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12 *Attorneys for Defendant City of Milpitas*

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
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16 U.S. EQUAL EMPLOYMENT OPPORTUNITY
 COMMISSION,
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 18 Plaintiff,
 vs.
 19 CITY OF MILPITAS,
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 21 Defendant.

Case No.: CV 15-04444 RMW HRL

CONSENT DECREE

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 23 The United States Equal Employment Opportunity Commission (the “Commission” or
 24 “EEOC”) filed this action against the City of Milpitas (“Defendant”) in order to enforce the Age
 25 Discrimination in Employment Act (“ADEA”). In the First Amended Complaint, the Commission
 26 alleged that Defendant City of Milpitas failed to hire Ms. Rhonda Anderson, Ms. Margaret Espinoza
 27 and Ms. Rosvida Galindez-Penas because of their ages in violation of Section 4(d) of the ADEA, 29
 28 U.S.C. § 623(d). Defendant denied the allegations asserted by the EEOC.

1 In the interest of resolving the lawsuit and as a result of having engaged in comprehensive
2 settlement negotiations, the Commission, and the City of Milpitas (“the Parties”) have agreed that
3 the lawsuit should be finally resolved by entry of this Consent Decree. This Consent Decree shall
4 not constitute an adjudication and/or a finding of age discrimination by the City of Milpitas.

5 This Consent Decree resolves all claims arising out of EEOC Charge No. 550-2012-02207,
6 the Letter of Determination regarding EEOC Charge No. 550-2012-02207 and the First Amended
7 Complaint filed in the lawsuit, and constitutes a complete resolution of all claims of discrimination
8 under the ADEA that were made or could have been made by the Commission in this lawsuit. This
9 Consent Decree does not, however, resolve any future charges or charges that may be pending with
10 the EEOC other than the Charge and First Amended Complaint specifically referenced in this
11 paragraph.

12 This Consent Decree comprises the full and exclusive agreement of the Parties with respect
13 to the matters discussed herein.

14 No waiver, modification or amendment of any provision of this Consent Decree shall be
15 effective unless made in writing and approved by all the Parties to this Decree, and any substantive
16 change, modification or amendment of any provision of this Consent Decree shall also require
17 approval by the Court.

18 The Court has reviewed this Consent Decree in light of the pleadings, the record herein, and
19 now approves this Consent Decree. **THEREFORE, IT IS ORDERED, ADJUDGED AND**
20 **DECREEED:**

21 I. GENERAL PROVISIONS

22 A. This Court has jurisdiction over the subject matter and the Parties to this lawsuit.
23 This Court will retain jurisdiction over this Decree for all purposes until the expiration of
24 Defendant’s obligations as set forth herein.

25 B. This Consent Decree is final and binding upon the Parties, their successors and
26 assigns.

27 C. Each party will bear its own costs and attorneys’ fees.

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1 II. GENERAL INJUNCTIVE RELIEF: NON-DISCRIMINATION AND NON-
2 RETALIATION

3 A. Defendant and its officers, agents, employees, successors, assigns, and all persons in
4 active concert or participation with it, both at the time that this Decree becomes effective and for the
5 duration of this Decree, are enjoined from: (a) unlawfully discriminating against any employee or
6 prospective employee due to his or her age; or (b) retaliating against any employee or former
7 employee because he or she: (i) opposes or opposed discriminatory practices made unlawful by the
8 ADEA; (ii) files or filed a charge of discrimination or assists, assisted, participates, or participated in
9 the filing of a charge of discrimination; or (iii) assists, assisted, participates or participated in an
10 investigation or proceeding brought under the federal laws prohibiting discrimination or retaliation.

11 III. MONETARY RELIEF

12 Defendant shall pay the gross sum of \$140,000.00 as monetary relief. Half this total amount
13 will be allocated to wages, and half will be allocated to liquidated damages. Within fourteen (14)
14 days of entry of the Consent Decree, the EEOC will inform the City how payment of the monetary
15 relief amount is to be allocated among the Claimants. The City will pay all payroll taxes it owes and
16 make appropriate withholdings for each Claimant on the back wages for the tax year during which
17 payment is made. EEOC will provide W-4 and W-9 information and current addresses for each
18 Claimant. Within 14 days of receipt of this information, the City will mail checks directly to each
19 Claimant with a copy to the EEOC. The City will mail directly to each Claimant no later than
20 February 1, 2017 U.S. Internal Revenue Service forms W-2 and 1099 for their payments.

21 IV. SPECIFIC INJUNCTIVE RELIEF

22 A. EEO, Anti-Discrimination and Complaint Procedure Policies: Defendant has
23 instituted and implemented policies and practices that help assure a work environment free from age
24 discrimination for their employees and that allow employees to raise concerns or complaints without
25 retaliation about matters, whether alleged, perceived or actual, made unlawful by the ADEA.

