

ORIGINAL

1 ANNA Y. PARK, SBN 164242
2 CHERRY MARIE D. ROJAS, SBN 141482
3 GREGORY L. McCLINTON, SBN 153553
4 U.S. EQUAL EMPLOYMENT
5 OPPORTUNITY COMMISSION
6 255 East Temple Street, 4th Floor
7 Los Angeles, CA 90012
8 Telephone: (213) 894-1053
9 Facsimile: (213) 894-1301

2005 APR 18 P 3:14

MJ

6 Attorneys for Plaintiff
7 U.S. EQUAL EMPLOYMENT
8 OPPORTUNITY COMMISSION

8 ANTHONY L. HALL, SBN 5977
9 JEFFREY S. JUDD, SBN 7393
10 LITTLER MENDELSON LLP
11 3030 Howard Hughes Parkway, Suite 200
12 Las Vegas, Nevada 89109
13 Telephone: (702) 862-8800
14 Facsimile: (702) 862-8811

12 Attorneys for Defendant
13 EXAMINATION MANAGEMENT SERVICES, INC.

PO

14 UNITED STATES DISTRICT COURT
15 DISTRICT OF NEVADA

17 U.S. EQUAL EMPLOYMENT
18 OPPORTUNITY COMMISSION,
19 Plaintiff,

20 v.

21 EXAMINATION MANAGEMENT
22 SERVICES, INC, D/B/A EMSI,
23 Defendants.

RCJ
CASE NO. CV-S-03-1229-~~RLH~~-PAL)

~~PROPOSED~~ CONSENT DECREE

24 I. INTRODUCTION

25 1. On September 11, 2003, Plaintiff U.S. Equal Employment Opportunity Commission (the
26 "EEOC" or "Commission") brought this action against Defendant Examination Management
27 Services, Incorporated, d/b/a "EMSI" alleging that EMSI harassed and discriminated against Ms.
28 Constance Damian because of her age in violation of the ADEA, 29 U.S.C. §623(a) as amended.

1.

26

1 **II. JURISDICTION**

2 2. The Court has jurisdiction over the parties and the subject matter of this lawsuit. Jurisdiction
3 of this Court is invoked pursuant to 28 U.S.C. sections 451, 1331, 1337, 1343 and 1345. This action
4 is authorized and instituted pursuant to section 7(b) of the ADEA, 29 U.S.C. § 626(b), which
5 incorporates by reference sections 16(c) and 17 of the Fair Labor Standards Act of 1938, as amended,
6 29 U.S.C. §§ 216(c) and 217.

7 3. This Decree conforms with the Federal Rules of Civil Procedure and the ADEA and is not in
8 derogation of the rights and privileges of any person. The Court shall retain jurisdiction of this
9 action for the duration of the Decree for the purpose of entering all orders, judgments, and decrees
10 which may be necessary to implement the relief provided herein.

11 4. The parties do not object to the jurisdiction of the Court over this action and waive their rights
12 to a hearing and the entry of findings of fact and conclusions of law.

13 5. As a result of having engaged in mediation, the Commission and EMSI have resolved their
14 differences and have agreed that this action should be resolved by entry of this Consent Decree.

15 **III. FINDINGS**

16 6. Having examined the terms and provisions of this Decree and based on the pleadings, record
17 and stipulation of the parties, the Court finds the following:

18 A. The Court has jurisdiction over the parties and the subject matter of this action;

19 B. The terms and provisions of this Consent Decree are adequate, fair, reasonable,
20 equitable and just. The rights of EMSI the Commission and those for whom the Commission seeks
21 relief are protected adequately by this Consent Decree;

22 C. This Decree conforms with the Federal Rules of Civil Procedure, and the ADEA and
23 is not in derogation of the rights and privileges of any person. The entry of this Decree will further
24 the objectives of the ADEA and will be in the best interests of any person. The entry of this Consent
25 Decree will further the objectives of ADEA and will be in the best interest of EMSI, the Commission
26 and those for whom the Commission seeks relief.

27 **IV. EFFECT OF DECREE**

28 7. This Decree resolves all issues and claims arising out of the Complaint filed by the EEOC

1 herein alleging unlawful employment practices by EMSI and this Decree shall be binding and final
2 as to all such issues and claims in this action.

3 8. Neither the agreement to enter into this Consent Decree nor any provisions hereof constitutes an
4 admission by EMSI of any violation of the ADEA.

