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 CLERK, U.S. DISTRICT COURT  
 DISTRICT OF HAWAII

FILED IN THE  
 UNITED STATES DISTRICT COURT  
 DISTRICT OF HAWAII

DEC 14 2007  
 at A o'clock and 05 min  
 SUE BEITIA, CLERK

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 20 STRAUB CLINIC & HOSPITAL and  
 21 HAWAII PACIFIC HEALTH

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF HAWAII**

22 U.S. EQUAL EMPLOYMENT	)	CASE NO. CV 06-00530 ACK (LEK)
23 OPPORTUNITY COMMISSION,	)	
24 Plaintiff,	)	
25 v.	)	<b>[PROPOSED] CONSENT DECREE;</b>
26 STRAUB HOSPITAL and HAWAII	)	<b>EXHIBITS A-B; ORDER</b>
27 PACIFIC HEALTH,	)	
28 Defendants.	)	

1 **I.**

2 **INTRODUCTION**

3 Plaintiff U.S. Equal Employment Opportunity Commission ("EEOC" or  
4 "Commission ") and Defendants Straub Clinic & Hospital and Hawaii Pacific  
5 Health, ("Straub" and "HPH") hereby stipulate and agree to entry of this Consent  
6 Decree to resolve the Commission's Complaint (the "Complaint"), filed under Title  
7 VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* ("Title  
8 VII ") and under the Age Discrimination in Employment Act of 1967, as amended,  
9 29 U.S.C. §§ 621 *et seq.* (the "ADEA"). This Consent Decree resolves all issues  
10 raised by the EEOC in the present lawsuit involving the Charging Parties, Helen  
11 Josypenko, Lauren Arashiro, Yvonne Lima, Candace Johnson, Jennifer Siemsen,  
12 Doris Faletoi, and Ruth Jones, ("Charging Parties") and the additional Claimants,  
13 (the "Other Claimants"). "Other Claimants" are those individuals who were not  
14 hired by Straub, HPH or Kapi'olani Medical Center for Women and Children  
15 ("KMCWC") for security officer positions for which they applied and who were  
16 female and/or 40 years of age or older during the period from June 1, 2004 until  
17 October 1, 2006, or any other similarly situated individuals that the EEOC  
18 determines to be class members. (The "Claimants" refers to both Charging Parties  
19 and the Other Claimants unless otherwise specified).

20 Plaintiff-Intervenor Doris Faletoi moved to intervene in this matter on  
21 January 23, 2007, to pursue her interests under federal and state law, and she filed  
22 a Complaint-in-Intervention on March 20, 2007.

23 Defendants deny the allegations in the Complaint and the Complaint in  
24 Intervention and assert that their actions were in compliance with all applicable  
25 federal and state laws.

26 In the interest of resolving this matter, and as a result of having engaged in  
27 comprehensive settlement negotiations, the Commission and Defendants  
28 (hereinafter referred to as "the Parties") have agreed that this action should be

1 finally resolved by entry of the Consent Decree ("Decree"). This Consent Decree  
2 is not an admission of liability by Defendants and it shall not constitute an  
3 adjudication and/or finding on the merits of the case.

## 4 II.

### 5 PURPOSES AND SCOPE OF THE CONSENT DECREE

6 A. The Parties to this Consent Decree ("Decree") are EEOC, Straub, and  
7 HPH. This Decree shall be binding on and enforceable against Straub, HPH and  
8 their officers, directors, agents, successors and assigns, and against the  
9 Commission for the effective period of the Decree as noted in section V.

10 B. The Parties have entered into this Decree for the following purposes:

- 11 1. To provide relief agreed upon for the Claimants;
- 12 2. To ensure that Straub's and HPH's employment practices  
13 comply with federal law;
- 14 3. To avoid expensive and protracted costs incident to litigation;  
15 and,
- 16 4. To provide a final and binding settlement upon the Parties as to  
17 all claims described in section III.A below.