26 B. Training: Within six (6) months of the Consent Decree being filed with the Court,
27 Defendant shall provide equal employment opportunity and anti-discrimination training to all
28 employees, including managers, supervisors, and all Human Resources staff members, specifically

1 on the subjects of the prohibition of age discrimination, anti-retaliation, and other forms of
2 discrimination. The training will include discussion of an employer's obligation not to discriminate
3 on account of age and the employer's policies prohibiting age discrimination and retaliation.

4 1. Said training shall be held once per year during the term of this Consent
5 Decree, such year to be measured from the entry of the Consent Decree in this matter, and shall
6 consist of no less than two hours of instruction.

7 2. The training described in this section shall be provided by experienced anti-
8 discrimination educators or instructors, knowledgeable about the ADEA. This training may be
9 provided in house or online.

10 3. Defendant agrees to provide the name of the entity or person selected to do the
11 training, a course outline or syllabus of the content of each training program, and a copy of any
12 materials to be used during the training to counsel for the EEOC no later than twenty (20) days
13 before the training programs are scheduled to be held. This information should be sent to the
14 Commission c/o Peter F. Laura, 450 Golden Gate Ave., 5th Floor West, P.O. Box 36025, San
15 Francisco, CA 94102. If the Commission has not objected to the entity or person selected to conduct
16 the training or the description of the content of the training or the training materials within ten (10)
17 days of the above notice, such non-response shall be deemed an acknowledgment that the EEOC
18 does not object to them. The EEOC agrees not to object unreasonably.

19 4. As part of the training, Defendant shall inform its managers and supervisors
20 that, in accordance with their EEO and anti-discrimination policy, Defendant will impose
21 appropriate discipline up to and including termination, suspension without pay, or demotion, upon
22 any supervisor or manager who engages in age discrimination and/ or retaliation, or knowingly
23 permits any such conduct to occur in his or her work area or among employees under his or her
24 supervision.

25 5. As part of the training, Defendant also shall inform its managers and
26 supervisors that, in accordance with their EEO and anti-discrimination policy, managers and
27 supervisors have a duty to actively monitor their work areas to ensure employee compliance with
28 Defendant's EEO and anti-discrimination policy, and to report any incidents and/or complaints of

1 harassment of which they become aware to the individuals charged with handling such complaints.

2 6. All persons attending mandatory EEO and anti-discrimination training
3 pursuant to this Consent Decree shall acknowledge their attendance at the training by completing an
4 attendance roster which will include their hard-copy or electronic signature, the date, and their
5 position/ title. Defendant shall retain these attendance rosters during the pendency of the Consent
6 Decree. Defendant also shall provide these attendance rosters within ten (10) days following each
7 training session to the Commission c/o Peter F. Laura, EEOC San Francisco District Office, 450
8 Golden Gate Avenue, 5th Floor West, P.O. Box 36025, San Francisco, CA.

9 C. Discipline: Defendant shall take immediate, appropriate corrective action to
10 discipline employees, including managers, who engage in age discrimination, through consequences
11 that include termination under appropriate circumstances.

12 D. Investigation Procedures: Defendant shall promptly and appropriately investigate all
13 complaints of age discrimination.

14 1. The investigation shall include a finding of whether age discrimination and/or
15 retaliation occurred; a credibility assessment, if necessary; interviews of all potential victims and
16 witnesses identified; and concurrent notes of the investigation.

17 2. Defendant shall take immediate appropriate corrective action to discipline
18 violators and to eradicate the discrimination. Defendant shall follow up on complainants at
19 appropriate intervals to ensure that age discrimination and/ or retaliation do not recur.

20 E. Reports of Age Discrimination or Retaliation Complaints: During the pendency of
21 the Consent Decree, Defendant will provide an annual report of all complaints of age discrimination
22 and/ or retaliation made during the previous year to their management or supervisory officials or to
23 Human Resources staff members. The report will contain the complainant's name, the employer's
24 name, the nature of the complaint, and a description of its resolution. Beginning six (6) months from
25 the date of the entry of this Decree and thereafter every year for the duration of the Decree, the
26 report shall be mailed to counsel for the Commission c/o Peter F. Laura, EEOC San Francisco
27 District Office, 450 Golden Gate Avenue, 5th Floor West, P.O. Box 36025, San Francisco, CA
28 94102.

1 F. Evaluation of Managers' Performance

2 1. Defendant shall institute a procedure that evaluates supervisors and managers
3 on their performance in responding to employee complaints of age discrimination and retaliation.

4 2. The procedure shall include a provision that supervisors and managers will be
5 disciplined for failing to enforce Defendant's policies to prevent and remedy age discrimination.

6 G. Notice: Defendant shall post for the duration of this Decree, in a prominent place
7 frequented by their employees at each of its locations, the notice attached as Exhibit A. The notice
8 shall be the same type, style, and size as Exhibit A.