5 9. This Consent Decree in no way affects the EEOC's rights to process charges against EMSI not
6 otherwise covered by this Consent Decree in accordance with standard EEOC procedures and to
7 commence civil actions on any such charge.

8 **V. DURATION OF DECREE AND RETENTION OF JURISDICTION**

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

11 11. The duration of the Consent Decree shall be two (2) years from the date that the parties sign
12 this Decree.

13 12. For the duration of the Consent Decree, this Court shall retain jurisdiction over this action for
14 the purpose of enforcing the provisions of this Consent Decree.

15 **VI. INJUNCTIVE RELIEF: Non-Discrimination**

16 13. EMSI, its officers, agents, employees, successors, assigns and all persons in active concert or
17 participation with it are enjoined for the duration of the Decree from discriminating or harassing any
18 individual because of his or her age.

19 **VII. INJUNCTIVE RELIEF**

20 14. Within thirty (30) days of the Effective Date of this Decree and for a period of two (2) years
21 from the Effective Date of this Decree, EMSI shall retain an EEO Consultant or retain/designate an
22 EMSI employee to implement (including the training provisions set forth below in Section X) and
23 monitor EMSI's compliance with the ADEA and with the provisions of this Decree. The EEOC
24 must approve of the person hired/designated; however, the EEOC's consent cannot be unreasonably
25 withheld and may only be withheld based upon the person's inadequate qualifications concerning the
26 ADEA.

27 15. EMSI shall:

28 (A) develop a written procedure for the reporting and investigation of claims of age

1 discrimination and harassment, within one-hundred twenty (120) days of the Effective Date of the
2 Decree. At a minimum, the procedure shall:

3 (1) specify how an employee or applicant for employment may make a complaint
4 internally to EMSI, including complaints about managers under the procedure;

5 (2) will include a provision that specifically notifies employees and applicants
6 that in addition to the internal complaint procedure, they may also make complaints of age
7 discrimination directly to the EEOC; and

8 (3) include a statement that the employee, in addition to following the reporting
9 procedures required by EMSI's policy(s), may also file a charge with the EEOC.

10 (B) Once the procedure set forth in paragraph 15(A) is in place, EMSI shall report to the
11 Regional Attorney of the Los Angeles District Office of the EEOC all changes to the policies and
12 procedures not later than 60 days after any changes are implemented.

13 16. EMSI shall ensure that all reports required by this Decree are accurately compiled and timely
14 submitted for the duration of the Decree.

15 **VIII. MONETARY RELIEF**

16 17. EMSI agrees to pay Constance Damian the amount of \$45,000.00. This amount reflects the
17 full consideration due Ms. Damian.

18 18. EMSI shall report the payment made to Ms. Damian on an Internal Revenue Service Form
19 1099 and shall distribute such reports to the payees as required by law. Any required employer
20 contribution(s) including FUTA and FICA, shall be borne by EMSI and shall not be deducted from
21 the settlement amount; however, all applicable employee contributions, deductions and taxes shall be
22 deducted from the settlement amount.

23 19. Within ten (10) days of the Effective Date of this Decree, EMSI shall mail, via certified mail, a
24 certified check made payable to CONSTANCE DAMIAN and/or her Conservator CHRISTINE
25 DAVIS, in the above amount to the address provided by the Commission.

26 20. Within ten (10) days of the Effective Date of this Decree, a copy of the check sent above shall
27 be submitted to the Regional Attorney Anna Y. Park, Equal Employment Opportunity Commission,
28 Los Angeles District Office, 255 East Temple Street, 4th Floor, Los Angeles, California 90012.

1 **IX. RECORD KEEPING AND REPORTING**

2 21. For the duration of the Decree, EMSI agrees to maintain such records as are necessary to
3 demonstrate its compliance with this Decree and to verify that the reports submitted are accurate.
4 Upon fifteen (15) work days written notice from the Commission, EMSI shall make such records
5 available to the Commission for inspection and copying.

6 22. At the conclusion of one (1) year after the Effective Date of this Decree, at the conclusion of
7 one (1) year and six (6) months after the Effective Date of this Decree and at the conclusion of two
8 (2) years after the Effective Date of this Decree, EMSI shall submit a written report to the Regional
9 Attorney of the Los Angeles District Office of the U.S. Equal Employment Opportunity Commission
10 at 255 E. Temple Street, 4th Floor, Los Angeles, California 90012. The report shall contain the
11 following information:

12 (A) The name, business address, telephone number and qualifications of its EEO
13 Officer/Human Relations Officer who shall ensure compliance with the terms of this Decree;

14 (B) A copy of EMSI's EEO policy, including any modifications of said policy adopted by
15 EMSI;

16 (C) Proof of ADEA training of its employees as set forth in this Decree, including copies
17 of training materials used; and

18 (D) A copy of any complaints filed by any employee pursuant to the EEO policy and,
19 upon specific request from the EEOC, provide a copy of any non-privileged investigative notes
20 regarding any complaint filed by any employee pursuant to the EEO policy.

