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EEOC v. California Psychiatric Transitions

Judge Oliver W. Wanger

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EEOC v. California Psychiatric Transitions

Keywords

EEOC, California Psychiatric Transitions, 1:06-CV-01251-OWW-GSA, Consent Decree, Sexual Harassment, Retaliation, Hostile Work Environment, Female, Sex, Healthcare, Employment Law, Title VII

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WILLIAM R. TAMAYO, SBN 084965
DAVID F. OFFEN-BROWN, SBN 063321
DANA C. JOHNSON, SBN 187341
RAYMOND T. CHEUNG, SBN 176086
U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
San Francisco District Office
350 The Embarcadero, Suite 500
San Francisco, CA 94105-1260
Telephone: (415) 625-5697
Facsimile: (415) 625-5657
dana.johnson@eoc.gov

Attorneys for Plaintiff EEOC

HEWITT & TRUSZKOWSKI
STEPHEN L. HEWITT, SBN 102729
HENRY C. TRUSZKOWSKI, SBN 169243
4640 Lankershim Blvd., Ste. 600
North Hollywood, CA 91602-1818
Telephone: (818) 509-0311
Facsimile: (818) 509-0402
hctruszkowski@hewittlegal.com

Attorneys for Defendant CALIFORNIA
PSYCHIATRIC TRANSITIONS, INC.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

CALIFORNIA PSYCHIATRIC
TRANSITIONS

Defendant.

Case No. 1:06-CV-01251-OWW-GSA

CONSENT DECREE

1 Plaintiff U.S. Equal Employment Opportunity Commission (“Commission” or “EEOC”)
2 brought this lawsuit under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act
3 of 1991, to correct alleged unlawful employment practices on the basis of sex harassment and
4 retaliation and to make whole Ms. Valerie Soares, Ms. Mariel Somera, and other similarly situated
5 female employees aggrieved by the alleged unlawful practices. Plaintiff EEOC alleged that defendant
6 California Psychiatric Transitions, Inc. (“CPT” or “the Company”), unlawfully subjected Ms. Soares
7 and Ms. Somera and others to a sexually hostile work environment. Defendant denied all the
8 allegations.

9 In the interest of resolving this matter and as a result of having engaged in comprehensive
10 settlement negotiations, the Commission and Defendant (hereinafter referred to as “the Parties”) have
11 agreed that the above-captioned lawsuit (the “Lawsuit”) should be finally resolved by entry of this
12 Consent Decree. This Consent Decree shall not constitute an adjudication and/or a finding on the
13 merits of the Lawsuit.

14 This Consent Decree resolves all claims arising out of EEOC Charge Nos. 370-2004-01635 and
15 370-2004-01555 and the complaint filed in the Lawsuit, and constitutes a complete resolution of all
16 claims of sex discrimination, sexual harassment, and retaliation under Title VII that were made or
17 could have been made by the Commission in this Lawsuit. This consent decree also resolves all claims
18 for attorneys fees and costs that were made or could have been made by either of the Parties in this
19 Lawsuit. This Consent Decree does not, however, resolve any future charges or charges that may be
20 pending with the EEOC other than the charges and complaints specifically referenced in this paragraph.

21 This Consent Decree comprises the full and exclusive agreement of the Parties with respect to
22 the matters discussed herein. No waiver, modification or amendment of any provision of this Consent
23 Decree shall be effective unless made and approved in writing by all the Parties to this Decree, and any
24 substantive change, modification or amendment of any provision of this Consent Decree shall also
25 require approval by the Court.

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1 The Court has reviewed this Consent Decree in light of the pleadings, the record herein, and
2 now approves this Consent Decree. THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

3 **GENERAL PROVISIONS**

4 1. This Court has jurisdiction over the subject matter and the Parties to this Lawsuit. This
5 Court will retain jurisdiction over this Consent Decree for all purposes until the expiration of
6 Defendants' obligations as set forth herein.

7 2. This Consent Decree is final and binding upon the Parties, their successors and assigns.

8 3. Each Party shall be responsible for its own costs and attorneys' fees.

