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**UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII**

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

vs.

COUNTY OF MAUI and DOES 1-15,
INCLUSIVE,

Defendants.

} Case No.: 1:13-cv-00698 -KSC

} **CONSENT DECREE;**
} **ORDER**

}
} **I.**

INTRODUCTION

Plaintiff U.S. Equal Employment Opportunity Commission (the “EEOC”) and Defendant County of Maui on behalf of the Maui Police Department (“Defendant MPD”) hereby stipulate and agree to entry of this Consent Decree (the

“Decree”) to fully and finally resolve Plaintiff’s complaint against Defendant in U.S. Equal Employment Opportunity Commission v. County of Maui and Does 1-10, inclusive; Case No. 1:13-cv-00698-LEK-KSC (the “Action”). On December 18, 2013, Plaintiff filed this Action in the United States District Court, District of Hawaii, for violation of the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 *et seq.* (“ADEA”). The Action alleged that Defendant MPD discriminated against an individual applicant for a police officer position with the Maui Police Department by failing to hire him on the basis of his age. The events underlying the EEOC's action occurred under an administration prior to Chief Faaumu.

II.

PURPOSES AND SCOPE OF THE CONSENT DECREE

A. The Decree is made and entered into by and between the EEOC and the County of Maui on behalf of Defendant MPD and shall be binding on and enforceable against Defendant, MPD, as well as its officers, directors, agents, successors and assigns. Collectively, the EEOC and County of Maui, on behalf of the Maui Police Department, are referred to herein as the “Parties.”

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

1. To provide appropriate monetary and injunctive relief;
2. To ensure employment practices in compliance with federal

law;

3. To ensure a work environment free from retaliation;
4. To ensure training in employment discrimination law; and
5. To ensure appropriate recording keeping, reporting, and monitoring.

C. This Decree, as described in further detail in Section IX and X, below will be implemented by Defendant MPD. The County is referred to as a Defendant in this matter for employment of the EEO monitor, payment of any monetary settlement, issuance of tax forms and for reporting information related to a monetary settlement to the Internal Revenue Service or any other tax authority as respectively described in Sections VIII and X.

III.

RELEASE OF CLAIMS

- A. This Decree fully and completely resolves all issues, claims and allegations raised by the EEOC against Defendant MPD in this Action.
- B. Nothing in this Decree shall be construed to limit or reduce Defendant MPD's obligation to comply fully with the ADEA or any other federal employment statute.
- C. Nothing in this Decree shall be construed to preclude the EEOC from bringing suit to enforce this Decree in the event that any party fails to perform the promises and representations contained herein.

D. This Decree in no way affects the EEOC's right to bring, process, investigate or litigate other charges that may be in existence or may later arise against Defendant MPD in accordance with standard EEOC procedures.

IV.

JURISDICTION

A. The Court has jurisdiction over the Parties and the subject matter of this litigation. The Action asserts claims that, if proven, would authorize the Court to grant the equitable relief set forth in this Decree. The terms and provisions of this Decree are fair, reasonable and just. This Decree conforms with the Federal Rules of Civil Procedure and the ADEA and is not in derogation of the rights or privileges of any person.

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

V.

EFFECTIVE DATE AND DURATION OF DECREE

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

B. Except as otherwise provided herein, this Decree shall remain in effect for three (3) years after the Effective Date.

VI.

MODIFICATION AND SEVERABILITY

A. This Decree constitutes the complete understanding of the Parties with respect to the matters contained herein. No waiver, modification or amendment of any provision of this Decree will be effective unless made in writing and signed by an authorized representative of each of the Parties.

B. If one or more provisions of the Decree are rendered unlawful or unenforceable, the Parties shall make good faith efforts to agree upon appropriate amendments in order to effectuate the purposes of the Decree. In any event, the remaining provisions will remain in full force and effect unless the purposes of the Decree cannot, despite the Parties' best efforts, be achieved.

C. By mutual agreement of the Parties, this Decree may be amended or modified in the interests of justice and fairness in order to effectuate the provisions herein.

VII.

