

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

**ERCEL CHANDLER, SHIRLEY MILLER,)
and MARCHALL ALLEN, individually and)
representing a class of similarly situated persons,)**

Plaintiffs,)

vs.)

Case No. 00-0878-GAF

JOHN KNOX VILLAGE)

Defendant.)

CONSENT DECREE

TABLE OF CONTENTS

I. INTRODUCTION

II. NATURE OF THE CASE

III. GENERAL TERMS OF THE DECREE

 A. DEFINITIONS

 B. JURISDICTION AND VENUE.....

 C. EFFECTIVE DATE AND TERM OF DECREE

 D. PERSONS COVERED BY DECREE, SCOPE OF CLASS AND LIMITATIONS PERIOD.....

 E. NON-ADMISSION OF LIABILITY

 F. RELEASE/BAR OF CLAIMS

IV. GENERAL INJUNCTIVE MEASURES

 A. BACKGROUND.....

 B. FUTURE MEASURES

 C. ANNUAL REPORT TO THE COURT.....

V. SETTLEMENT FUND.....

 A. CREATION AND ADMINISTRATION OF FUND.....

 1. Creation and Purpose.....

 2. Administrators’ Responsibilities

 B. CLAIMS FILING PROCEDURES FOR SETTLEMENT OF CLAIMS OF PLAINTIFFS AND CLASS MEMBERS

VI. ATTORNEYS' FEES AND EXPENSES

VII. NOTICE

 A. INDIVIDUAL NOTICE

 B. COST OF NOTICE.....

VIII. ENFORCEMENT.....

 A. NOTICE AND OPPORTUNITY TO CURE.....

 B. FEES.....

IX. GOVERNING LAW/ENTIRE AGREEMENT.....

Schedule of Attachments

- Attachment A (release of claims)
- Attachment B (stipulation of dismissal)
- Attachment C (injunctive relief reporting form)
- Attachment D (notice to class)
- Attachment E (claim form)
- Attachment F (request for exclusion form)

I. INTRODUCTION

The purpose of this Consent Decree is to set forth the full and final terms by which named plaintiffs, on behalf of themselves and members of the class defined herein, and defendant John Knox Village have settled and resolved all claims or potential claims between them, including all claims of any alleged discrimination against African American individuals through an alleged discriminatory practice, purpose, adverse impact, or effect of John Knox Village's alleged practices and policies.

II. NATURE OF THE CASE

Plaintiff originally filed this race discrimination action against John Knox Village on August 29, 2000. On March 15, 2002 plaintiff named additional parties and amended her claims to include class allegations. There are currently 12 other plaintiffs in three separate cases in this court who have similar claims of race discrimination. This lawsuit, however, is the lowest numbered case which is currently active in this Court. The case of Minnie Ford v. John Knox Village, Case No. 00-0879-CV-W-SOW, which is pending in front of the Honorable Scott O. Wright, was filed after this case. The case of Kaye Saunders v. John Knox Village, Case No. 00-0880-CV-W-6, which is pending in front of the Honorable Howard F. Sachs, was filed after this case. The case of Barbara Eldridge v. John Knox Village, Case No. 00-0168-CV-W-1, was appealed to the Eighth Circuit and is the subject of a potential petition for certiorari to the United States Supreme Court. As a result, the parties jointly agree that this is the proper case in which to seek class certification and a consent decree.

III. GENERAL TERMS OF THE DECREE

A. DEFINITIONS

1. John Knox Village is a not-for-profit corporation.

2. The phrases "named plaintiffs" or "plaintiffs" mean and refer to Ercel Chandler, Shirley Miller and Marchall Allen.

3. The phrase "African American" means "black" as defined in Appendix 4 of the current Instruction Booklet for completion of Standard Form 100, Employer Information Report EEO- 1. The phrases "African American" and "black" are used interchangeably.