9 **GENERAL INJUNCTIVE RELIEF**

10 4. Sexual Harassment: Consistent with Section 703 of Title VII, 42 U.S.C. §2000e-2, the
11 Company, and its officers, agents, managers (including supervisory employees), successors and
12 assigns, shall not: (a) discriminate against persons on the basis of sex in the terms and conditions of
13 employment; (b) engage in or being a party to any action, policy or practice that is intended to, or is
14 known to them, to have the effect of harassing or intimidating any employee on the basis of sex; or (c)
15 create, facilitate or permit, to the extent known to them, the existence of a work environment hostile to
16 female employees.

17 5. Retaliation: The Company its officers, agents, managers (including supervisory
18 employees), successors and assigns, shall not engage in, implement or permit any action, policy or
19 practice with the purpose of retaliating against any current or former employee of the Company
20 because he or she has in the past, or during the term of this Consent Decree (a) opposed any practice of
21 harassment or other discriminatory acts on the basis of sex made unlawful under Title VII; (b) filed a
22 Charge of Discrimination alleging any such practice; (c) testified or participated in any manner in any
23 investigation into claims of harassment or other discriminatory acts (including, without limitation, any
24 internal investigation undertaken by the Company), proceeding or hearing in connection with this
25 Lawsuit; (d) was identified as a possible witness in this Lawsuit; (e) asserted any rights under this
26 Consent Decree; or (f) sought and/or received any monetary or non-monetary relief in accordance with
27 this Consent Decree.

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MONETARY RELIEF

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2 6. The Company agrees to pay the total, aggregate sum of \$145,000.00 (One Hundred Forty-
3 Five Thousand Dollars and No Cents) (the “Settlement Amount”) as damages for emotional distress, to
4 be allocated in amounts to be determined in the sole discretion of the EEOC, to Valerie Soares, Mariel
5 Somera and other similarly situated women on whose behalf the EEOC prosecuted that above-
6 captioned action (hereinafter “Payee”). All payments of the Settlement Amount allocations shall be
7 characterized as non wage compensatory damages and will be reported on IRS form 1099. No
8 FICA/FUTA or other withholdings shall be made to the Settlement Amount or the allocations thereof.
9 Each Payee will be responsible for paying any federal, state and/or local taxes that may be due on her
10 allocation of the aforementioned Settlement Amount, if any.

11 7. Within 45 days after entry of the Consent Decree, the EEOC shall provide the Company
12 with the Settlement Amount allocation, the addresses to which the Settlement Amount checks shall be
13 mailed, and executed W-9s and executed releases in the form attached here as Exhibit A.

14 8. The Company shall pay the Settlement Amount within 60 days after entry of the
15 Consent Decree. The Company shall issue separate checks for the Payees made in their respective
16 names and in the amounts (which collectively shall not exceed \$145,000.00) provided by the EEOC.
17 The Company shall make payment in the form of a business check, cashier’s check, or certified check.
18 The Company shall mail via certified mail to each Payee a check for the Settlement Amount allocation
19 amount provided to the Company by the EEOC. If the Company has not received an executed release
20 and W-9 for any Payee, it may refrain from paying the Settlement Amount allocation to that Payee
21 until it has received the executed release and W-9, but may not delay or defer paying the Settlement
22 Allocation amount to any Payee for whom it has received the executed release and W-9 in accordance
23 herewith.

24 9. At the time that the Company sends the checks to the Payees, it shall provide a copy of
25 each check to Dana C. Johnson, Senior Trial Attorney, EEOC, 350 The Embarcadero, Suite 500, San
26 Francisco, CA 94105.

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SPECIFIC INJUNCTIVE RELIEF

10. Zero-Tolerance

The Company affirms the following Statement of Zero-Tolerance Policy and Equality Objectives:

“The Company is firmly committed to maintaining a zero-tolerance policy concerning discriminatory harassment and retaliation against individuals who report harassment in the company’s workplace; to swiftly and firmly respond to any acts of harassment and retaliation of which the company becomes aware; to imposing appropriate discipline designed to strongly deter future acts of harassment or retaliation; and to actively monitor its workplace in order to ensure tolerance, respect and dignity for all employees.”

This paragraph 10 does not create any individual contractual or common law causes of action or other rights that would not otherwise exist under statute.