COMPLIANCE AND DISPUTE RESOLUTION

A. The Parties expressly agree that if the EEOC has reason to believe that Defendant and/or MPD has failed to comply with any provision of this Consent

Decree, the EEOC may bring an action before this Court to enforce the Decree. Prior to initiating such action, the EEOC will notify Defendant and/or MPD, in writing, of the nature of the dispute. This notice shall specify the particular provision(s) that the EEOC believes Defendant and/or MPD breached. Absent a showing by either party that the delay will cause irreparable harm, Defendant and/or MPD shall have thirty (30) days to attempt to resolve or cure any non-monetary breach and shall have thirty (30) days to attempt to resolve or cure any monetary breach.

B. After thirty (30) days have passed with respect to any non-monetary breach, or thirty (30) days have passes with respect to any monetary breach, if the Parties have reached no resolution or agreement to extend the time further, the EEOC may petition this Court for resolution of the dispute, seeking all available relief, including an extension of the term of the Decree, the EEOC's costs and any attorneys' fees incurred in securing compliance with the Decree, and/or any other relief the court deems appropriate.

VIII.

MONETARY RELIEF

A. Defendant County of Maui, on behalf of the Defendant Maui Police Department, will pay a total of \$24,000.00, to be distributed to the Charging Party ("distribution amount"). The EEOC has full and complete discretion under the

terms of this Decree to determine the amounts of any payments to be distributed and the characterization of such payments as income, wages or otherwise, as hereinafter described in this Decree.

B. The EEOC will provide Defendant County of Maui with the Charging Party's current address, the distribution amount and any relevant identifying information (hereafter "Distribution List"). Within thirty (30) days of the EEOC providing the Distribution List, the Defendant County of Maui shall send a cashier's check or money order to the Charging Party via certified mail, return receipt requested.

C. Payment shall be made in one check for unclassified damages and for this payment Defendant of Maui, in the ordinary course, shall prepare and distribute 1099 tax reporting forms, if required by law, and shall make any appropriate reports to the Internal Revenue Service and other tax authorities. Defendant County of Maui shall be solely responsible for any costs associated with the issuance and distribution of tax reporting forms to the Charging Party.

D. Within three (3) business days of the issuance of the settlement check or the issuance of tax reporting forms, Defendant County of Maui shall submit a copy of the check, tax reporting forms, and related correspondence to Anna Y. Park, Regional Attorney, U.S. Equal Employment Opportunity Commission, Los

Angeles District Office, 255 East Temple Street, 4th Floor, Los Angeles, CA, 90012.

IX.

GENERAL INJUNCTIVE RELIEF

A. Non-Discrimination:

Defendant MPD, including all managerial and non-managerial employees, and all those in active concert or participation with them, are hereby enjoined from discriminating against persons on the basis of age (over 40) in hiring decisions, termination decisions, performance evaluations, transfers, demotions, promotions, or any terms and conditions of employment.

B. Retaliation:

Defendant MPD, including all managerial and non-managerial employees, and all those in active concert or participation with them, or any of them, are hereby enjoined from implementing or permitting any action, policy or practice with the purpose of retaliating against any current or former employee or applicant of Defendant MPD, because he or she has in the past, or during the term of this Decree:

1. Opposed any practice made unlawful under the ADEA;
2. Filed a charge of discrimination alleging such practice;

3. Participated in any manner in an internal or external investigation or proceeding relating to this case or any claim of a violation of the ADEA;
4. Was identified as a possible witness or claimant in this action;
5. Asserted any right under this Decree; or
6. Sought and/or received any relief in accordance with this Decree.

X.

SPECIFIC INJUNCTIVE RELIEF

A. Equal Employment Opportunity Monitor

Within thirty (30) days after the Effective Date, the Parties agree that Defendant MPD will designate Ralph Thomas as an Equal Employment Opportunity Monitor ("Monitor") to monitor Defendant MPD's compliance with the ADEA and the provisions of this Decree. Defendant MPD shall bear all costs associated with the selection and retention of the Monitor and the performance of his duties. The Monitor's responsibilities shall include:

1. ensuring that Defendant MPD's procedures to handle complaints of discrimination and retaliation comply with its obligations under the ADEA and this Decree;
2. ensuring that Defendant MPD is using the County of Maui's anti-discrimination policy and reporting procedure effectively to carry out its obligations under this Decree;