4. The phrase "employment-related claims" means any and all claims based upon or arising under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000 et seq.; the Civil Rights Act of 1991, as codified primarily in Titles 29 and 42 of the United States Code; the Civil Rights Act of 1866, 42 U.S.C. § 1981 et seq.; the Missouri Human Rights Act, R.S. Mo. Chapter 213; as well as any other federal, state, or local statute, law, regulation, rule, order, ordinance or other authority of any nature applicable to employment, including without limitation those relating to discrimination, human rights, affirmative action and any employment-related tort or contract claim.

5. The phrases "plaintiffs' counsel" and "class counsel" refer to Michael S. Ketchmark, DAVIS KETCHMARK EISCHENS & McCREIGHT, P.C., 2345 Grand Boulevard, Suite 2110, Kansas City, Missouri 64108

6. The phrase John Knox Village's counsel refers to Stanley D. Davis, SHOOK, HARDY & BACON, L.L.P., One Kansas City Place, 1200 Main Street, Kansas City, Missouri 64105, or such other counsel as may be hereafter designated in writing by John Knox Village.

7. The phrase "eligible class members" or "members of the class," or any variation of such terms shall refer to all members of the class as defined in Section III(D) of this Decree.

B. JURISDICTION AND VENUE

The Court has jurisdiction over the parties and the subject matter of this action. Venue is proper in this District. The Court shall retain jurisdiction of this action for the purpose of entering all orders, judgments and decrees which may be necessary to implement the relief provided herein.

C. EFFECTIVE DATE AND TERM OF DECREE

This Decree and the agreements contained herein are effective as of the date the Decree is finally approved and entered by the Court and the time for appeal has run without an appeal being filed or, if an appeal is filed, the appeal is vacated or the approval of the Decree has been finally affirmed on appeal and no further appellate review would be possible (the "Effective Date"). The Decree and the agreements contained in it shall continue to be effective and binding upon the parties and their agents and successors for a three year period from the Effective Date, unless a shorter period is specified for a particular provision, and provided that the releases and bars on claims shall survive the Decree. The three year term does not, as such, bar plaintiffs or class members from seeking an extension of the term of the Decree as may be authorized by applicable law.

D. PERSONS COVERED BY DECREE, SCOPE OF CLASS AND LIMITATIONS PERIOD

1. The Class

The class shall be maintained as both a Fed. R. Civ. P. 23(b)(2) and (b)(3) class which includes:

ALL BLACK PERSONS WHO HAVE WORKED AT JOHN KNOX VILLAGE IN LEE'S SUMMIT, MISSOURI AT ANY TIME BETWEEN MARCH 16, 1995 AND MARCH 15, 2002, INCLUDING THOSE WHO ARE STILL WORKING AT JOHN KNOX VILLAGE, WHO CLAIM TO

HAVE BEEN SUBJECTED TO RACIAL HARASSMENT OR DISCRIMINATION.

2. Opt Out

Members of the class (other than named plaintiffs) may opt out of the class and settlement described herein upon Court approval. Members of the class who elect to opt out must do so in writing no later than the date specified in the notice provisions contained herein. Election to opt out must be submitted pursuant to the procedure set forth in the Notice and must be approved by the Court.

E. NON-ADMISSION OF LIABILITY

Nothing in this Decree constitutes any admission whatsoever of any wrongdoing or liability of any kind by John Knox Village, whether for any alleged acts of unlawful discrimination or otherwise. John Knox Village expressly denies any wrongdoing or liability.