11. EEO and Harassment Policies

The Company agrees that to the extent necessary it shall revise its EEO & harassment policies, within thirty (30) days of signing the Consent Decree, such that the policies: (i) include definitions of discriminatory harassment, with specific reference to harassment based on sex; (ii) include examples to supplement the definitions of harassment based on sex; (iii) provide for appropriate discipline and/or corrective action for incidents of discriminatory harassment designed to deter future acts of harassment; (iv) include strong non-retaliation language with examples to supplement the definition of retaliation; (v) provide for appropriate discipline for incidents of retaliation designed to deter future acts of retaliation; (vi) provide that complaints of harassment and/or retaliation will be accepted irrespective of whether they are made verbally or in writing; (vii) provide a reasonable timetable for commencing an investigation after a complaint is made or received and for appropriate remedial action, if warranted, to be taken upon conclusion of an investigation; and (viii) indicate that, promptly upon the conclusion of the investigation of a complaint, the Company will communicate to the complaining party the results of the investigation and the remedial actions taken or proposed, if any. The revised policies will be submitted to the EEOC within 30 days of the signing of this Consent Decree, and shall become effective 15 days later unless the EEOC requires revisions; the EEOC will require only reasonable revisions which must be completed within 60 days of the signing of this Consent Decree.

1 a. The Company shall effectively disseminate its revised policies and procedures to its
2 employees for review and retention for the duration of employment only as follows:

- 3 i. Distributing copies of the policies to all current employees within 30 days of its
4 adoption;
5 ii. Giving copies of the policies to and reviewing the policies with all new
6 employees upon the employees' hire.

7 b. The Company will submit a copy of the revised EEO and harassment policies to EEOC
8 at the same time it submits the report on the completion of training as described below.

9 12. Complaint Procedure

10 The Company shall develop a complaint procedure designed to encourage employees to come
11 forward with complaints about violations of its harassment policy. As part of the policy, the Company
12 shall provide its employees with convenient, confidential and reliable mechanisms for reporting
13 incidents of harassment and retaliation. The Company's complaint procedure and harassment policy
14 shall notify employees that they can lodge a complaint with their immediate supervisor, or a Company
15 Corporate Officer or designee, and shall provide the name and telephone numbers for such individuals.
16 Contact information for the Company Corporate Officer or designee shall also be continuously posted
17 in a prominent place at the Company's business location in Delhi, California.

18 a. The Company will submit a copy of the complaint procedures to the EEOC twenty (20)
19 days before the completion of training as required below.

20 b. The Company shall undertake reasonable efforts to maintain complainant and complaint
21 confidentiality in a manner consistent with applicable law and this Consent Decree.

22 13. Posting

23 The terms of this Consent Decree shall be stated in a notice, attached hereto as Exhibit B, which
24 shall be limited to notice of the non-monetary aspects of the settlement, which shall be, and remain,
25 posted in a clearly visible location frequented by employees at the Company's facility in Delhi,
26 California during the term of this Consent Decree.

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1 14. Distribution of Anti-Harassment Policy

2 Within sixty (60) days of the entry of this Consent Decree, the Company shall issue to all
3 employees, supervisors and managers at its Delhi location its anti-harassment policy and procedure
4 statement, and each such person shall be asked to sign an acknowledgment that they have received and
5 read the policy. The same acknowledgment shall be required of all newly hired employees at the start
6 of their employment.

7 15. Training of Employees

8 The Company shall provide and require all current and new employees to attend anti-
9 harassment training, exclusive of training given during orientation, at least once every year for a
10 cumulative total of no less than two hours throughout the duration of this Consent Decree. The
11 purpose of said training shall be to give participants an understanding of harassment issues, particularly
12 sexual harassment, including but not limited to what constitutes sexual harassment, sources of legal
13 protection for sexual harassment victims, the employees' obligation to report sexual harassment, the
14 employer's obligation to take preventive, investigative and remedial action with respect to harassment
15 complaints, and to review company policies (including discipline policies) and practices related to
16 sexual harassment and retaliation with Company employees.