## 18 III.

### 19 RELEASE OF CLAIMS

20 A. This Decree fully and completely resolves all issues, claims, and  
21 allegations made by the EEOC against Straub and HPH that are raised in the  
22 Complaint filed in this action in the United States District Court, District of Hawaii  
23 on September 28, 2006, captioned *U.S. Equal Employment Opportunity*  
24 *Commission v. Straub Hospital and Hawaii Pacific Health*, Case No. CV 06-  
25 00530 ACK (LEK), which emanated from Charges of Discrimination Nos.: 378-  
26 2004-00618, 378-2004-00619, 378-2004-00620, 378-2004-00634, 378-2004-  
27 00635, 378-2004-00636, 378-2004-00637, 378-2004-00648, 378-2005-00442,  
28 378-2005-00444, 378-2005-00445, 378-2005-00446, 378-2005-00448, 378-2005-

1 00449, all as amended, or all issues and claims which could have been raised or  
2 made by the Commission in this litigation, including but not limited to:

- 3 1. The claims set forth in Charges of Discrimination Nos. 378-2004-  
4 00618, 378-2004-00619, 38-2004-00620, 378-2004-00634, 378-2004-  
5 00635, 378-2004-00636, 378-2004-00637, 378-2004-00648, 378-  
6 2005-00442, 378-2005-00444, 378-2005-00445, 378-2005-00446,  
7 378-2005-00448, 378-2005-00449, all as amended, including claims  
8 against KMCWC;
- 9 2. The claims of the Charging Parties, Other Claimants, and other  
10 similarly situated class members.

11 The entry of said Decree and release of claims is not contingent upon either  
12 the execution or efficacy of any Release sought from individual Claimants  
13 pursuant to the Monetary Relief section below.

14 B. Nothing in this Decree shall be construed to limit or reduce Straub's  
15 or HPH's obligation to comply fully with Title VII or the ADEA or any other  
16 federal employment statute.

17 C. This Decree in no way affects the EEOC's right to bring, process,  
18 investigate, or litigate charges, other than those released herein, that may be in  
19 existence or may later arise against Straub or HPH in accordance with standard  
20 EEOC procedures.

21 D. The existence of this Consent Decree or settlement of the claims in the  
22 Commission's Complaint, in general, may not be construed in any way as an  
23 admission of any liability on Straub's or HPH's part or as an adjudication and/or  
24 finding on the merits of the case.

#### 25 IV.

#### 26 JURISDICTION

27 A. The Court has jurisdiction over the Parties and the subject matter of  
28 this lawsuit pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1345, 1367 and 42 U.S.C.

1 § 2000e-5(f). The Complaint asserts claims that, if proven, would authorize the  
2 Court to grant the equitable relief set forth in this Decree. The terms and  
3 provisions of this Decree are fair, reasonable, and just. This Decree conforms with  
4 the Federal Rules of Civil Procedure and Title VII and the ADEA and is not in  
5 derogation of the rights or privileges of any person. The entry of this Decree will  
6 further the objectives of Title VII and the ADEA and will be in the best interests of  
7 Straub and HPH, the Commission, and those for whom the Commission alleges  
8 relief is appropriate (the Claimants).

9 B. The Court shall retain jurisdiction of this action during the duration of  
10 the Decree for the purposes of entering all orders, judgments and decrees that may  
11 be necessary to implement the relief provided herein.

#### 12 V.

#### 13 **EFFECTIVE DATE AND DURATION OF DECREE**

14 A. The provisions and agreements contained herein are effective  
15 immediately upon the date which this Decree is entered by the Court ("the  
16 Effective Date").

17 B. The duration of this Consent Decree shall be two years and three  
18 months from the date of the Effective Date.

#### 19 VI.

#### 20 **MODIFICATION AND SEVERABILITY**

21 A. This Decree constitutes the Parties' complete understanding with  
22 respect to the matters contained herein. By the Parties' mutual agreement, this  
23 Decree may be amended or modified in the interests of justice and fairness in order  
24 to effectuate the provisions of the Decree. No waiver, modification, or amendment  
25 of any provision of this Decree will be effective unless made in writing and signed  
26 by an authorized representative of each of the Parties.

27 B. If one or more provisions of the Decree are rendered unlawful or  
28 unenforceable, the Parties shall make good faith efforts to agree upon appropriate

1 amendments to this Decree in order to effectuate the purposes of the Decree. In  
2 any event, the remaining provisions will remain in full force and effect unless the  
3 purposes of the Decree cannot, despite the Parties' best efforts, be achieved.