F. RELEASE/BAR OF CLAIMS

1. Release by Named Plaintiffs and those who Receive Payment from the Settlement Fund. The provisions of this Decree shall resolve finally and forever and bar hereafter any and all individual or class employment-related claims as defined in this Decree, in law or in equity, of the named plaintiffs and any members of the class who receive payments from the Settlement Fund, which any of them may have, may have had or in the future may have against John Knox Village (including any of its predecessors, assignees, directors, officers, employees, representatives, agents, attorneys, insurers, affiliates and subsidiaries) arising from any events, acts, omissions, policies, practices, procedures, conditions, or occurrences at any time through and including the Effective Date of this Decree, including any alleged "continuing violation(s)" after the Effective Date of the Decree insofar as any such continuing violations arose

from events which occurred during any part of such period prior to the Effective Date of the Decree. As a condition precedent to the receipt of any relief under the terms of this Decree, named plaintiffs and members of the class shall, in consideration thereof, execute the Release, exactly as it appears in Attachment A. The named plaintiffs and members of the class must execute the Release before receiving any monetary payment from the Settlement Fund.

2. Release of Claims of All Class Members Who Fail to Opt Out and Who Do Not Receive Monetary Payments from the Settlement Fund. With respect to all members of the class other than (1) the named plaintiffs, (2) persons who receive payments from the Settlement Fund, and (3) persons who have been allowed by the Court to opt out under the provisions of this Decree, the provisions of this Decree shall resolve finally and forever and bar hereafter any and all individual or class claims that any such members of the class may have, may have had or in the future may have against John Knox Village (including any of its predecessors, assignees, directors, officers, employees, representatives, agents, attorneys, insurers, affiliates and subsidiaries) in this or any other proceeding, including lawsuits, administrative actions or grievances under a collective bargaining agreement, relating to race or color discrimination arising from any events, acts, omissions, policies, practices, procedures, conditions or occurrences at any time through and including the Effective Date of this Decree, including any "continuing violation(s)" after the Effective Date of the Decree insofar as any such continuing violations arose from events which occurred during any part of such period prior to the Effective Date of the Decree, as well as any other claim of any nature under any legal authority or theory relating to, arising from, or based on any events, acts, omissions, policies, practices, procedures, conditions or occurrences at any time through and

including the Effective Date of this Decree that could have given rise to any claim of race or color discrimination.

3. Effect of this Consent Decree on Future Claims. The doctrines of res judicata and collateral estoppel shall apply to the named plaintiffs and all members of class (except those who have been allowed by the Court to opt out under the provisions of this Decree) with respect to all claims as identified and described above, whether of an individual or class nature.

4. Dismissal of Current Lawsuits. The complaint in this action against John Knox Village shall be dismissed in its entirety, with prejudice, on the Effective Date of this Decree, pursuant to the Joint Stipulation of Dismissal, attached hereto as Attachment B. The Court, however, shall retain jurisdiction of this case as set forth in Section III.B. Any individual class member who has a lawsuit on file is required to dismiss their lawsuit, with prejudice, before receiving any monetary compensation from the Settlement Fund.

IV. GENERAL INJUNCTIVE MEASURES

The following general injunctive relief shall apply to and affect the operations of John Knox Village.

A. BACKGROUND

The following existing measures currently in place at John Knox Village shall be continued and shall be subject to annual reporting to the Court as set forth below throughout the term of this Consent Decree.

1. EEO Compliance

- Current Policies
- No. 113: Equal Opportunity Employment

- No. 117: Nondiscriminatory Staffing/Assignment
 - No. 420: Discriminatory Harassment
 - No. 512: Problem Solving
 - Reporting Form: Workplace Discrimination/Harassment
(attached as Exhibit C)
 - All associates receive copies of the Village policies, and all shall receive policy updates and revisions periodically.
 - EEOC/MCHR Posters posted throughout the Village
2. EEO and Related Training
- Workplace Sensitivity/Diversity
 - Training designed to communicate and reinforce the Village's commitment to maintaining a work environment that is free from discrimination and harassment is provided to all managers once each calendar year, and to all associates once each calendar year.
 - EEO Training
 - New managers are offered a workshop on EEO laws and Village policies related to EEO laws within the first year of employment.
 - The training is also included in the orientation of all new Village associates and in new manager orientation.
 - Interview Process

Prior to conducting any performance or other employment related interviews on their own, all managers and others involved in the interview process must successfully complete an interviewing class, which includes education on EEO laws and Village policies relating to EEO laws.

