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24 UNITED STATES DISTRICT COURT
25 NORTHERN DISTRICT OF CALIFORNIA

26 U.S. EQUAL EMPLOYMENT OPPORTUNITY
27 COMMISSION,

28 Plaintiff,

vs.

WALGREEN CO.,

Defendant.

Case No.: CV 11-4470 WHO

CONSENT DECREE

Plaintiff Equal Employment Opportunity Commission (“Commission”) filed this action under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991 to correct alleged unlawful employment practices on the basis of disability, and to provide appropriate relief to Charging Party Josefina Hernandez (“Charging Party”), whom the Commission alleged was adversely affected by such practices. The Commission alleged that Defendant Walgreen

1 Co. (“Defendant”) subjected Charging Party to discrimination based on disability when it failed to
2 accommodate her and instead terminated her employment, in violation of the Americans with
3 Disabilities Act. Defendant has denied these allegations. The Commission and Defendant now seek
4 to resolve this action as to each other and as between Defendant and Charging Party without further
5 contested litigation through this Consent Decree. This resolution does not constitute an admission of
6 liability on the part of Defendant, nor constitute a finding on the allegations stated in the
7 Commission’s Complaint.

8 The Court has reviewed this Consent Decree in light of the pleadings, the record herein, and
9 the applicable law, and now approves this Consent Decree.

10 THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

11 GENERAL PROVISIONS

12 1. This Court has jurisdiction over the subject matter and the parties to this action. This
13 Court retains jurisdiction over this Consent Decree during its term.

14 2. This Consent Decree constitutes a full and final resolution of the Commission’s
15 claims against Defendant in this action.

16 3. This Consent Decree will become effective upon its entry by the Court.

17 4. This Consent Decree is final and binding upon the parties to it, their successors and
18 assigns.

19 5. The Commission and Defendant will each bear its own costs and attorney fees in this
20 action.

21 GENERAL INJUNCTIVE RELIEF

22 6. Defendant and its current officers, agents, employees, and all persons in active
23 concert or participation with them are enjoined from discriminating based on disability, including
24 failure to reasonably accommodate, as prohibited by the Americans with Disabilities Act.

25 7. Defendant and its current officers, agents, employees, and all persons in active
26 concert or participation with them are enjoined from retaliating against the Charging Party, or any
27 other employee or former employee, for having testified or participated in any manner in the
28 Commission’s investigation and the proceedings in this case.

1 SPECIAL INJUNCTIVE RELIEF

2 Non-Discrimination Policy

3 8. Within sixty (60) days of the entry of this Consent Decree, Defendant will post its
4 revised employment policy on Defendant's intranet system. Defendant's revised employment policy
5 clarifies that an employer has an obligation to provide reasonable accommodation. Said revised
6 policy also makes clear to supervisors that when they are aware of an employee's disability, and
7 observe that an employee is having difficulty performing his/her job duties as a result, supervisors
8 should affirmatively inquire if an accommodation is needed.

9 Training

10 9. Each year during the term of this Consent Decree, Defendant will conduct the
11 following trainings:

12 (a) Provide annual training of all managers and supervisors regarding their
13 obligations not to discriminate based on disability, and their obligations to provide reasonable
14 accommodation to employees with disabilities;

15 (b) Provide annual training of all human resources personnel who provide advice
16 to managers about disability discrimination, and an employer's obligation to reasonably
17 accommodate employees with disabilities; and

18 (c) No later than thirty (30) days prior to the beginning of each training program, Defendant
19 will provide to counsel for the Commission a description of each training program and a copy of the
20 materials to be used. Defendant shall not be required to provide these materials for each individual
21 training event. If Defendant makes any material changes to the training materials, Defendant will
22 provide these training materials to the Commission.

23 Posting

24 10. Defendant will post the Notice attached hereto as Exhibit 1 to this Consent Decree, in
25 a location accessible to all employees working in stores within the San Francisco Peninsula District,
26 (a list of the stores in the San Francisco Peninsula District is attached hereto as Exhibit 2). This
27 Notice will remain posted for the duration of the Consent Decree.