#### 4 **VII.**

#### 5 **MONETARY RELIEF**

6 A. Straub and HPH shall pay a total of \$450,000.00 as alleged damages  
7 to the Charging Parties and Claimants. Of this total amount, Straub and HPH shall  
8 pay \$59,000.00 to intervenor Doris Faletoi with a check to be made payable to  
9 Mary Wilkowski in trust for Doris Faletoi. The payment for Doris Faletoi shall be  
10 made within 10 business days after the Effective Date of this Decree, or the  
11 effective date of the separate agreement between Defendants and Faletoi,  
12 whichever is later. The EEOC shall have the sole discretion on the monetary  
13 distribution of the money to the remaining Charging Parties and to Shemariah  
14 Garcia and Shannon Long, both of whom were identified by the EEOC and  
15 disclosed to Defendants during conciliation of the Charges of Discrimination.  
16 Within ten business days after the Effective Date, or receipt of the distribution list  
17 from the Commission (along with completed W-9 forms for each payee),  
18 whichever is later, Straub and HPH shall mail, via certified mail, checks payable to  
19 the Charging Parties, Garcia and Long, to be apportioned as notified by the  
20 Commission.

21 B. The sum of \$20,000 shall be designated from the total amount of  
22 \$450,000 as the Class Fund to be distributed to individuals not previously  
23 identified in conciliation. The EEOC shall have the sole discretion on the monetary  
24 distribution of the money to these Claimants. Within ten business days after the  
25 Effective Date, or receipt of the distribution list from the Commission (along with  
26 completed W-9 forms for each payee), whichever is later, Straub and HPH shall  
27 mail, via certified mail, checks payable to these previously unidentified Claimants,  
28 to be apportioned as notified by the Commission.

1 C. As the Parties agree that the \$450,000.00 total payment represents  
2 compensatory damages under Title VII, Straub and HPH are not required to make  
3 any employer contributions, except that it must issue IRS form 1099s or the  
4 equivalent as required by law for the payment made to each Claimant. Copies of  
5 these Form 1099s will also be distributed to the Commission upon issuance.

6 D. A copy of the checks and accompanying transmittal papers shall be  
7 contemporaneously forwarded to the EEOC.

8 **VIII.**

9 **GENERAL INJUNCTIVE RELIEF**

10 **A. Compliance With Laws**

11 Straub and HPH and its officers, agents, employees, successors and assigns,  
12 and all of those in active concert or participation with them, or any of them, hereby  
13 agree not to engage in any hiring practice which discriminates against women or  
14 individuals over the age of forty.

15 **B. Recruiting and Hiring**

16 Straub and HPH shall endeavor to increase diversity in the workforce by  
17 undertaking recruitment activities. In pursuing this endeavor, Straub and HPH  
18 shall engage in the following activities:

19 1. Advertise and actively recruit women and individuals who are age  
20 forty or older in the state of Hawaii;

21 2. Advertise and actively recruit in publications read by women and  
22 individuals who are age forty or older (*i.e.*, in newspapers of general circulation  
23 and in AARP publications); and

24 3. Participate in job/career fairs to actively recruit women and  
25 individuals who are age forty or older.

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1 **C. Revision of Policies Concerning Discrimination**

2 To the extent the following items are not already included in Straub and  
3 HPH's written policy(ies) on discrimination and recruitment/hiring, such  
4 policy(ies) shall be revised to include these items:

5 1. Clear objective hiring criteria which expressly prohibit hiring  
6 decisions on the basis of sex or age, except as permitted by law;

7 2. Assurance that applicants who make complaints of discrimination or  
8 provide information related to such complaints will be protected against retaliation;

9 3. Assurance of involvement of human resources in the hiring process;

10 4. A clearly described complaint process that provides accessible and  
11 confidential avenues of complaint with contact information including name (if  
12 applicable), address, and telephone number of persons to whom applicants may  
13 report discrimination and retaliation, including a Compliance Hotline, which is  
14 externally administered and permits anonymous complaints; and

15 5. Assurance that Straub and HPH will take immediate and appropriate  
16 corrective action when they determine that their hiring policies have been violated.