21 **X. TRAINING**

22 23. During the operative period of this consent decree, EMSI shall conduct training for all
23 employees as follows:

24 A. The training for managers shall consist of:

25 (1) a review of Defendant's policy established pursuant to this consent decree;
26 and

27 (2) a review of Defendant's policy for managers concerning how to address a
28 complaint of discrimination under the ADEA.

1 B. The training for non-management employee's shall consist of:

- 2 (1) a review of Defendant's policy established pursuant to this consent decree;
3 and
4 (2) a review of Defendant's policy for making a complaint of discrimination
5 under the ADEA.

6 C. The training designated above may be accomplished by video-tape, on-line,
7 telephone, written, in-person or any other means of communicating the required information.

8 24. Each employee who is trained shall be required to sign an acknowledgement of the training.

9 **XI. COMPLIANCE AND DISPUTE RESOLUTION**

10 25. In the event that the Commission believes that EMSI has failed to comply with any provision
11 of this Decree, the Commission shall notify EMSI in writing of such belief and afford EMSI a
12 reasonable period of not less than ten (10) business days to remedy the alleged noncompliance. If
13 EMSI disagrees, they shall notify the Commission in writing within ten (10) business days. If, after
14 having received notice of failure to comply from the Commission, EMSI continues to fail to comply,
15 or notifies the Commission that they disagree with the Commission's belief, the Commission may
16 then apply to this Court for appropriate relief. Should the Court determine that EMSI has not
17 complied with this Decree, in whole or in part, it may impose appropriate relief, including but not
18 limited to the imposition of costs, attorney fees, an extension of the duration of this Decree for such a
19 period as may be necessary to remedy EMSI's noncompliance, or other relief that the Court deems
20 appropriate.

21 **XII. MODIFICATION AND SEVERABILITY**

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

25 27. If one or more provisions of the Decree are rendered unlawful or unenforceable, the parties
26 shall make good faith efforts to agree upon appropriate amendments to this Decree in order the
27 effectuate the purposes of the Decree. In any event, the remaining provisions will remain in full
28 force and effect unless the purposes of the Decree cannot be achieved.

28. 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 of this Decree.

XIII. COURT COSTS AND ATTORNEYS' FEES

29. Each party shall bear its own court costs and attorneys' fees.

XIV. COSTS OF ADMINISTRATION AND IMPLEMENTATION OF DECREE

30. EMSI shall bear all costs associated with its administration and implementation of this Decree.

XV. MISCELLANEOUS PROVISIONS

31. EMSI will provide any potential successor, assignees, etc., with a copy of this Decree within a reasonable time of not less than thirty (30) days prior to the execution of any document providing for acquisition or assumption of control of EMSI, or any other material change in corporate structure, and shall simultaneously inform the Commission of the same.


32. This Decree shall be binding upon and enforceable against EMSI and its successors and assigns.

Dated: April 17, 2005.

Respectfully Submitted By:
ERIC DREIBAND,
General Counsel

ANNA Y. PARK,
Regional Attorney
CHERRY MARIE D. ROJAS
Supervisory Trial Attorney
GREGORY L. McCLINTON
Trial Attorney

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

By: 
ANNA Y. PARK,
Regional Attorney

Dated: April 18, 2005.

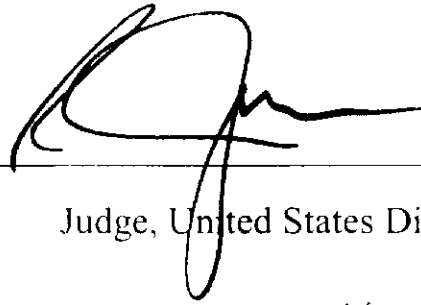
By: 
ANTHONY FALISI, ESQ.

GENERAL COUNSEL FOR DEFENDANT
EXAMINATION MANAGEMENT
SERVICES, INCORPORATED.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED:

Dated: April _____, 2005.

By:  _____

Judge, United States District Court

Reno:22341.3 035183.2001

4-27-05