17 16. Training Logistics

18 The content, persons providing training, method of training and size of training under Paragraph
19 15, above, is subject to approval by the Commission which approval shall not be unreasonably
20 withheld and which shall take into consideration the Company's operational needs. The person(s)
21 providing the training shall not be person(s) regularly employed as CPT employee(s), but rather shall
22 be professionals whose main business is provision of workplace sexual harassment training. The
23 Company agrees to provide the qualifications of the trainer(s) and a description of each training
24 program to counsel for the Commission no later than twenty (20) days before the training programs are
25 scheduled to be held.

26 17. Acknowledgment of Training Attendance

27 All persons attending mandatory anti-harassment training pursuant to this Consent Decree shall
28 sign an acknowledgment of their attendance at the training, the date thereof, and their position with the

1 company. The Company shall retain the originals of these acknowledgments and provide the EEOC
2 with a copy thereof each year that the Consent Decree remains in effect.

3 18. Disclosure of Information Regarding Valerie Soares, Mariel Somera and Claimants'
4 Employment

5 a. The Company shall not disclose any information or make references to any charges of
6 discrimination or this lawsuit in responding to employment reference requests for information about
7 Valerie Soares, Mariel Somera, Renee Addison, Yuliana Arzate, Amy Koons, Kathleen Mason, Diana
8 Rodriguez, Stephanie Riveira, Rosemary Vallery, or Sherry Wall.

9 b. The Company agrees to segregate in separate, confidential folders all documents related
10 to each Charging Party or claimant and the Charges of Discrimination and the Commission's lawsuit.
11 These documents shall not be part of her personnel file. Further, the Company agrees not to reference
12 any of the following to any potential employers of the Charging Parties or Claimants: the Charges of
13 Discrimination, the Commission's lawsuit, or this Consent Decree entered in the Commission's lawsuit.

14 c. From the date of entry of this Consent Decree, the Company shall not disclose any
15 information regarding its employment of the employees identified in paragraph 18a, above, except as
16 follows:

17 i. In response to a specific inquiry, the Company may disclose dates of
18 employment, position held and final rate of pay;

19 ii. The Company may report any information as required to state or federal
20 authorities; and

21 iii. The Company may disclose information as required by Court order or subpoena.

22 19. Reports to the Commission

23 a. Training Reports

24 Within thirty (30) days of completion of the training required by this Consent Decree, the
25 Company will send the EEOC verification of its completion of harassment training for its employees.

26 b. Sexual Harassment Complaint Reports

27 For the purposes of Paragraph 19, a complaint of harassment consists of any communication to
28 any CPT supervisor, manager, officer or person designated to receive complaints pursuant to the sexual

1 harassment policy, from any source, about conduct that might violate the sexual harassment policy. If
2 the complaint is made in writing or reduced to writing, a copy of the writing shall be provided to the
3 EEOC. If a complaint is made orally, a written summary of the oral complaint including what was
4 alleged to have taken place, when, where, by whom, to whom, and the identities of the person(s)
5 making the complaint and any witnesses to the complained-of event(s) shall be provided to the EEOC.

6 Within ninety (90) days after entry of this Consent Decree, the Company will mail to counsel
7 for the Commission a report containing the following information and documentation:

- 8 i. Copies of all sexual harassment complaints received by the Company after
9 October 16, 2008, and a statement regarding the result of the investigation of
10 each complaint. Additionally, the Company will identify the name, address and
11 telephone number of the complainant and identify the person who received the
12 complaint. A copy of all records, documents and other writings relevant to such
13 complaints and investigations shall be maintained by the Company during the
14 period of the Consent Decree and will be made available to the Commission
15 within ten (10) business days following a written request from the Commission.
16 ii. On the fifth day of January and June of each year during the duration of this
17 Consent Decree, the Company will mail to counsel for the Commission a report
18 containing the above documentation and information.

19 20. Policies Designed to Promote Supervisor Accountability

20 a. Communication of Potential Discipline for Engaging in Harassment

21 The Company agrees that it shall impose appropriate discipline, up to and including
22 termination, suspension without pay or demotion, upon any supervisor or manager who engages in
23 sexual harassment or knowingly permits any such conduct to occur in his or her work area or among
24 employees under his or her supervision, or who retaliates against any person who complains or
25 participates in any investigation or proceeding concerning such conduct. The Company shall
26 communicate this policy to all of its supervisors and managers.

