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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity
Commission,

Plaintiff,

vs.

Creative Networks, L.L.C., an Arizona
L.L.C.,

Defendants.

Case No.: CV 09-02023-PHX-DAE

CONSENT DECREE

The United States Equal Employment Opportunity Commission (the
“Commission” or “EEOC”) filed this action against Creative Networks, Inc., an Arizona
L.L.C., to enforce Title I of the Americans with Disabilities Act (ADA), 42 U.S.C.
§12101, et seq., as amended (“the ADA”). In the Complaint, the Commission alleged
that Defendant discriminated against Rochelle Duran (Ms. Duran) because of her
disability, by failing to provide a reasonable accommodation during pre-employment
training and pre-employment orientation, and thereby failing to hire her and

Case 2:05-cv-02025-DAL Document 107 Filed 03/19/15 Page 2 of 10

1 discriminating against her, based on her disabilities, during the hiring process in violation
2 of Section 102 of the ADA, 42 U.S.C. §12112(a). The Commission further alleged, *inter*
3 *alia*, that Defendant had a rigid policy or practice of limiting accommodations to \$200 for
4 24 hours of required training, which is a per se violation of the ADA and had the impact
5 of not hiring or excluding hearing impaired applicants.
6

7 The Parties do not object to the jurisdiction of the Court over this action and waive
8 their rights to a jury trial and the entry of findings of fact and conclusions of law.
9

10 It is hereby ORDERED, ADJUDGED AND DECREED:

11 1. This Decree resolves all claims of the Commission against Defendant,
12 including back pay, compensatory and punitive damages, interest and injunctive relief,
13 arising out of the issues in this lawsuit.
14

15 INJUNCTION

16 2. Defendant and its officers, agents, employees, successors, assigns, and all
17 persons in active concert or participation with it, both at the time that this Decree
18 becomes effective and for the duration of this Decree, are permanently enjoined from (1)
19 engaging in any employment practice which unlawfully discriminates against an
20 applicant covered under the Americans with Disabilities Act, as amended, on the basis of
21 disability and from (2) retaliating against any applicant because he or she: (i) opposes or
22 opposed discriminatory practices made unlawful by the ADA; (ii) files or filed a charge
23 of discrimination or assists, assisted, participates, or participated in the filing of a charge
24 of disability discrimination; or (iii) assists, assisted, participates or participated in an
25 investigation or proceeding brought under the federal laws prohibiting disability
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discrimination or retaliation.

MONETARY RELIEF

3. Judgment is entered in favor of the Commission and against Creative Networks in the amount of \$57,500.00. Defendant shall pay a gross sum of \$57,500.00 to Ms. Duran. This gross sum includes \$14,375.00 in settlement of backpay and \$43,125.00 in settlement of compensatory damages. The gross sum provided to Ms. Duran shall be paid no later than fourteen days from the Court's entry of the Consent Decree. Defendant shall pay each the amount specified by the Commission and send it to Ms. Duran at the address supplied by the EEOC. Within three business days of the issuance of the payment, Defendant shall submit a copy of the payment instrument and all related correspondence to Mary Jo O'Neill, Regional Attorney, Equal Employment Opportunity Commission, 3300 North Central Avenue, Suite 690, Phoenix, Arizona 85012.

4. Defendant shall not condition the receipt of individual relief on Ms. Duran's agreement to (a) maintain as confidential the terms of this decree or the factual allegations giving rise to the charge of discrimination, (b) waive her statutory right to file a charge with any federal or state anti-discrimination agency, or (c) waive her right to apply for a position with the Defendant.

5. Defendant shall pay all payroll taxes it owes on the \$14,375.00 in back wages for the tax year during which payment is made. Defendant will be responsible for paying the employer's share of FUTA and FICA taxes and the amount shall not be taken from the settlement amount. Defendant will issue Ms. Duran a W-2 for the back wage

1 amount. Ms. Duran will provide Defendant with a W-4, W-9, and an A-4, within three
2 days of the entry of the Consent Decree, and Defendant will calculate any payroll taxes
3 owed by Ms. Duran based on the W-4, W-9, and A-4 provided by Ms. Duran. Defendant
4 shall make no deductions from the \$43,125.00 amount set forth as compensatory
5 damages. Defendant shall issue a United States Internal Revenue Service Form 1099 to
6 Ms. Duran for the remaining \$43,125.00 of the gross sum for the tax year during which
7 payment is made.
8
9