3. ensuring that all employees are trained on their rights and responsibilities under the ADEA, including but not limited to the responsibilities to provide a workplace free of age discrimination;
4. ensuring that all employees are trained on policies and procedures relating to age-based discrimination/harassment and retaliation;
5. monitoring Defendant MPD's investigation of all complaints of age-based discrimination/ harassment and retaliation to ensure compliance with Title VII;
6. ensuring that Defendant MPD properly communicates with complainants regarding the complaint procedure, status of the complaint investigation, results of the investigation, and if any remedial action was taken except that the specific disciplinary action will not be disclosed pursuant to the applicable collective bargaining agreement;
7. ensuring that Defendant MPD's reports required by this Decree are accurately compiled and timely submitted;
8. ensuring that Defendant MPD's disciplinary policies hold employees and managers accountable for failing to take appropriate action or for engaging in conduct prohibited under this Decree;
9. ensuring that Defendant MPD creates a centralized system of tracking age discrimination and retaliation complaints;

10. ensuring that Defendant MPD creates and implements recruitment strategies designed to encompass an applicant pool of all potential employees, regardless of age in compliance with the ADEA;
11. ensuring that the terms and conditions of employment are the same for workers of all ages;
12. create and prepare an assessment tool to determine whether the terms and conditions of employment are equal for all employees regardless of age;
13. further ensuring compliance with the terms of this Decree; and
14. preparing a brief annual report on Defendant MPD's progress, including its compliance with the terms of this Decree and the Monitor's compliance with his/her responsibilities as articulated herein.

The Monitor shall ensure compliance for the foregoing provisions for the term of the Decree.

In the event that Defendant MPD needs to nominate a new EEO monitor at any time during the term of the Decree, Defendant MPD shall propose a new monitor with demonstrated experience in the area of employment discrimination and age discrimination issues, to the EEOC within forty-five (45) days of Mr. Thomas' final day as EEO Monitor. If the Commission does not approve the proposed new Monitor, the Commission shall work with Defendant MPD to find a

suitable new monitor. Defendant shall bear all costs associated with the selection and retention of the new Monitor and the performance of his/her/its duties.

B. Policies and Procedures

Defendant MPD, using the County of Maui's Policy Against Discrimination, shall review, revise, distribute, and implement its policies and procedures against discrimination and retaliation prohibited by the ADEA (the "Policy"). The Policy shall include:

1. A clear explanation of prohibited conduct;
2. Assurance that employees who make complaints of discrimination or who provide information related to such complaints are protected against retaliation;
3. a clearly described complaint process for age discrimination, harassment, and retaliation that provides accessible avenues of making a complaint against co-workers, including the complainant's supervisors, that allows for complaints to be initiated verbally, although it may require that the substance of the complaint be recorded later in writing;
4. an assurance that Defendant MPD and the County of Maui will protect the confidentiality of discrimination complaints to the extent possible from being disclosed to those who do not need to know;
5. a complaint process that provides a prompt, thorough, and impartial investigation;

6. a requirement that any employee in a supervisory position who receives a complaint of discrimination, whether formal or informal, written or verbal, report such complaint to the County of Maui's EEO, Ralph Thomas, within 72 hours of receiving said complaint, or in special circumstances such as weekends or holidays, the information will be forwarded no later than the next business day;

7. an assurance that Defendant MPD's disciplinary policies hold employees, managers and supervisors accountable for failing to take appropriate action or for engaging in conduct prohibited under this Decree;

8. a procedure for communicating with the complainant in writing regarding the status of the complaint /investigation, results of the investigation, and if any remedial action was taken except that the specific disciplinary action will not be disclosed pursuant to the applicable collective bargaining agreement; and

9. Assurance that Defendant MPD will take prompt and appropriate corrective action when it determines that discrimination and/or retaliation has occurred

Within thirty (30) days of the Effective Date of this Decree, Defendant MPD, using the County of Maui's Policy Against Discrimination, shall provide to the EEOC a copy of the Policy. Within sixty (60) days of the Effective Date, Defendant MPD shall ensure that it has distributed its Policy to each managerial and non-managerial employee. Within sixty (60) days of the Effective Date, Defendant MPD shall submit to the Commission a statement confirming distribution of the

Policy. For each new managerial or non-managerial employee hired after the initial distribution of the Policy described above, Defendant MPD shall ensure that the new employee and/or manager receives the Policy within thirty (30) days of employment.