3. Resident Education

- Resident Handbook

This handbook is disseminated to all residents and reminds all residents that all resident agreements require compliance with Village policies. The General Policies section within the handbook informs residents of the Village's policy to encourage diversity and prohibit discrimination against both residents and associates. The resident handbook is updated periodically.

- VCC Admission Process

A separate letter is sent to all new residents and their families during the admission process to educate residents and their families regarding Village policies respecting diversity and non-discrimination as well as Village policies of communicating and treating all associates with dignity and respect.

4. Diversity Initiatives

- Associate Diversity Committee

The Village developed the Associate Diversity Committee to promote communication and understanding among associates with different backgrounds. The Committee is comprised of Village associates at all levels and reflects diverse backgrounds. The committee has been trained and began monthly meetings in April 2001. Committee activities have included development and implementation of a diversity audit, review of associate policies, and workplace sensitivity training. Future plans for additional educational activities as well as the celebration of a Diversity Month are underway.

B. FUTURE MEASURES

The following additional and expanded EEO and diversity measures shall be developed and implemented at John Knox Village and shall be reported annually to the Court as set forth below throughout the term of this Consent Decree.

1. The Director of Employment and Associate Relations will
 - Continue to coordinate enforcement of Village policies related to EEO laws
 - Identify potential EEO concerns in partnership with outside consultants as necessary
 - Receive and track reports of EEO concerns

- Coordinate investigation and resolution of identified or reported EEO concerns
2. Communication of Director of Employment and Associate Relations Role
The Village shall promote and communicate to all associates at least annually an understanding of the Director of Employment and Associate Relations' role and responsibilities.
 3. EEO Compliance
The Director of Employment and Associate Relations reports directly to the Vice President of Human Resources to whom quarterly reports on EEO compliance and diversity measures shall be provided.
 4. Board of Directors Reports
The Vice President of Human Resources shall report the status and progress of all EEO compliance and diversity activity to the Village Board of Directors at least semi-annually.
 5. The Village shall:
 - distribute annually to all associates a summary, in simple language, of associate rights and responsibilities related to EEO laws and Village policies related to EEO laws, and their right to be free from retaliation;
 - Periodically (at least annually) publicize and promote Village values, with emphasis on valuing diversity;

- Post Village values throughout the Village in all locations where associate information is posted;
- Retain a qualified outside consultant to advise and consult with the Village regarding the promotion of diversity;
 - Outside consultant will be available to provide individual, department specific as well as Village-wide consulting and diversity review;
 - Outside consultant will assist with annual diversity training for all associates;
- Continue to focus on minority recruitment efforts;
- Offer annual diversity training for all residents; and
- Coordinate and conduct joint resident/associate diversity awareness.

C. ANNUAL REPORT TO THE COURT

1. Pursuant to this Consent Decree, the Village's Vice President of Human Resources shall report to the Court annually on or about January 15 each year during the term of this Consent Decree commencing January 15, 2003 respecting the status of the Village's EEO and diversity activities described herein during the preceding year.
2. Each annual report to the Court shall be submitted over the signature of the Vice President of Human Resources of the Village who shall certify the accuracy and completeness of the report.