9 1. Within ten (10) days of the posting, confirmation that the Notice required by
10 this Decree was posted, the date of the posting, and the locations in which it was posted shall be
11 provided to the Commission, c/o Peter F. Laura, 450 Golden Gate Ave., 5th Floor West, P.O. Box
12 36025, San Francisco, CA 94102.

13 H. Access by the U.S. EEOC: The Commission, upon reasonable notice and agreement,
14 shall have the right to enter and inspect Defendant's premises, work sites, and records to ensure
15 compliance with this Decree.

16 V. PROCEDURES AND REMEDIES FOR NON-COMPLIANCE

17 A. In the event that the Commission believes that Defendant has failed to comply with
18 any provision(s) of this Consent Decree, it shall notify Defendant in writing of the non-compliance
19 by email and by mail to the counsel and the corporate officer who signed this Decree on Defendant's
20 behalf, or to his or her successor, and afford Defendant twenty (20) days after service of the notice to
21 remedy the non-compliance.

22 B. If Defendant has not remedied the alleged non-compliance in twenty (20) days after
23 service of the notice, the EEOC may petition this Court to enforce the terms of the Decree at any
24 time during its duration.

25 C. In the event the Court finds that Defendant has violated this Decree, as evidenced by
26 a final judgment against Defendant, the Court may order reasonable relief to remedy the non-
27 compliance, including attorneys' fees and costs, daily fines, appropriate injunctive relief, and
28 extension of this Consent Decree for such period as may be necessary to remedy its non-compliance.

1 VI. DURATION

2 A. This Consent Decree shall terminate two (2) years from the date of entry by the
3 Court, unless the Commission petitions this Court for an extension of the Decree because of
4 noncompliance by the City of Milpitas.

5 B. Except as provided in the preceding paragraph, two (2) years after the entry of this
6 Consent Decree, this lawsuit will be dismissed with prejudice, provided that Defendant has complied
7 substantially with the terms of this Decree. Defendant will be deemed to have complied
8 substantially if the Court has not made any findings or orders during the term of the Decree that
9 Defendants have failed to comply with any of the terms of this Decree. This Consent Decree will
10 automatically expire without further Court Order.

11 C. The Parties agree to the entry of this Decree subject to final approval by the Court.

12 DATED: April 11, 2016

13 By: /s/ Roberta L. Steele
14 Roberta Steele
15 Regional Attorney
16 Jonathan T. Peck
17 Supervisory Trial Attorney
18 Peter F. Laura
19 Trial Attorney
20 On Behalf of Plaintiff
21 U.S. EQUAL EMPLOYMENT
22 OPPORTUNITY COMMISSION

23 By: /s/ Erich W. Shiners
24 Erich W. Shiners
25 RENNE SLOAN HOLTZMAN SAKAI LLP
26 On Behalf of Defendants
27 CITY OF MILPITAS
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LOCAL RULE 5-1(i)(3) ATTESTATION

I, Peter F. Laura, am the ECF User whose ID and password are being used to file the Consent Decree. In compliance with Local Rule 5-1(i)(3), I hereby attest that Roberta L. Steele and Erich W. Shiners concurred in this filing.

DATED: April 11, 2016

By: /s/ Peter F. Laura
Peter F. Laura
Trial Attorney

ORDER

IT IS SO ORDERED.

Dated: 4/13/2016



Hon. Ronald M. Whyte
United States District Court Judge

1 **EXHIBIT A**

2 **NOTICE TO EMPLOYEES**

3 This notice has been posted pursuant to the settlement of a lawsuit: *EEOC v. City of Milpitas*. In
4 accordance with the Consent Decree, the City will provide annual training to its employees,
5 managers, supervisors, and human resources staff regarding age discrimination. The City will also
6 implement policies to ensure supervisor and manager accountability with regard to age
discrimination; and has revised and redistributed its personnel policies concerning age
discrimination.

7 Federal law prohibits an employer from engaging in or allowing discrimination, including
8 discrimination based on age. It is also unlawful for an employer to retaliate against any individual
9 because he or she complains of discrimination, cooperates with the investigation of discrimination,
10 participates as a witness or potential witness in any investigation or legal proceeding or otherwise
exercises his or her rights under the law.

11 Any employee who is found to have retaliated against any other employee because such employee
12 participated in this lawsuit will be subject to substantial discipline, up to and including immediate
13 discharge, as is consistent with the applicable Collective Bargaining Agreement or Personnel Rules
and Regulations. Should you have any complaints of discrimination or retaliation you should
contact _____ at _____.

14 Employees also have the right to bring complaints of discrimination or harassment to the U.S. Equal
15 Employment Opportunity Commission, San Francisco District Office, 450 Golden Gate Avenue, 5th
Floor West, P.O. Box 36025, San Francisco, CA 94102, (415) 522-3000.

16 This notice shall remain prominently posted until [two years from the entry of the decree].

17 This Official Notice shall not be altered, defaced, covered or obstructed by any other material.
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