10 OTHER RELIEF

11 6. Defendant shall expunge from Ms. Duran's file: (a) all references to the
12 charge of discrimination filed against Defendant that formed the basis of this action; (b)
13 all references to Ms. Duran's participation in this action; and (c) any documents which
14 relate to complaints by Ms. Duran or investigation of Ms. Duran's complaints of
15 unlawful discrimination on the basis of disability.
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18 7. Defendant shall institute and carry out policies and practices that help
19 assure a work environment free of discrimination based on disability and fully compliant
20 with the requirements of the ADA, including the requirement of engaging in the
21 interactive process to identify reasonable accommodations.
22

23 NOTICE

24 8. For the duration of this Decree, Defendant shall post the Notice attached as
25 Exhibit A in a prominent place frequented by its applicants and employees at its facilities.
26 The Notice shall be posted in English and shall be the same type, style, and size as set
27 forth in Exhibit A.
28

ACCOMMODATIONS

1
2 9. Within sixty (60) days of the entry of this Decree, Defendant shall instruct
3 all employees in the Staff Development and Training department and all supervisory and
4 managerial employees, through interoffice memoranda and through email, that they are
5 required to consult with and seek assistance from the Regional HR Director when
6 responding to requests and/or apparent needs for reasonable accommodations, when
7 responding to allegations of denials of reasonable accommodations, and when responding
8 to complaints of discrimination on the basis of disability.
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11 10. Defendant will not implement, reinstate, or adopt any policy or practice of
12 categorically limiting accommodations and/or capping the monetary amount it will spend
13 or incur to provide accommodations to qualified individuals with disabilities. This
14 includes, but is not limited to, the elimination of Defendant's policy and/or practice of
15 limiting accommodations to \$200 for sign-language-interpreter services for hearing-
16 impaired applicants and the elimination of any other monetary limitations imposed on
17 accommodations for Defendant's 24-hours of required training to become a Direct
18 Support Professional and/or Caregiver.
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22 11. Within thirty (30) days after the entry of this decree, Defendant shall inform
23 all employees and managers through inter-office mail and email that (1) it has eliminated
24 all policies and/or practices of capping the monetary amount of accommodations it will
25 provide to qualified individuals with disabilities, and (2) it has eliminated the policy
26 and/or practice of limiting accommodations to \$200 for sign-language-interpreter
27 services
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Case 2:05-cv-02025-DAL Document 107 Filed 03/13/16 Page 6 of 16

1 12. Defendant shall provide reasonable accommodations, including, but not
2 limited to, sign language interpreters, to all applicants with disabilities who are required
3 to complete any orientations or trainings, including but not limited to Defendant's 24
4 hours of required training to become a Direct Support Professional and/or Caregiver. As
5 part of this requirement, Defendant shall provide alternative arrangements for applicants
6 with disabilities to complete the 24-hour training to become a Direct Support Professional
7 or Caregiver if, because of their disabilities and/or need for accommodation, they are
8 unable to do so within a group setting and/or within four, six-hour training sessions.
9 Defendant shall also provide a handout (attached as Exhibit B) during all applicant
10 orientations and trainings explaining applicants' rights to request a reasonable
11 accommodation under the ADA and providing information about how to request an
12 accommodation during the application and hiring process.
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17 **POLICIES/PROCEDURES**

18 13. Within sixty (60) days of the entry of this Decree, Defendant shall develop
19 written policies, or revise existing policies, concerning discrimination on the basis of
20 disability to conform with the law, and shall submit copies of the policies to the Regional
21 Attorney of the Phoenix District Office of the EEOC at the address provided in paragraph
22 three above. The written policies must include at a minimum:
23

24 A. A strong and clear commitment to a workplace free of
25 discrimination based on disability.
26

27 B. A statement that all applicants with disabilities may request a
28 reasonable accommodation.

1 C. A clear and easy procedure for applicants to follow
2 when requesting accommodations. The procedure shall provide more than one
3 option for applicants to request accommodations, including but not limited to the
4 following:

5
6 (1) providing applicants the Director of Operations/General Manager's
7 contact information (including telephone number and email address) in
8 order to request accommodations, to report denials of accommodations, or
9 to report discrimination on the basis of disability, and

