

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Celine A. Baker,

Plaintiff,

vs.

Clarence W. Dupnik, et al.

Defendants.

No. CV-09-0015-TUC-HCE
No. CV-09-273-TUC-HCE¹

CONSOLIDATED

CONSENT DECREE

The State of Arizona *ex rel.* Tom Horne, et al.

Plaintiffs,

Celine A. Baker,

Plaintiff/Intervenor

vs.

Clarence W. Dupnik, et al.

Defendants.

Plaintiff State of Arizona (State), Plaintiff Celine A. Baker (Ms. Baker), and Defendants Clarence W. Dupnik and Pima County (Defendants) have agreed to resolve this action by terms of this Consent Decree (Decree) as set forth below.

On April 30, 2009, Defendants removed Maricopa County Superior Court Case No. CV 2008-022586 to the United States District Court for the District of Arizona. Subsequently, on May 13, 2009, the Court ordered that the removed case, CV 09-916-PHX-JAT, be consolidated

¹ CV 09-273-TUC-HCE was originally filed as CV 09-916-PHX-JAT and renumbered as CV 09-273-TUC-HCE subsequent to intradistrict transfer.

1 with the case filed by Celine A. Baker, CV 09-15-TUC-HCE. In the consolidated cases, the
2 State and Ms. Baker allege that Defendants discriminated against Ms. Baker on the basis of
3 disability and retaliated against her in violation of the Arizona Civil Rights Act (ACRA), and
4 Ms. Baker makes similar allegations under the federal Americans with Disabilities Act of 1990
5 (ADA) and the Rehabilitation Act of 1973, as amended. Defendants deny the allegations.
6

7 Defendants specifically deny and do not admit either expressly or implicitly, that they
8 violated any federal or state law or that they have any liability in this civil action. Defendants
9 maintain, and have consistently maintained, that they provide equal employment opportunities
10 for all employees and applicants, and that they comply with all applicable employment laws,
11 including those pertaining to unlawful disability discrimination. This Decree does not
12 constitute a finding of liability or wrongdoing on the part of Defendants. Defendants are
13 entering into this Decree solely for the purposes of avoiding the expense and inconvenience of
14 further investigation and litigation.
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17 Ms. Baker and Defendants have entered into a separate settlement agreement to settle
18 Ms. Baker's claims and, therefore, stipulate and consent to the entry of this Decree to dismiss
19 with prejudice all of Ms. Baker's claims against Defendants in the consolidated cases.
20

21 The State and Defendants desire to settle the State's claims in CV-09-273-TUC-HCE of
22 the consolidated cases, and therefore stipulate and consent to the entry of this Decree as final
23 and binding between the parties who are the signatories hereto. This Decree was entered into
24 as an amicable way of resolving all outstanding differences that may have existed in this case.
25 This Decree is intended and does fully and finally resolve any and all claims arising out of the
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1 Complaint filed by the State. The parties do not object to the jurisdiction of the Court over this
2 action and waive a hearing and the entry of findings of fact and conclusions of law.

3 It is hereby ORDERED, ADJUDGED, and DECREED:

4 **PLAINTIFF BAKER'S CLAIMS**

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6 1. Upon stipulation of the parties, and good cause appearing, the Court hereby dismisses
7 with prejudice all claims of Plaintiff Celine A. Baker against Defendants in the consolidated
8 cases.

9
10 **THE STATE'S CLAIMS**

11 2. This Decree constitutes a complete resolution of all claims of the State against
12 Defendants in this lawsuit, including but not limited to back pay, front pay, compensatory
13 damages, interest, injunctive relief, and attorney's fees and costs.

14
15 3. This Decree may not be used by the parties in any proceeding except in this Court to
16 enforce or implement the Decree or any orders or judgments of this Court entered into in
17 connection herewith, and for no other purposes whatsoever. Nothing in this Decree will be
18 deemed to create any rights on the part of non-parties to enforce this Decree. The right to seek
19 enforcement of this Decree is vested exclusively in the parties hereto.

20
21 4. The parties agree to entry of this Decree and judgment subject to final approval by the
22 Court.