3. Each annual report to the Court shall describe each activity, seminar, training session, communication or publication in furtherance of the Village's responsibilities under these Injunctive Measures which description shall include date of the event or communication, the number of associates and/or residents participating or involved, a brief description of the substance of the event or communication, and with respect to ongoing management and operating activities such as continuing diversity recruitment efforts, a summary of diversity recruiting activities, media outlets utilized, and a statement of the volume of such activities for the year.
4. Plaintiffs' opportunity to respond
 - A copy of the Village's annual report to the Court shall be served on counsel for plaintiffs concurrently with filing.
 - Counsel for plaintiffs shall have 14 days within which to review the report and file any response with the Court. Any response shall be served on counsel for the Village concurrently with filing.
 - In the event counsel for plaintiffs file a response, both parties shall have 14 days within which to reconcile issues reflected or identified in the Village's annual report and plaintiffs' response, and shall report such reconciliation or failure to reconcile to the Court.
 - In the event reconciliation is not achieved by the parties, the Court may take such action as the Court deems appropriate to address or resolve the issues.

5. In the event plaintiffs do not file a response to the Village's annual report within 14 days, the report shall be deemed to be accepted by plaintiffs and the Court without further action by the Court or any party.

V. SETTLEMENT FUND

A. CREATION AND ADMINISTRATION OF FUND

1. Creation and Purpose

For the purpose of satisfying and settling all of the eligible claims of named plaintiffs and members of the class and to make full and complete settlement with respect to past and future attorneys' fees, expenses and costs of class counsel, as well as future administrative fees and expenses, John Knox Village shall, upon final approval and entry of proposed Administrative Order No. 1 attached hereto, deposit by wire transfer to the Settlement Fund the amount of \$3,750,000.00.

The Settlement Fund shall be established as a qualified settlement fund that qualifies under Section 468B of the Internal Revenue Code and shall be administered by Michael S. Ketchmark and Brett A. Davis ("the Administrators") under the Court's supervision in accordance with Administrative Order No. 1 submitted to the Court for approval, the terms of which are incorporated herein.

2. Administrators' Responsibilities

In administering the Settlement Fund, including the maintenance of detailed and accurate records, the Administrators shall be bound by the terms of the Court's Administrative Order No. 1, as that order may in the future be supplemented or amended by the Court to administratively carry out the purposes of the Decree, provided that no such supplementation or amendment may alter the terms of the Decree, including John Knox Village's settlement obligation.

B. CLAIMS FILING PROCEDURES FOR SETTLEMENT OF CLAIMS OF PLAINTIFFS AND CLASS MEMBERS

Members of the class as defined in the Decree, including named plaintiffs, may submit their claims to the Administrators, under penalty of perjury, in accordance with the procedures set forth on the Claim Form by a date selected by the Court.

Following preliminary approval of the Decree, class counsel shall mail a Claim Form to every known class member at his/her last known address, pursuant to the procedures set forth in the Notice provision of the Decree and the Schedule of Mailing and Publication Notice set forth in the Court's Order preliminarily approving the Decree. Claim Forms shall be made available by class counsel to other class members at their request.

The claims submitted by class members, including named plaintiffs, shall be processed and reviewed by the Administrators and monetary awards from the Settlement Fund shall be recommended to the Court by the Administrators. Underlying Claim Forms prepared by class members may be provided to the Court under seal if so requested, but shall be provided to John Knox Village only if so ordered by the Court. The recommendations shall be provided to the Court under seal, with a copy to counsel for John Knox Village. In order to promote both fairness and efficiency, each claim will be awarded points after review by the Administrators of the information provided on his/her Claim Form. The details of the point system to be applied shall be provided to John Knox Village and recommended by class counsel to the Court after claims are received, and the details are subject to Court approval. The point system will be applied uniformly, will not be discretionary after approval and may be amended only by Court Order. The total points awarded to all claimants will be aggregated, and each claimant's proportionate share of the total

points will be determined. The claimant shall then be allocated a commensurate proportion of Settlement Fund. All monetary awards shall be subject to the review and approval of the Court before disbursement. All class members receiving awards will be required to keep the amount of the awards confidential from everyone except class counsel, or any attorney, tax or financial advisor representing them or a member of their immediate family (but only after receiving an agreement by such attorney, advisor or family member to keep the amount of the award confidential).