10
11 (2) allowing applicants to request an accommodation from any employee of
12 Defendant's who is involved in the hiring process, including but not limited
13 to managers.
14

15 D. A clear procedure for supervisory, management and Staff
16 Development and Training employees to follow when receiving requests for
17 accommodation and attempting to obtain approval of requests for accommodation.
18 Under this procedure, these employees and managers shall be required to seek
19 assistance from the Director of Operations/General Manager when responding to
20 requests and/or apparent needs for reasonable accommodations, as set forth under
21 paragraph 12.
22
23

24 E. A mandatory obligation that Defendant must engage in the
25 interactive process with applicants who request an accommodation and/or have an
26 apparent need for accommodation. Defendant shall individually assess the needs
27 of each applicant during the interactive process and shall maintain flexibility in
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1 providing reasonable accommodations.

2 F. A requirement that Defendant shall protect the confidentiality of all
3 information regarding employees' and applicants' medical information and
4 requests for accommodation to the extent possible and will not share information
5 relating to complaints of disability discrimination (including failure to provide
6 reasonable accommodations), and retaliation unnecessarily in conformance with
7 the National Labor Relations Act. Nothing herein precludes Defendant from
8 disclosing such information in any legal, equitable, legislative, or regulatory
9 proceeding.
10

11
12 G. A requirement that Defendant shall respond to reasonable
13 accommodation requests promptly, fairly, reasonably, and effectively.
14

15 H. A requirement that, upon receiving a request for accommodation or
16 becoming aware of an apparent need for reasonable accommodation, Defendant
17 shall:
18

19 (1) document the date and time when the request for accommodation was
20 received or the date and time when Defendant became aware of the
21 apparent need for accommodation, and
22

23 (2) document in detail the applicant's need for reasonable accommodation,
24 the nature of the request for reasonable accommodation, every step taken
25 during the interactive process, all efforts made by Defendant to provide a
26 reasonable accommodation, and Defendant's response to the request for
27 accommodation.
28

1 I. A strong and clear statement advising persons who believe they have
2 been discriminated against on the basis of disability to come forward.

3 J. A description of the disciplinary consequences, up to and including
4 termination, that may be imposed upon violators of the policy.
5

6 K. An assurance of non-retaliation against persons and witnesses who
7 report to Defendant that they believe they or other applicants have been subjected
8 to unlawful discrimination and/or who have asked for reasonable
9 accommodations.
10

11 14. The policies described in paragraph thirteen shall be distributed to all of
12 Defendant's employees within ninety (90) days of the entry of this Decree.
13

14 **TRAINING**

15 15. For the duration of this decree, Defendant shall require all its employees
16 located in Arizona (as well as any other employee with human resources responsibilities
17 for its Arizona locations) to attend training regarding the ADA, reasonable
18 accommodation, the mandatory interactive process, and Defendant's policies regarding
19 these items (as described in paragraph thirteen). Regional HR Directors and employees
20 who work in Human Resources or Staff Development and Training positions shall
21 receive additional training on the requirements of the ADA, the employer's obligation to
22 engage in the interactive process and provide reasonable accommodations in the absence
23 of an undue burden, instructions on how to engage in the interactive process to identify a
24 reasonable accommodation, Defendant's policies and procedures regarding these topics
25 (as set forth in paragraph thirteen), and their respective roles in implementing and
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Case 1:07-cv-01265-DAL Document 157 Filed 08/19/10 Page 10 of 10

1 following those policies and procedures. Each training session shall include time for
2 questions and answers. The length and content of the training shall comport with
3 subsections (A), (B), and (C) below.

4
5 A. REGIONAL HR DIRECTOR TRAINING: Defendant shall ensure that the
6 Regional HR Director attends at least two (2) hours of live, in-person training on
7 the topics set forth above. The Regional HR Director shall also attend the
8 trainings set forth in subsections (B) and (C) of this paragraph.

9
10 B. EMPLOYEES WHO WORK IN HUMAN RESOURCES OR STAFF
11 DEVELOPMENT AND TRAINING POSITIONS: Defendant shall ensure that all
12 individuals who work in a human resources and/or staff development and training
13 positions receive at least 1 (1) hours of live, in-person on the topics set forth
14 above. These individuals shall also attend the training set forth in subsection (C)
15 of this paragraph.