17 Straub and HPH acknowledge that they centrally gather and retain  
18 applications and that their disciplinary policies hold employees and managers  
19 accountable for failing to take appropriate action or for engaging in conduct  
20 prohibited under this Decree.

21 Straub and HPH shall provide a copy of their written policy(ies) on  
22 discrimination and recruitment/hiring to the EEOC within sixty days after the  
23 Effective Date. EEOC shall comment on the policy within forty-five (45) days of  
24 receipt. Should the policy not require any revision, Straub and HPH shall confirm  
25 re-distribution of the policy no later than thirty (30) calendar days after notification  
26 by the EEOC that no revision is required. Also within that thirty (30) calendar day  
27 period, the policy shall be posted on Straub and HPH's intranet, Straub and HPH's  
28 managers shall be notified by e-mail that the policy is so posted, an equal



1 employment opportunity statement with contact information for applicants with  
2 questions will be posted on Straub and HPH's job application website, and the  
3 policy shall be included in the Human Resources Policy Manual. In addition, a  
4 summary of the policy shall be included in the employee handbook that is  
5 distributed to employees by Straub and HPH the next time such handbook is  
6 printed.

7 **D. Posting**

8 Within ten business days after the Effective Date and throughout the term of  
9 this Decree, Straub and HPH shall post notice (attached as Exhibit "A") of the  
10 terms of this Decree in at least one clearly visible location frequented by  
11 employees at the location covered by this Decree. This posting shall remain in  
12 place for the duration of this Decree.

13 **E. Equal Employment Opportunity Consultant**

14 Within thirty days after the Effective Date, Straub and HPH shall designate  
15 an employee as an Equal Employment Opportunity Consultant ("Consultant") with  
16 demonstrated experience in the area of employment discrimination and  
17 recruitment/hiring issues. The Consultant shall be subject to the EEOC's approval,  
18 which shall not be unreasonably withheld. If the EEOC does not approve Straub  
19 and HPH's proposed Consultant, the EEOC shall provide Straub and HPH with a  
20 list of at least three suggested candidates acceptable to the EEOC. Straub and HPH  
21 shall bear all costs associated with the selection and retention of the Consultant and  
22 the performance of his/her duties. The Consultant's responsibilities shall include:

23 a. developing procedures in recruiting, screening, interviewing,  
24 selecting, rejecting and hiring individuals without regard to sex and age in  
25 compliance with Title VII and the ADEA;

26 b. creating, applying, and implementing objective hiring criteria and  
27 reporting/auditing procedures to carry out Straub's and HPH's obligations under  
28 this Decree;

1 c. training managerial/supervisory staff of their responsibilities with  
2 respect to recruiting and hiring under Title VII and the ADEA;

3 d. ensuring that all reports required by this Decree are accurately  
4 compiled and timely submitted; and

5 e. ensuring compliance with the terms of this Decree.

6 **F. Training**

7 Within sixty days after the Effective Date or thirty days after hiring the  
8 Consultant, whichever is later, all of Straub managers that are based in the King  
9 Street hospital facility, all Straub security department employees, and HPH human  
10 resources employees shall be required to attend an intensive training program of at  
11 least two hours with regard to compliance under Title VII and the ADEA. The  
12 training shall be mandatory.

13 1. All employees' training shall include coverage of the subjects of equal  
14 employment opportunity rights and responsibilities, including but not limited to  
15 Title VII's and the ADEA's prohibitions against discrimination on the basis of sex  
16 and age and reaffirmation of Straub and HPH's commitment to non-discriminatory  
17 hiring.

18 2. For the remainder of the term of this Decree, all new Straub security  
19 department employees shall receive the staff/hourly employee training within  
20 ninety days of hire, and all employees based at the Straub King Street hospital  
21 facility who are promoted from a staff/hourly to a managerial position shall receive  
22 the managerial employee training within ninety days of promotion.

23 3. After the initial training as specified above, all Straub managers based  
24 at the King Street hospital facility, employees of the Straub Security Department,  
25 and HPH human resources employees shall receive a one hour training at least  
26 annually thereafter for the remainder of the term of this Decree.