VI. ATTORNEYS' FEES AND EXPENSES

Subject to approval by the Court, class counsel shall be entitled to attorneys' fees including reimbursement of costs and expenses for legal services through the Effective Date of the Decree as well as future attorneys' fees, administrative fees, costs and expenses in the following amounts:

1. Upon the Effective Date of this Decree, class counsel will receive reimbursement for out-of-pocket litigation expenses incurred to that point;
2. Class counsel will receive reimbursement for future out-of-pocket expenses incurred on behalf of the class as such expenses are incurred;
3. Class counsel will receive as attorneys' fees and administration fees forty percent (40%) of each cash payment tendered by John Knox Village pursuant to paragraph V(A)(1)(a) of this Decree. These amounts are intended to compensate class counsel both for past and future attorneys' fees and administration fees. These amounts will be paid to class counsel on the Effective Date of this Decree.

VII. NOTICE

A. INDIVIDUAL NOTICE

Individual Notice of the terms of this Decree, and of the opportunity to submit written comments or to appear at the fairness hearing, shall be sent by class counsel by first-class mail to all members of the class of, at their last known address, to the extent those individuals are ascertainable from John Knox Village's records. Such notice will be in the form as it appears in Attachment D. John Knox Village shall provide such addresses to class counsel on gummed labels within seven (7) days after preliminary approval by the Court. The gummed labels for all class members shall also include the individual's social security number to the extent determinable from John Knox Village's records. John Knox Village shall also deliver to class counsel alphabetized lists of the persons for whom address labels were supplied. Notice will also be given by publication in the Kansas City Call.

The Notice to class members shall include the Claim Form as it appears in Attachment E, and the Request for Exclusion Form as it appears in Attachment F.

B. COST OF NOTICE

The costs of printing, handling and distributing the mailed and published Notices and Claim Forms to members of the class shall be borne by the Class.

VIII. ENFORCEMENT

A. NOTICE AND OPPORTUNITY TO CURE

In the event any plaintiff, member of the class, or plaintiffs' counsel have good reason to believe, at any time during the term of this Decree, that John Knox Village has not complied with any

provision of the Decree, such persons may, through plaintiffs' counsel, seek enforcement of the Decree from the Court. However, prior to instituting any proceedings to enforce the provisions of this Decree, plaintiffs' counsel shall provide written notice to John Knox Village's counsel that specifically sets forth the way(s) in which counsel believes that John Knox Village is in violation and the evidence in support thereof. Following written notice, John Knox Village shall be afforded a sixty (60) day opportunity to cure the alleged violation. Only after the expiration of the applicable cure period, or any agreed extension thereof, may plaintiffs' counsel bring any enforcement proceedings before the Court.

Enforcement proceedings, if any, shall be brought on written motion to the Court. If such proceedings are brought, John Knox Village shall have twenty (20) working days to file its response.

B. FEES

In the event class counsel brings an enforcement action, the prevailing party may petition the Court for attorneys' fees and costs in accordance with the provisions and standards of 42 U.S.C. § 1988.

IX. GOVERNING LAW/ENTIRE AGREEMENT

The parties agree that federal law shall govern the validity, construction and enforcement of this Decree. To the extent it is determined that the validity, construction or enforcement of this Decree or any release executed pursuant to its terms is governed by state law, the law of the State of Missouri shall apply.

This Decree, including the Attachments hereto, contains the entire agreement and understanding of the parties with respect to the settlement of this litigation. This Decree does not impose any obligations on the parties beyond the terms and conditions stated herein. Accordingly, this Decree shall not prevent or preclude John Knox Village from revising its employment practices and policies or taking

other personnel actions during the term of the Decree that do not violate specific requirements of the Decree.

This Decree may not be amended or modified except with the express written consent of the parties and the approval of the Court.

All parties to this Decree acknowledge that this Decree is final and binding in all respects.

AGREED AND CONSENTED TO THIS 15th DAY OF MARCH, 2002 BY:

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