Decree that took place prior to the  
7 reporting period;

8 f. A summary of the procedures and record-keeping  
9 methods developed for the sexual harassment, and retaliation  
10 Audit program, and production of any policies and procedures  
11 developed for said system; and

12 i. a copy of all audit reports and corresponding  
13 action taken spanning the Effective Date to the reporting date.

14 2. Reports Regarding Training

15 a. Ten (10) days prior to any training required under this  
16 Decree, the Employer will mail by regular mail to the  
17 Commission or via e-mail to [anna.park@eoc.gov](mailto:anna.park@eoc.gov);

18 i. Proposed sexual harassment and non-retaliation  
19 training materials;

20 ii. The identity the person(s) and/or organization(s)  
21 conducting the training programs; and

22 iii. The dates, times and locations of each of the  
23 training sessions.

24 b. Within one hundred twenty (120) days of the Effective  
25 Date of the Decree, and annually thereafter for the duration of  
26 the Decree, ABM will provide the EEOC a report containing  
27 the following information:  
28

1 i. A description of all employees of the Employer  
2 trained during the reporting period and the purpose of  
3 said training, i.e. as part of scheduled training or as a  
4 response to sexual harassment, discrimination and/or  
5 retaliation investigation; and

6 ii. Statements that acknowledge receipt of the anti-  
7 harassment / anti-retaliation policies for all employees  
8 hired within the preceding six (6) months period were  
9 secured.

10 c. Within 120 days from the Effective date, or twenty days  
11 after the hiring of the Monitor, whichever is later, and semi-  
12 annually thereafter, the Employer shall provide copies of its  
13 employees' complaints, the corresponding investigation report,  
14 and a printout from ABM's centralized tracking system,  
15 Employer's complaints of harassment and related complaints  
16 of retaliation. The report of all sexual harassment and  
17 retaliation complaints, including a copy of all investigation  
18 notes, shall include all complaints made since the submission of  
19 the immediately preceding report hereunder. The report of  
20 complaints filed for sex harassment and/or retaliation  
21 description shall include: the names of the individuals alleging  
22 harassment and/ or retaliation, the nature of the harassment and/  
23 or retaliation, the names of the alleged perpetrators of  
24 harassment or retaliation, the dates of the alleged harassment or  
25 retaliation, the location of the alleged harassment, the identity  
26 of the person(s) who investigated or resolved each complaint,  
27 and whether the alleged wrongdoer had been previously  
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1 accused of harassment or retaliation;

2 i. For each complaint listed above, the report shall  
3 include a statement of the result of each investigation into  
4 the complaint. If no result has been reached at the time  
5 of the report, the result shall be included in the next  
6 report;

7 ii. The identity and job titles of the complainant and  
8 person who received the complaint;

9 iii. A summary of the final course of action after  
10 investigating the complaint; and

11 iv. An analysis by the Monitor of how effectively  
12 Defendants ensured compliance with the EEO laws  
13 regarding sex harassment, and retaliation for the  
14 preceding year under the terms of the decree, including  
15 an analysis of the investigations, whether the training was  
16 effective, whether managers/supervisors, and leads are  
17 being held accountable, whether employees are taking  
18 advantage of the complaint procedures, the effectiveness  
19 of the audits, and any recommendations to improve.

20 d. A report by ABM to the EEOC detailing any changes of the  
21 procedures or record-keeping methods for centralized tracking  
22 of harassment and retaliation complaints and the monitoring of  
23 such complaints within thirty (30) days before implementing  
24 such changes; and

25 e. A report on the results of the audits and the actual audits  
26 specifically outlining which locations were visited, what was  
27 observed who was interviewed, and what course of action, if  
28

1 any, were taken.

2 **XV.**

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

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

7 **XVI.**

8 **COSTS AND ATTORNEYS' FEES**

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

10 **XVII.**

11 **MISCELLANEOUS PROVISIONS**

12 A. During the term of this Decree, Defendants shall provide any potential  
13 successor-in-interest with a copy of this Consent Decree within a reasonable time  
14 of not less than thirty (30) days prior to the execution of any agreement for  
15 acquisition or assumption of control of any or all of Defendants' facilities, or any  
16 other material change in corporate structure, and shall simultaneously inform the  
17 EEOC of same.

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

21 C. Unless otherwise stated, all notices, reports and correspondence  
22 required under this Decree shall be delivered to the attention of the Regional  
23 Attorney, Anna Y. Park, U.S. Equal Employment Opportunity Commission, Los  
24 Angeles District Office, 255 E. Temple St., 4th Fl., Los Angeles, CA 90012.

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

27 ///

1 **XVIII. COUNTERPARTS AND FACSIMILE SIGNATURES**

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

4 All parties, through the undersigned, respectfully apply for and consent to  
5 the entry of this Consent Decree as an Order of this Court.

6 U.S. EQUAL EMPLOYMENT  
7 OPPORTUNITY COMMISSION

8  
9 Dated: \_\_\_\_\_, 2010

By: \_\_\_\_\_  
10 Anna Y. Park  
11 Derek Li  
12 Elizabeth Esparza-Cervantes  
13 Lorena Garcia-Bautista  
14 Attorneys for Plaintiff EEOC

15  
16 Dated: \_\_\_\_\_, 2010

By: \_\_\_\_\_  
17 LITTLER MENDELSON  
18 Keith Jacoby  
19 Laura Hayward  
20 Attorneys for Defendants ABM  
21 INDUSTRIES INCORPORATED, ABM  
22 JANITORIAL SERVICES,  
23 INCORPORATED, and ABM  
24 JANITORIAL NORTHERN CALIFORNIA

25  
26 Dated: \_\_\_\_\_, 2010

By: \_\_\_\_\_  
27 ABM Industries Incorporated

28  
29 Dated: \_\_\_\_\_, 2010

By: \_\_\_\_\_  
30 ABM Janitorial Services, Incorporated

31  
32 Dated: \_\_\_\_\_, 2010

By: \_\_\_\_\_  
33 ABM Janitorial Northern California

1 **ORDER**

2 **Good cause appearing,**

3 The Court hereby retains jurisdiction and the provisions of the foregoing  
4 Consent Decree are hereby approved and compliance with all provisions thereof is  
5 fair and adequate and finds that the provisions of this Consent Decree are hereby  
6 approved. Compliance by the Defendants in this case of the provisions is Hereby  
7 Ordered.

8 IT IS SO ORDERED.

9 Date: September 24, 2010

/s/ Lawrence J. O'Neill

10 The Honorable Lawrence J. O'Neill  
11 United States District Court Judge  
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