27 Within forty-five days after the Effective Date, Straub and HPH shall  
28 submit to the EEOC a description of the training to be provided and an outline of

1 the curriculum developed for the trainees. Straub and HPH shall give the EEOC a  
2 minimum of ten business days' advance written notice to the EEOC of the date,  
3 time and location of each training program provided pursuant to this Decree, and  
4 agrees that a EEOC representative may attend any such training program.

## 5 IX.

### 6 RECORD KEEPING AND REPORTING

#### 7 A. Record Keeping

8 Straub and HPH shall (1) submit annual EEO-1 reports pursuant to  
9 applicable law, (2) maintain supporting documentation as required by applicable  
10 law, and (3) maintain employment applications and resumes as required by  
11 applicable law.

#### 12 B. Audit Report

13 Within sixty calendar days after each annual anniversary date of the  
14 Effective Date, and at the end of the term of the Consent Decree, Straub and HPH  
15 shall conduct an annual audit of the previous twelve-month period, or in the case of  
16 the final report the previous three-month period (the "Audit Period") and submit a  
17 written report (the "Audit Report") to the EEOC stating the total number of  
18 persons identified by gender and age who during the Audit Period:

- 19 1. Were interviewed for security guard positions at Straub;
- 20 2. Were hired for security guard positions at Straub;
- 21 3. Were offered security guard positions at Straub, but declined the  
22 employment offer;
- 23 4. Voluntarily withdrew from consideration for a security guard position  
24 at Straub.

25 The Audit Report shall also state:

- 26 1. The percentages of the newly hired security guards at Straub who are  
27 within and outside of the protected classes of gender and age;
- 28 2. The total applicant flow for security guard positions at Straub;



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**XI.**

**COSTS AND ATTORNEYS' FEES**

Each Party shall bear its own costs of suit and attorneys' fees.

**XII.**

**MISCELLANEOUS PROVISIONS**

A. During the term of this Consent Decree, Straub and HPH shall provide any potential successor-in-interest with a copy of this Decree within a reasonable time of not less than thirty days prior to the execution of any agreement for acquisition or assumption of control of any or all of Straub and HPH's operations, or any other material change in corporate structure, and shall simultaneously inform the EEOC of same.

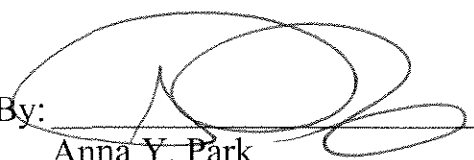
B. During the term of this Decree, Straub and HPH and its successors shall assure that each of its officers, managers, and supervisors is aware of any term in this Decree which is related to his/her job duties.

C. The Parties agree to cooperate with each other and use their best efforts to resolve any dispute that arises under this Agreement prior to seeking the Court's intervention, by way of motion or otherwise.

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

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
Anna Y. Park  
Peter F. Laura  
Wilfredo Tungol

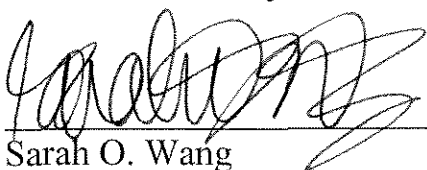
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By:   
Anna Y. Park  
Attorneys for Plaintiff

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MARR HIPP JONES & WANG  
Sarah O. Wang  
Melanie Mito May


Date: DEC 06 2007

By:   
Sarah O. Wang  
Attorneys for Defendants

~~PROPOSED~~ ORDER

Pursuant to *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381-82 (1994) and *Flanagan v. Arnaiz*, 143 F.3d 540, 543-44 (9<sup>th</sup> Cir. 1998), the Parties further stipulate that this Court shall retain jurisdiction of this action for a period of two years and three months following entry of this Consent Decree for purposes of resolving any disputes that may arise in the future regarding the Consent Decree, its terms or the enforcement thereof. The Court may order an extension of the term of this Consent Decree for such period of time as there is shown to be a breach of the Decree, and may order any other relief the Court deems appropriate. The provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is **HEREBY ORDERED.**

Date: DEC 14 2007

  
The Honorable Alan C. Kay  
United States District Judge