16
17 C. ALL EMPLOYEES: Defendant shall ensure that all of its employees,
18 supervisors, officers, directors, and human resources and staff
19 development/training personnel attend at least one (1) hours of live, in-person
20 training (or view a recording of a live seminar). In addition to the topics set forth
21 above, this training shall review and explain all aspects of the ADA and
22 Defendant's related policies, including but not limited to nondiscrimination in
23 hiring, Defendant's procedures to request and provide reasonable accommodations
24 to applicants, the rights and responsibilities of applicants and employers during the
25 interactive process, awareness of issues affecting applicants with disabilities,
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1 common accommodations for hearing-impaired individuals, and evaluating
2 whether accommodations are effective at addressing the needs of applicants with
3 disabilities.

4
5 16. Defendant shall ensure that the training sessions required under paragraph
6 fifteen take place within six months of the entry of this Decree and at least annually
7 thereafter. New employees shall complete the initial training required under paragraph
8 fifteen within sixty (60) days of their hire.

9
10 17. Defendant shall require all its employees to register when they attend a
11 training seminar required by paragraph fifteen and shall retain all such registries of
12 attendance for the duration of this Decree.

13
14 18. All trainings conducted pursuant to paragraph fifteen shall be facilitated by a
15 vendor or vendors not affiliated with Defendant, and Defendant shall obtain the EEOC's
16 approval of the consultants/lecturers it selects to provide the training described below. At
17 least sixty (60) days prior to each proposed training seminar, Defendant shall submit the
18 name(s), address(es), telephone number(s), and resume(s) of the proposed
19 consultant/lecturer(s), along with the dates of the proposed training seminar(s) and an
20 outline of the contents of the training, to the Regional Attorney of the Phoenix District
21 Office of the EEOC, at the address provided in paragraph three above. The Commission
22 shall have thirty (30) days from the date of receipt of the information described above to
23 accept or reject the proposed consultant/lecturer(s). The Commission shall also have the
24 right to designate Commission representatives to attend and fully participate in any and
25 all of the training sessions required under paragraph fifteen.
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REPORTING BY DEFENDANT AND ACCESS BY EEOC

19. Defendant shall report in writing to the Regional Attorney of the Commission's Phoenix District Office, at the address provided in paragraph three above, beginning six months from the date of the entry of this Decree, and thereafter every year for the duration of the Decree, the following information:

A. A copy of the revised policies and procedures required in paragraphs nine through thirteen of this Decree.

B. Any changes, modifications, revocations, or revisions to its policies and procedures described in paragraphs nine through thirteen above which concern or affect the subjects of unlawful discrimination based on disability.

C. Verification that Defendant has implemented the accommodations practices and procedures set forth in paragraphs nine through twelve.

D. The name, address, position, social security number, and telephone number of any individual who has brought allegations, whether formal or informal, of discrimination on the basis of disability and/or denial of reasonable accommodations against Defendant's personnel including, but not limited to, management officials and/or non-management employees, during the first six months, and thereafter every year, preceding the report to the EEOC. Defendant shall also state the nature of the complaint, investigatory efforts made by Defendant, and corrective action taken, if any.

E. The registries of persons attending the training seminars required in paragraph fifteen of this Decree and a list identifying: (1) the current Regional HR Director employed by Defendant and the hours of training completed; (2) the current

1 Human Resources and Staff Development and Training personnel employed by
2 Defendant and the hours of training they completed, and (3) all current employees of
3 Defendant on the days of the seminar training sessions described in paragraph fifteen (C)
4 above.

5
6 F. Confirmation that (1) the Notice required in paragraph eight of this
7 Decree was posted in English, and the locations where it was posted; (2) the policies
8 required in paragraph thirteen was distributed to each current and new employee of
9 Defendant, and posted; and (3) that Exhibit B has been added to the materials provided to
10 applicants.
11

12 20. The Commission, upon reasonable notice and agreement, shall have the
13 right to enter and inspect Defendant's premises and work sites to ensure compliance with
14 this Decree.
15

16 COSTS AND DURATION

17
18 21. Each Party shall bear its costs and attorney's fees incurred as a result of this
19 action through the filing of this Decree.
20

21 22. The duration of this Decree shall be two (2) years from its entry. This
22 Court shall retain jurisdiction over this action for the duration of the Decree, during
23 which the Commission may petition this Court for compliance with this Decree. Should
24 the Court determine that Defendant has not complied with this Decree, the Court may
25 order appropriate relief, including extension of this Decree for such period as may be
26 necessary to remedy its non-compliance, an award of attorney's fees and costs, and fines
27 for contempt of court.
28

23. Absent extension, this Decree shall expire by its own terms at the end of two
(2) years from the date of entry without further action by the Parties.