23
24 **DURATION**

25
26 5. The Court shall retain jurisdiction over both the subject matter and the parties in the
27 State's claims in CV-09-273-TUC-HCE for a period of twenty-four (24) months from entry of
28 this Decree. The State may petition this Court for compliance with this Decree, after notifying

1 Defendants, in writing and in reasonable detail, of the alleged instance(s) of non-compliance,
2 and thereafter afford Defendants a reasonable opportunity (which in no event will be less than
3 thirty (30) days) to provide additional documentation related to the alleged instance(s) of non-
4 compliance if necessary, and to correct any such alleged instance(s) of non-compliance.
5
6 Should the Court determine that Defendants have not complied with this Decree, appropriate
7 relief, including but not limited to extension of this Decree for such period as may be necessary
8 to remedy the noncompliance, may be ordered. In the event that the State does not petition for
9 compliance with the Decree or the Court determines that Defendants are in compliance, this
10 Decree will expire by its own terms at the end of twenty-four (24) months from the date of
11 entry, without further action by the parties. Defendants' compliance with this Decree will fully
12 and completely resolve all issues of law and fact which were or could have been raised by the
13 State in this lawsuit under Charge Nos. T07-00533, 35A-2008-0027C, T08-0588, and 35A-
14 2008-00445C, as to all events occurring at any time on or prior to the date of entry of this
15 Decree.
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19 **MONETARY RELIEF AND COSTS**

20 6. Defendants have paid an agreed upon sum to Plaintiff Celine A. Baker and placed her in
21 an agreed upon position with Pima County pursuant to the terms agreed upon by Defendants
22 and Ms. Baker.
23

24 7. The State and Defendants shall bear their own costs and attorney's fees incurred as a
25 result of this action through the filing of this Decree. Defendants shall pay to the State the sum
26 of \$15,000.00 for monitoring and enforcement of civil rights in Arizona. This payment shall be
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1 made within fifteen (15) business days after entry of this Decree by means of a check made
2 payable to the Arizona Civil Rights Division.

3 **INJUNCTION**

4 8. Defendants are enjoined for the duration of this Decree from:

- 5
- 6 a. Speculating that a suggested accommodation requested by an applicant or
7 employee with a disability is not feasible.
- 8 b. Relying on generalized conclusions to support a claim of undue hardship
9 regarding a request for reasonable accommodation from an applicant or employee
10 with a disability.
- 11
- 12 c. Deciding to deny a requested accommodation prior to having engaged in an
13 interactive process with the employee or applicant requesting reasonable
14 accommodation.
- 15
- 16 d. Retaliating against or intimidating an employee with a disability for requesting
17 reasonable accommodation, or to avoid granting a reasonable accommodation to
18 an employee with a disability, or for filing a complaint of discrimination or
19 participating in any manner in any investigation or proceeding under the ACRA
20 or the ADA.

21

22 9. Defendants are enjoined for the duration of this Decree to:

- 23
- 24 a. Provide reasonable accommodation to include (i) modifications or adjustments to
25 a job application process that enable a qualified applicant with a disability to be
26 considered for the position such qualified applicant desires; (ii) modifications or
27 adjustments to the work environment, or to the manner or circumstances under
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1 which the position held or desired is customarily performed, that enable a
2 qualified individual with a disability to perform the essential functions of that
3 position; or (iii) modifications or adjustments that enable an employee with a
4 disability to enjoy equal benefits and privileges of employment as are enjoyed by
5 its other similarly situated employees without disabilities.
6

- 7 b. Consider the following five (5) factors set out in 29 C.F.R. § 1630.2 (p) when
8 determining whether granting a request for reasonable accommodation for an
9 employee or applicant with a disability would impose an undue hardship: “(i)
10 The nature and net cost of the accommodation needed under this part, taking into
11 consideration the availability of tax credits and deductions, and/or outside
12 funding; (ii) The overall financial resources of the facility or facilities involved in
13 the provision of the reasonable accommodation, the number of persons employed
14 at such facility, and the effect on expenses and resources; (iii) The overall
15 financial resources of the covered entity, the overall size of the business of the
16 covered entity with respect to the number of its employees and the number, type
17 and location of its facilities; (iv) The type of operation or operations of the
18 covered entity, including the composition, structure and functions of the
19 workforce of such entity, and the geographic separateness and administrative or
20 fiscal relationship of the facility or facilities in question to the covered entity; and
21 (v) The impact of the accommodation upon the operation of the facility, including
22 the impact on the ability of other employees to perform their duties and the
23 impact on the facility’s ability to conduct business.”
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- 1 c. Engage in an interactive process with the applicant/employee requesting
2 reasonable accommodation to find an effective accommodation that includes: (i)
3 analyzing the barrier(s) to equal employment opportunity in the application
4 process, the job, or a benefit or privilege of employment caused by the disability;
5 (ii) consulting with the applicant/employee to identify possible accommodations;
6 (iii) assessing the effectiveness of possible accommodations in eliminating or
7 reducing the identified barrier(s) to equal opportunity in consultation with the
8 applicant/employee; and (iv) considering the preference of the
9 applicant/employee and selecting and implementing the accommodation that is
10 most appropriate for both the applicant/employee and the employer.
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13 d. Communicate directly with the applicant/employee during the interactive process
14 and engage in a good faith exploration of possible accommodations with the
15 shared goal of identifying an accommodation that allows the applicant to
16 participate in the application process effectively, and the employee to perform the
17 job effectively, or enjoy equal benefits and privileges of employment as are
18 enjoyed by other similarly situated employees without disabilities.
19
20
21 e. Offer alternative accommodations, when such alternatives are identified during
22 the interactive process that provide an equally effective employment opportunity
23 to the applicant/employee and would not cause an undue hardship for Defendants.
24
25 f. Give primary consideration to the accommodation preferred by the
26 applicant/employee when more than one accommodation would eliminate the
27 barrier(s) to equal opportunity in the application process, the job, or a benefit or
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1 privilege of employment caused by the disability, or if the applicant/employee
2 would prefer to provide his or her own accommodation; and provide the less
3 expensive accommodation or the accommodation that is easier to provide if Pima
4 County exercises its ultimate discretion to choose between equally effective
5 accommodations.