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1 Record Keeping and Reports

2 11. Each year during the term of this Consent Decree, within thirty (30) days following
3 the anniversary date of the entry of the Consent Decree, Defendant will mail to counsel for the
4 Commission a report containing the date of training specified in paragraph 9, the name of the trainer
5 and/or training program, an outline of the training content, a list of all attendees, and copies of all
6 materials distributed at the training.

7 12. Once every six (6) months, to be measured beginning at the date of entry of this
8 Consent Decree and continuing for the duration of this Consent Decree, Defendant will notify the
9 counsel for the Commission whether it has received any complaints of disability discrimination or
10 failure to accommodate from its employees in the San Francisco Peninsula District, what steps were
11 taken in response, and how the situation was resolved.

12 RELIEF FOR CHARGING PARTY

13 13. Defendant will pay the sum of \$180,000.00 in complete satisfaction of the
14 Commission’s claims against Defendant as set forth in the Complaint. The settlement amount shall
15 be paid by mailing three checks. One check shall be mailed to Claimant in the amount of forty-five
16 thousand Dollars (\$45,000) within ten (10) calendar days of receipt by counsel for Defendant of a
17 copy of this Agreement containing the original signature of the Commission and W-9 forms
18 completed by Claimant. An additional check shall be mailed to Claimant in the amount of ninety
19 thousand Dollars (\$90,000) on January 10, 2015. The sums in these checks shall not be
20 characterized as wages, but as recovery for alleged emotional distress. Form(s) 1099 will be issued
21 in regard to these checks for tax reporting purposes in connection with claimant’s social security
22 number. Another check shall be sent to Claimant within thirty (30) calendar days of receipt by
23 counsel for Defendant of a copy of this Agreement containing the original signature of the
24 Commission and W-9 forms completed by Claimant. This check shall be made payable to “Josefina
25 Hernandez” in an amount that will equal forty-five thousand Dollars (\$45,000) in wages less
26 applicable withholdings. This sum shall be characterized as wages. Defendant has no further
27 obligation to make any payments to or bestow any benefits on Claimant with respect to her
28 employment with Defendant upon receipt by Claimant of the aforementioned settlement checks.

1 Defendant has made no representation regarding any tax consequences relating to this
2 payment, and Claimant shall be responsible for the payment of any taxes in connection with this
3 payment.

4 14. Defendant agrees to provide only neutral information in response to any inquiries
5 from prospective employers. Such reference shall be provided through a third party service used by
6 Defendant called "the Work Number." Claimant shall direct any inquiry from a prospective
7 employer to that service using the following information:

- 8 • www.theworknumber.com/verifiers; or
- 9 • 1-800-367-5690
- Company employer code: 10105

10 15. Defendant agrees to allow Ms. Hernandez to resign as of the date of her termination
11 in October, 2008.

12 EXPIRATION OF CONSENT DECREE

13 16. This Consent Decree constitutes a full and final resolution of all the Commission's
14 claims on behalf of Charging Party. This Consent Decree will be in effect for three (3) years, and
15 will expire at midnight of the date three (3) years after its entry by the Court, provided that
16 Defendant has substantially complied with the terms of this Consent Decree. Defendant will be
17 deemed to have complied substantially if the Court has not made any findings or orders during the
18 term of the Decree that Defendant has failed to comply with any of the terms of this Decree.

19 U.S. EQUAL EMPLOYMENT
20 OPPORTUNITY COMMISSION

21 Dated: June 27, 2014

By _____/s/_____
WILLIAM R. TAMAYO
Regional Attorney

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23 Dated: June 27, 2014

By _____/s/_____
JONATHAN PECK
Supervisory Trial Attorney

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25
26 Dated: June 27, 2014

By _____/s/_____
CINDY O'HARA
Senior Trial Attorney