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On Behalf of Plaintiff Commission

On Behalf of Defendant:

Dated: October 15, 2009

Dated: October 16, 2009

 /S/ (as authorized on 10/15/09)
William R. Tamayo
Regional Attorney

 /S/ (as authorized on 10/15/09)
Henry Truskowski
HEWITT & TRUSZKOWSKI

Attorney for California Psychiatric Transitions

 /S/
Dana C. Johnson
Senior Trial Attorney

Attorneys for the EEOC

EXHIBIT A

EXHIBIT A

TITLE VII RELEASE

In consideration for \$ __, __.00 (_____ dollars and no cents) paid to me by California Psychiatric Transitions, Inc. for non-pecuniary emotional distress damages, in connection with the resolution of *EEOC v. California Psychiatric Transitions, Inc.*, Case No. 1:06-cv-01251-OWW-GSA, I fully and forever release, discharge and waive my right to recover for any claims of hostile environment because of sex (or retaliation) arising under Title VII that I had against California Psychiatric Transitions, Inc., its successors and assigns, including its present and former directors, officers, employees and agents, prior to the date of this release and that were included in the claims alleged in EEOC's complaint in *EEOC v. California Psychiatric Transitions, Inc.*

I agree that I will be solely and individually responsible for paying any and all taxes which may be due and owing, if any, as a result of the settlement described above. I acknowledge that I have not relied on any representations made by California Psychiatric Transitions, Inc., or the EEOC relating in any way to the tax treatment of the payments pursuant to this agreement. I have read this Release and I execute it voluntarily, without coercion or threat of reprisal.

Date: _____

Signature: _____
NAME



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
San Francisco District Office

350 The Embarcadero, Suite 500
San Francisco, CA 94105
(415) 625-5602
TTY (415) 625-5610
FAX (415) 625-5657
Toll Free (866) 408-8075

EXHIBIT B

EXHIBIT B



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
San Francisco District Office**

350 The Embarcadero, Suite 500
San Francisco, CA 94105
(415) 625-5602
TTY (415) 625-5610
FAX (415) 625-5657
Toll Free (866) 408-8075

NOTICE OF CONSENT DECREE

The U.S. Equal Employment Opportunity Commission ("EEOC") filed a lawsuit in the United States District Court for the Eastern District of California entitled EEOC v. California Psychiatric Transitions, Inc., Case Number 1:06-cv-01251-OWW-GSA, alleging sexual harassment and retaliation. CPT denied any wrongdoing or liability. Pursuant to a Consent Decree which resolved this lawsuit, Judge Oliver W. Wanger of the U.S. District Court has ordered that this notice be posted until October 2012.

Title VII makes it unlawful for any employer with 15 or more employees to discriminate against any employee or applicant for employment because of sex. As part of its prohibition against sex discrimination, Title VII forbids an employer from subjecting its employees to sexual or gender harassment. Title VII also prohibits employers from retaliating against anyone who complains of discriminatory practices covered by Title VII, or who participates in the investigation of a complaint or the investigation of a charge of discrimination.

CPT affirms the following Statement of Zero-Tolerance Policy and Equality Objectives:

The Company is firmly committed to maintaining a zero-tolerance policy concerning discriminatory harassment and retaliation against individuals who report harassment in the company's workplace; to swiftly and firmly respond to any acts of harassment and retaliation of which the company becomes aware; to imposing appropriate discipline designed to strongly deter future acts of harassment or retaliation; and to actively monitor its workplace in order to ensure tolerance, respect and dignity for all employees.

Any CPT employee who feels that he or she has been harassed or retaliation against or has any similar work-related problem should bring it immediately to the attention of his or her immediate supervisor or Art Tharpe at (800) - . Pursuant to the requirements of the Consent Decree, CPT will report to the EEOC any harassment complaints that it receives through October 2012. Regardless of whether you complain internally to CPT, you have a right to report allegations of employment discrimination in the workplace to the EEOC which may be contacted at the address listed on the letterhead, above. In compliance with federal law, no official at CPT will retaliate against an employee who contacts the EEOC or its state counterpart, the California Department of Fair Employment and Housing.

Dated: _____

John Hackett, M.D.