- 6
- 7 g. Consider reassignment as an accommodation only when (i) no accommodation
8 will enable the employee to perform the essential functions of his or her current
9 job, (ii) the only effective accommodation would cause undue hardship, or (iii)
10 both Pima County and the employee voluntarily agree that reassignment is
11 preferable to the employee remaining in the current position with some form of
12 reasonable accommodation.
- 13
- 14 h. Consider allowing an employee with a disability to use a service animal at work
15 as a reasonable accommodation unless doing so would result in undue hardship.
16

17 **POLICES AND PROCEDURES**

18

19 10. Within sixty (60) days after the entry of this Decree, Defendants will:

- 20 a. Revise Pima County Administrative Procedure 23-29 to include the terms set out
21 above in paragraphs 8 and 9.
- 22 b. Amend Attachments A-2 and C to Pima County Administrative Procedure 23-29
23 to include references to the forms of reasonable accommodation identified above
24 in paragraph 9(a).
- 25 c. Add an anti-retaliation provision to Pima County Administrative Procedure 23-29
26 stating that employers are prohibited from retaliating against applicants or
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1 employees who assert their rights under the ADA by making a request for
2 reasonable accommodation.

3 **POSTING OF NOTICE**

4 11. Within thirty (30) days of the entry of this Decree, Defendants will post the Notice
5 attached as Exhibit A in the same locations as other labor and employment postings for the
6 duration of this Decree.
7

8 **TRAINING**

9 12. Within 120 days after entry of this Decree, Defendants will provide training by a
10 qualified trainer to its ADA Coordinator and members of the ADA Panel. The training will
11 consist of two (2) hours of instruction including:
12

- 13 a. The reasonable accommodation and anti-retaliation provisions included in this
14 Decree.
15
16 b. Administrative Procedure 23-29 as amended in accordance with paragraph 10
17 above with emphasis on (i) the three types of reasonable accommodation, (ii) the
18 meaning of “benefits and privileges” in the context of reasonable accommodation
19 and as described by the Equal Employment Opportunity Commission, (iii) the
20 process for considering and evaluating requests for service animals as reasonable
21 accommodation and available resources regarding service animals as reasonable
22 accommodations, and (iv) the interactive process requirements.
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24 c. The anti-retaliation provisions in Administrative Procedure 23-29.
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1 13. Defendants will provide a minimum of one (1) hour of training by a qualified trainer to
2 all supervisory employees regarding Administrative Procedure 23-29 with emphasis on the
3 anti-retaliation provisions within nine (9) months from entry of this Decree.

4 **MONITORING**

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6 14. Defendants will send periodic reports to the State regarding requests for reasonable
7 accommodation, as follows:

- 8 a. Six (6) months after the effective date of this Decree and every six (6) months
9 thereafter for the duration of the Decree.
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11 b. Each report will include (i) copies of all reasonable accommodation requests from
12 applicants and employees received during the previous six (6) month period, and;
13 (ii) copies of all Reasonable Accommodation Response forms sent during the
14 previous six (6) month period. Defendants will provide the names of applicants
15 and employees who requested reasonable accommodation only when the
16 applicants and employees have consented to have their names included in the
17 report. If an employee does not consent to having his or her name released,
18 Defendants will redact the name from any documents sent with the reports and
19 will provide the case number on the documents provided with the report.
20 Defendants shall provide all employees and applicants for employment who make
21 a request for reasonable accommodation during the duration of this Decree with
22 the Notice attached as Exhibit B at the time they make a request for reasonable
23 accommodation; (iii) Defendants shall report to the State the names, title,
24 department, and date of training for all supervisors who attended the training
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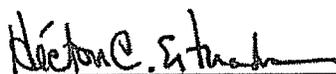
1 pursuant to paragraph 13 within the previous six (6) months. Defendants may
2 satisfy the requirement of identifying the supervisors by attaching a copy of the
3 attendance list that includes the printed name, title, and department of each
4 supervisor attending the training and the date of attendance.
5