24. The Parties agree to entry of this Decree and judgment subject to final
approval by the Court.

SO ORDERED.

Dated this 19 day of Sep. 2013.

United States District Judge David A. Ezra

APPROVED AND CONSENTED TO THIS

ELEVENTH DAY OF SEPTEMBER:

FOR DEFENDANT:

James L. Blair, Esq.

N. Todd McKay, Esq.

Renaud Cook Drury Mesaros, P.A.
Phelps Dodge Tower
One North Central Ave., Suite 900
Phoenix, AZ 85004-4417
Attorneys for Defendants

Megan Neal, DIRECTOR OF
OPERATIONS/ GENERAL
MANAGER

Creative Networks, L.L.C.
Phoenix, Arizona 85012
850 27

FOR THE EEOC:

MARY JO O'NEILL
Regional Attorney

ANDREA G. BARAN
Supervisory Trial Attorney

HILLARY K. VALDERRAMA
Trial Attorney

CHRISTOPHER HOUK
Trial Attorney
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Phoenix District Office
3300 N. Central Ave., Suite 690

EXHIBIT A

Case 1:00-cv-01010-DAL Document 107 Filed 05/10/10 Page 10 of 10

NOTICE TO ALL EMPLOYEES OF CREATIVE NETWORKS L.L.C.

It is unlawful under federal law, Title I of the Americans with Disabilities Act (ADA), 42 U.S.C. §12101, et seq., as amended ("the ADA"), and state law to discriminate against an employee on the basis of disability, including failing to provide a reasonable accommodation or otherwise discriminating against applicants or employees with disabilities in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training for applicants and employees, and other terms and conditions of employment. Discrimination under the ADA includes denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, based on the need to make reasonable accommodations for the disabled employee or applicant. It is also unlawful to retaliate against any person because the person protested discriminatory practices or contacted the EEOC.

Creative Networks shall not discriminate against any employee on the basis of disability, including failure to provide a reasonable accommodation, and shall not retaliate against any applicant or employee for complaining about discrimination.

If you believe you have been discriminated against or denied a reasonable accommodation, you have the right to seek assistance from:

- (1) EEOC, 3300 North Central Avenue, Suite
690, Phoenix, Arizona 85012
Telephone: (602) 640-5000
TTY: (602) 640-5072
Website (national): www.eeoc.gov; or**
- (2) Arizona Civil Rights Division ("ACRD")
of the Attorney General's Office
1275 W. Washington, Phoenix, Arizona, 85007
Telephone: (602) 542-5263
TDD: (602) 542-5002
Toll Free: (877) 491-5742
Toll Free TDD: (877) 624-8090**

You have the right to file a charge with the EEOC or ACRD if you believe you are being discriminated against, retaliated against or denied a reasonable accommodation.

No Retaliation Clause. It is against the law for any action to be taken against you by any supervisory or management official of Creative Networks for: (1) opposing disability discrimination, a failure to reasonably accommodate, or other discriminatory practices made unlawful by federal or state law; (2) filing a charge or assisting or participating in the filing of a charge of discrimination; or (3) assisting or participating in an investigation or proceeding brought under the ADA. Should any such retaliatory actions be taken against you, you should immediately contact the EEOC or the ACRD at the addresses or telephone numbers listed above.

EXHIBIT B

NOTICE TO APPLICANTS ABOUT AVAILABILITY OF REASONABLE ACCOMMODATIONS

Under federal law, the Americans with Disabilities Act of 1990, as amended in 2008, employers (such as Creative Networks) must provide reasonable accommodations for applicants with disabilities who need them to apply for a job or to work. “Reasonable accommodations” can include sign language interpretation for orientation and training, as well as other accommodations.

If you require an interpreter or any other accommodation due to your disability at any time, please request the accommodation from any Creative Networks employee. You may also request an accommodation from Creative Networks’ Director of Operations/General Manager, Megan Neal, by telephone at (623) 780-0053 or by email at mneal@rescare.com. Creative Networks is strongly committed to individually assessing the needs of each applicant and maintaining flexibility in providing reasonable accommodations.