

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

REGISTERED
NOV 20 2001

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
KMART CORPORATION,)
)
Defendant.)

Case No. 01 C 0594

Judge Hibbler

Magistrate Judge Denlow

CONSENT DECREE

Plaintiff, Equal Employment Opportunity Commission (hereinafter "EEOC"), filed this action on January 29, 2001, alleging that Defendant Kmart Corporation ("Kmart") discriminated against Charging Party Francisco Gomez (hereinafter "Gomez"), in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. ("Title VII") and § 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981A, by subjecting Gomez and a class of Hispanic employees to harassment and a hostile work environment because of their national origin. Kmart has denied these allegations. As a result of the parties having engaged in settlement discussions and solely for the purpose of amicably resolving remaining claims, EEOC and Kmart have agreed that this action should be finally resolved by entry of this Consent Decree. This Consent Decree is intended to and does fully and finally resolve any and all claims arising out of the Complaint filed by the EEOC.

Findings

Having examined the terms and provisions of this Consent Decree and based on the pleadings, records, and stipulations of the parties, this Court finds the following:

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A. This Court has jurisdiction over the subject matter of this action and over the parties.

B. The terms and provisions of this Consent Decree are adequate, reasonable equitable and just. The rights of the parties are adequately protected by this Consent Decree.

C. This Consent Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights and privileges of any person. The entry of this Consent Decree will further the objectives of Title VII and will be in the best interest of the parties and the public.

D. NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

Non-Discrimination

1. In all matters arising from or relating to employment, Kmart shall comply with Title VII and will not discriminate on the basis of national origin.

Non-Retaliation

2. Kmart, and all persons in active concert or participation with it, shall not retaliate against, penalize or otherwise prejudice any person because that person opposed any practice made unlawful by Title VII; filed a Complaint or Charge; testified, assisted, or otherwise participated in any manner in any investigation, proceeding, hearing or litigation under Title VII; asserted any right under this Consent Decree; or otherwise exercised his or her rights under Title VII.

Monetary Relief

3. Kmart shall pay to Francisco Gomez compensatory damages in the sum of \$50,000.00 representing damages. Payment will be made as follows:

After the Consent Decree has been entered and within thirty (30) business days after the

EEOC has provided to Kmart a Release form executed by Francisco Gomez (attached as Exhibit A to this Consent Decree), Kmart shall send the check, by certified mail to Francisco Gomez at 1906 Elizabeth Avenue, Zion, Illinois 60099, with a copy to the EEOC.

Notice Posting

4. Within twenty (20) days after the Court's entry of this Consent Decree and for the duration of this Decree, Kmart will post, and keep posted, in a prominent location in its Zion Store, #7084, where notices to employees and applicants for employment are customarily kept or posted, the Notice attached to this Decree as Exhibit B. Within twenty (20) days after the Consent Decree is entered Kmart shall certify in writing to the Chicago District Office of the EEOC that the Notice has been posted, and shall inform the EEOC of the locations where it has been posted.

Record Keeping and Reporting

5. Kmart shall maintain records of any complaints it receives relating to harassment based on national origin and any action by Kmart in response to such complaints relating to its Zion Store, # 7084. Kmart shall maintain such records as required by this paragraph for the duration of the Consent Decree.

6. Beginning six (6) months after entry of this Consent Decree and every six months thereafter, Kmart shall furnish the EEOC with a report with the following information relating to its Zion Store, #7084 during the pendency of the Consent Decree:

- a. any claims or complaints of national origin harassment;
- b. the names of all persons filing internal claims of national origin harassment;
- c. the name of any alleged national origin harassers;

- d. Kmart's resolution of any national origin harassment complaints; and
- e. copies of any and all written correspondence or reports regarding the resolution of such internal national origin harassment complaints.

Kmart shall submit its final report to the EEOC two (2) weeks prior to the date on which the Decree is to expire.

Training

7. Within forty-five (45) days after entry of this Consent Decree, Kmart shall conduct training of managers and supervisors of Kmart's Zion facility regarding the requirements of Title VII. Kmart shall submit to EEOC for approval, materials regarding the training session, including the credentials of the trainer, prior to such training. Within five (5) days after the completion of the training described above, Kmart will certify to EEOC that the training has been completed, the name(s) of the person(s) conducting the training, the time(s), duration and date(s) the training was held and a list identifying by name and position all individuals who received the training.

Duration of Decree/Retention of Jurisdiction

8. The terms of this Consent Decree shall be in effect (and the Court will retain jurisdiction of this matter to enforce this Decree) for a period of eighteen (18) months from the date on which this Consent Decree is entered.

Costs and Attorneys' Fees

9. Each party to this action shall bear its own attorney's fees, costs, and expenses.

Dispute Resolution

10. There is no private right of action to enforce Kmart's obligations under the Decree, and only the Commission and Kmart, or their successors may enforce compliance herewith.

11. In the event that either party to this Decree believes that the other party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the alleged non-complying party in writing of such non-compliance and afford the alleged non-complying party ten (10) business days to remedy the non-compliance or satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within ten (10) business days, the complaining party may apply to the Court for appropriate relief. In the event that, upon the expiration date of this Decree, a dispute is pending pursuant to this paragraph, then the term of this Decree shall be extended, with respect to the issue in dispute only, until such time as such dispute is resolved by the parties or the Court.