6 15. All monitoring reports and information to be sent to the State under this Decree shall be
7 sent to: Arizona Civil Rights Division, 1275 W. Washington, Phoenix, AZ 85007, Attn: Sandra
8 R. Kane, Assistant Attorney General, or her successor. All communications to be sent to
9 Defendants with respect to this Decree shall be sent to: Pima County Attorney's Office, 32 N.
10 Stone Avenue, Suite 2100, Tucson, AZ 85701, Attn: Stacey Roseberry, Deputy County
11 Attorney, or her successor.
12

13 16. Defendants shall send copies of policies and forms adopted or amended pursuant to this
14 Decree to the State within ten (10) business days of adoption or amendment.
15

16 17. Defendants shall send written certification to the State of compliance with the training
17 provisions of this Decree relating to the ADA Coordinator and the ADA Panel within ten (10)
18 business days of completion of the training by providing: (i) confirmation that the training
19 occurred; (ii) the date, time and location of the training; (iii) a list of the names and positions of
20 those persons who attended the training; (iv) the name of the agency or individual providing the
21 training and the resume or curriculum vitae of the trainer. If Defendant's attorney provided the
22 training, Defendants will not be required to submit a copy of the trainer's resume.
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24

25 Dated this 2nd day of November, 2011.
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Héctor C. Estrada
United States Magistrate Judge

APPROVED AND CONSENTED TO BY THE PARTIES:

1
2 Thomas C. Horne
3 Attorney General

Barbara LaWall
Pima County Attorney

4 By /s/ Sandra R. Kane
5 Sandra R. Kane
6 Assistant Attorney General
Attorneys for State of Arizona

By /s/ Stacey Roseberry (with consent)
Stacey Roseberry
Deputy Pima County Attorney
Attorneys for Pima County

7 /s/ Richard M. Martinez (with consent)
8 Richard M. Martinez, Esq.
9 Attorney for Celine A. Baker

By /s/ Thomas Weaver, Jr. (with consent)
Deputy Pima County Attorney
Attorneys for Sheriff Dupnik

EXHIBIT A

NOTICE TO ALL PIMA COUNTY EMPLOYEES

Federal and State law prohibits employers from discriminating against applicants and employees based on their race, color, national origin, sex, age, disability, religion, or the results of a genetic test received by the employer. Pima County will comply with all laws prohibiting discrimination in the workplace and will not take any retaliatory action against any employee who asserts his or her rights under, or complains of violations of, these laws by filing a complaint with the Arizona Attorney General or the Equal Employment Opportunity Commission.

Should you have any complaint of discrimination or retaliation, you may contact the following agencies:

Office of the Attorney General
Civil Rights Division
400 West Congress
South Building, #S-215
Tucson, AZ 85701
Local (520) 628-6500
Toll Free (877) 491-5740
TDD (602) 628-6872

Equal Employment Opportunity Commission
Phoenix District Office
3300 North Central Avenue
Suite 690
Phoenix, AZ 85012-2504
Toll Free (800) 669-4000
TTY (800)669-6820

EXHIBIT B

**NOTICE TO ALL PIMA COUNTY EMPLOYEES
REQUESTING A REASONABLE ACCOMMODATION**

The Arizona Civil Rights Division is monitoring Pima County's compliance with the Arizona Civil Rights Act regarding all requests for reasonable accommodation made by employees and prospective employees with disabilities pursuant to the terms of a consent decree. Please indicate below whether you consent to having your name appear on the records disclosed to the Division concerning your request for reasonable accommodation.

Should you have any complaint of discrimination or retaliation for requesting a reasonable accommodation, you may contact the following agencies:

- Office of the Attorney General
- Civil Rights Division
- 400 West Congress
- South Building, #S-215
- Tucson, AZ 85701
- Local (520) 628-6500
- Toll Free (877) 491-5740
- TDD (602) 628-6872
- Equal Employment Opportunity Commission
- Phoenix District Office
- 3300 North Central Avenue
- Suite 690
- Phoenix, AZ 85012-2504
- Toll Free (800) 669-4000
- TTY (800)-669-6820

I, _____, (consent) (do not consent) to having my name appear on the documents that Pima County submits to the Arizona Civil Rights Division regarding my reasonable accommodation request.

Employee's Signature

Date

#2311759v4