C. Training

1. Within ninety (90) days of the Effective Date of this Decree, Defendant MPD shall provide training of at least two hour duration to each employee at the Maui Police Department who participates in the hiring process. The training shall cover the Policy and federal laws regarding employment discrimination on the basis of age, with an emphasis on hiring, terms & conditions of employment, and the specific role of hiring committees in assuring compliance with the Policy and federal law. All persons required to attend such training shall verify their attendance in writing. Within thirty (30) days before each initial and annual training within MPD, Defendant MPD shall submit to the EEOC a statement describing the training it intends to provide and the materials it intends to use in this training. If no substantive changes have been made to the training materials since the last submission, MPD will not be required to submit new training materials within the thirty (30) days of the annual training . MPD shall submit an email or other written correspondence confirming that there are no new training materials. Email submissions of the training material is acceptable.

2. By the end of each year after the Effective Date throughout the term of this Decree, Defendant MPD shall provide another training of at least one hour duration to each of its employees . This training shall cover the Policy and federal laws regarding employment discrimination on the basis of age, with an emphasis on terms & conditions of employment, and the specific role of supervisory employees in assuring compliance with the Policy and federal law and ensuring fairness to all applicants throughout the hiring process. All persons required to attend such training shall verify their attendance in writing. Within thirty (30) days of each training, Defendant MPD shall submit to the EEOC a statement describing the training it intends to provide and the materials it intends to use in this training.

3. Within ninety (90) days of the Effective Date of this Decree, Defendant MPD shall provide training of at least one hour duration to all of its employees covering the Policy and federal laws regarding employment discrimination on the basis of age, with an emphasis on terms & conditions of employment. All persons required to attend such training shall verify their attendance in writing. Within thirty (30) days before each training, Defendant MPD shall submit to the EEOC a statement describing the training it intends to provide and the materials it intends to use in this training.

4. By the end of each year after the Effective Date throughout the term of this Decree and on an annual basis, Defendant MPD shall provide another training of at

least one hour duration to all other employees covering the Policy and federal laws regarding employment discrimination on the basis of age, with an emphasis on hiring and terms & conditions of employment. All persons required to attend such training shall verify their attendance in writing. Within thirty (30) days of each initial and annual training within MPD, Defendant MPD shall submit to the EEOC a statement describing the training it intends to provide and the materials it intends to use in this training. If no substantive changes have been made to the training materials since the last submission, MPD will not be required to submit new training materials within the thirty (30) days of the annual training. MPD shall submit an email or other written correspondence confirming that there are no new training materials. Email submissions of the training material is acceptable.

D. Record Keeping

Defendant MPD shall establish a record-keeping procedure that provides for the centralized tracking of employment decisions, discrimination complaints and the monitoring of such complaints to prevent retaliation. The records to be maintained shall include:

1. All documents generated in connection with any complaint, investigation into, or resolution of every complaint of age discrimination or retaliation for the duration of the Decree and the identities of the parties involved;

2. All forms acknowledging any employee or manager's receipt of the Policy as required under this Decree;
3. All documents verifying the occurrence of all training sessions and names and positions of all attendees for each session as required under this Decree;
4. All documents generated in connection with the monitoring, counseling, or disciplining of employees whom Defendant MPD determined to have engaged in behavior that may be discriminatory, harassing, and/or retaliatory;
5. All documents generated in connection with Defendant MPD's confidential follow-up inquiries into whether any complainant believes he or she has been retaliated against; and
6. All documents generated in connection with the establishment or review of performance evaluation measures for managers, supervisors, and human resource employees.

Defendant MPD will make the aforementioned records available to the EEOC within ten business days following a written request by the EEOC.

E. Performance Evaluations

For the annual review cycle, Defendant MPD shall revise their performance evaluation forms for managers and supervisors involved in the hiring process, who are subject to performance evaluations, to include as measures for performance compliance with the policy and with federal antidiscrimination laws. To the extent

that managers and supervisors are not subject to performance evaluations, Defendant shall otherwise ensure that managers and supervisors are held accountable for complying with the Policy and federal antidiscrimination laws.