Miscellaneous Provisions

12. This Consent Decree shall be binding and enforceable against Kmart and its successors and assigns.

13. Kmart and its successors shall assure that all their officers, managers, and supervisors observe the terms of this Consent Decree.

14. When this Consent Decree requires the submission by Kmart of reports, notices, or other materials to the Commission, such materials shall be mailed to: Kmart Settlement, Equal Employment Opportunity Commission, Chicago District Office, Legal Division, 500 West Madison, Suite 2800, Chicago, Illinois 60661.

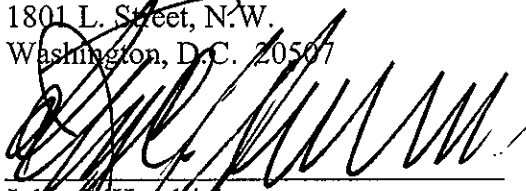
ENTERED AND APPROVED FOR:

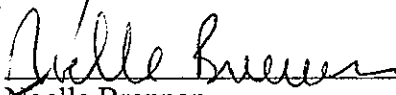
Equal Employment Opportunity Commission

NICHOLAS M. INZEO
Acting Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
1801 L. Street, N.W.
Washington, D.C. 20507

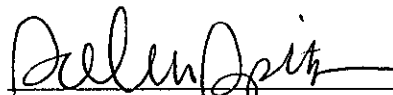

John C. Hendrickson
Regional Attorney


Noelle Brennan
Supervisory Trial Attorney

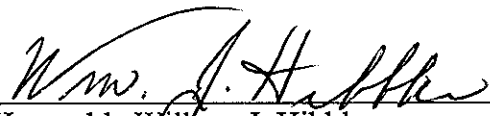

Pamela S. Moore-Gibbs
Senior Trial Attorney

Equal Employment Opportunity Commission
Chicago District Office
500 West Madison Street, Suite 2800
Chicago, Illinois 60661
(312) 886-9120

Kmart Corporation


Lawrence C. DiNardo
Sabrina C. Spitznagle
JONES, DAY, REAVIS & POGUE
77 West Wacker
Chicago, Illinois 60601
(312) 782-3939

Date: 11/19/01

ENTER: 

Honorable William J. Hibbler
United States District Judge

EXHIBIT A
RELEASE AGREEMENT

I, Francisco Gomez, for and in consideration of the sum of \$50,000.00, payable to me pursuant to the terms of the Consent Decree entered by the Court in EEOC v. Kmart Corporation, No. 01 C 0594 (N.D. Ill.), on behalf of myself, my heirs, assigns, executors, and agents, do hereby forever release, waive, remise, acquit, and discharge Kmart Corporation, and all past and present shareholders, officers, agents, employees, and representatives of Kmart Corporation, as well as all successors and assignees of Kmart Corporation from any and all claims and causes of action of any kind which I now have or ever have had under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., and § 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981A, as a result of or arising from the subject matter and claims which were or which could have been asserted in EEOC v. Kmart Corporation, No 01 C 0594 (N.D. Ill.).

Date

Francisco Gomez

NOTICE TO ALL EMPLOYEES AND APPLICANTS

This Notice is posted pursuant to the Consent Decree entered into by Kmart Corporation and the Equal Employment Opportunity Commission ("EEOC"). This settlement involves a lawsuit that was based on a Charge of Discrimination filed with the EEOC alleging national origin harassment entitled EEOC v. Kmart Corporation, N.D. Illinois No. 01 C 0594. After engaging in settlement negotiations, the parties decided to settle the case without having it determined whether the claims had any merit.

Under the terms of the Consent Decree, Kmart will 1) not engage in any employment practices which discriminate on the basis of national origin; 2) make a monetary payment to the individual who filed the charge of discrimination, 3) provide training to managers concerning prohibiting employment discrimination, and 4) maintain certain information relating to complaints and report to EEOC for eighteen months.

Kmart wishes to emphasize its fundamental policy of providing equal employment opportunity in all of its operations and in all areas of employment. In that regard, Kmart will not unlawfully discriminate against any employee or applicant for employment on the grounds of disability, race, color, religion, sex, national origin, or age. Kmart is strongly committed to maintaining a work environment free of all harassment, including national origin harassment.

Title VII of the Civil Rights Act of 1964, as amended, prohibits employers from discriminating on the basis of sex, race, color, religion or national origin. The Equal Employment Opportunity Commission is the agency responsible for enforcing Title VII. If you have any complaints of discrimination or questions concerning your rights under Title VII, you may contact the EEOC at: U. S. Equal Employment Opportunity Commission, 500 West Madison Street, Suite 2800, Chicago, Illinois 60661, (312) 353-2713.

THIS NOTICE WILL REMAIN POSTED FOR A PERIOD OF 18 MONTHS FROM THE DATE WHICH APPEARS BELOW. THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED.

U. S. Equal Employment Opportunity
Commission

Kmart Corporation

By: _____
John P. Rowe
District Director of Chicago District Office

By: _____
Its: _____

Date: _____

Date: _____

Exhibit B