F. Posting

Within ten (10) business days after the Effective Date and throughout the term of this Decree, Defendant MPD shall post the notice attached to the Decree as Exhibit A, in a clearly visible location frequented by employees at all of Defendant MPD's facilities within the County of Maui during the term of this Decree. The notice shall remain posted for the duration of the decree.

G. Reporting

Defendant MPD, through its EEO Monitor, shall provide the following reports annually throughout the term of this Decree beginning one year from the Decree effective date:

1. The attendance lists of all attendees for all training sessions required under this Decree that took place during the previous twelve months;
2. A description of all age discrimination and/or retaliation complaints made since the submission of the immediately preceding report hereunder. This description shall include the names of the individuals alleging age discrimination or retaliation, the nature of the discrimination or retaliation, the names of the alleged perpetrators of the age discrimination or retaliation, the dates of the alleged

age discrimination or retaliation, a brief summary of how each complaint was resolved, and the identity of the Defendant MPD employee(s) who investigated and/or resolved each complaint. If no results have been reached as of the time of the report, the result shall be included in the next report; and

3. Confirm the Notice Posting requirement as set forth in Section F is in full compliance throughout the duration of the Decree.

4. An analysis of the investigation of complaints, including the monitoring done for multiple complaints made against the same person.

5. A description of all recruitment efforts made by Defendant MPD and what steps Defendant MPD has taken to ensure recruitment from an age-diverse applicant pool, including those over 40.

6. A copy of the policy against and complaint procedure for age discrimination, harassment, and retaliation after consultation with the EEO Monitor in compliance with the Consent Decree.

7. A summary report of Defendant MPD's investigation into any complaint about age discrimination, harassment, and/or retaliation for complaining about age discrimination and/or harassment. The investigation report shall include the following for each complaint during the reporting period:

- (a). the name and title of the complaining party(ies);
- (b). the date of the complaint;

- (c) the name and title of the alleged harasser(s)/offender(s);
 - (d) the name and title of the person(s) who conducted the investigation into the complaint;
 - (e) the nature of the complaint (i.e. comments, acts, etc.)
 - (f) the date of the commencement and completion of the investigation;
 - (g) a brief description of the investigation (i.e. number of persons interviewed, materials reviewed);
 - (h) the outcome of the investigation and any action taken; and.
 - (i) whether previous age discrimination and/or harassment complaints had been made regarding the alleged harasser(s)/offender(s). If so, the report should also include the outcome of the prior investigations.
8. A report detailing the performance evaluation given to managers and supervisors as described in subsection E above; and
9. A report containing the age of every person hired into the position of Police Officer during the previous twelve months.

All reports under this Paragraph shall be directed to: U.S. Equal Employment Opportunity Commission, Attn. Regional Attorney, 255 E. Temple Street, 4th Floor, Los Angeles, CA 90012.

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XI.

COSTS OF ADMINISTRATION AND IMPLEMENTATION
OF CONSENT DECREE

Defendant MPD shall bear all costs associated with its administration and implementation of its obligations under this Consent Decree.

XII.

COSTS AND ATTORNEYS' FEES

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

XIII.

MISCELLANEOUS PROVISIONS

A. During the term of this Consent Decree, Defendant MPD shall assure that each of its officers, managers and supervisors is aware of any term(s) of this Decree which may be related to his/her job duties.

B. Unless otherwise stated, all notices, reports and correspondence required under this Decree shall be delivered to the attention of Anna Y. Park, Regional Attorney, U.S. Equal Employment Opportunity Commission, 255 East Temple Street, 4th Floor, Los Angeles, CA, 90012; facsimile number (213) 894-1301.

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

All parties, through the undersigned, respectfully apply for and consent to this entry of this Consent Decree Order.

Respectfully submitted,

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
ANNA Y. PARK

Date: 5/1/2016

Anna Y. Park
By: Anna Y. Park
Attorneys for Plaintiff EEOC

DEPARTMENT OF THE
CORPORATION COUNSEL,
COUNTY OF MAUI
MOANA M. LUTEY

Date: 4/21/2016

Moana M. Lutey
By: Moana M. Lutey
Attorneys for Defendant County of
Maui

ORDER

The provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is **HEREBY ORDERED**.

DATED: Honolulu, Hawaii, May 9, 2016.




Kevin S.C. Chang
United States Magistrate Judge