

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
KENNETH J. MURPHY
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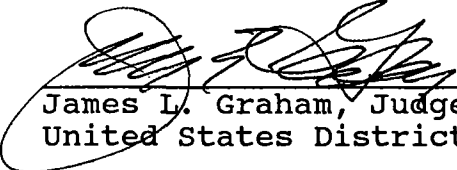
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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EASTERN DIVISION
COLUMBUS

United States of America, :
Plaintiff : Civil Action C-2-95-506
v. : Judge Graham
The Steubenville City Board : Magistrate Judge Abel
of Education, :
Defendant :

ORDER

This matter is before the Court on Magistrate Judge Abel's unopposed August 3, 1995 Report and Recommendation. Upon de novo review, the Court ADOPTS Magistrate Judge Abel's August 3, 1995 Report and Recommendation. The proposed consent decree, Exhibit 1 to the Court's June 1, 1995 Order, is hereby APPROVED and ENTERED as an Order of the Court.


James L. Graham, Judge
United States District Court

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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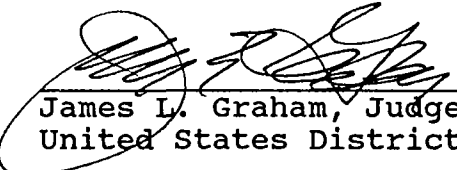
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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
POST OFFICE BOX 1000 COLUMBUS

United States of America, :
Plaintiff : Civil Action C-2-95-506
v. : Judge Graham
The Steubenville City Board : Magistrate Judge Abel
of Education, :
Defendant :

ORDER

This matter is before the Court on Magistrate Judge Abel's unopposed August 3, 1995 Report and Recommendation. Upon de novo review, the Court ADOPTS Magistrate Judge Abel's August 3, 1995 Report and Recommendation. The proposed consent decree, Exhibit 1 to the Court's June 1, 1995 Order, is hereby APPROVED and ENTERED as an Order of the Court.


James L. Graham, Judge
United States District Court

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Drew H Campbell, Esq.
Bricker & Eckler - 2
100 S Third Street
Columbus, OH 43215-4291

Re: 2:95-cv-00506

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Case No. C2-95-506
v.)	
)	Judge GRAHAM
THE STEUBENVILLE CITY BOARD)	
OF EDUCATION,)	Magistrate Judge ABEL
)	
Defendant.)	
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CONSENT DECREE

This action was brought by the United States of America against the Steubenville City Board of Education to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000e, et seq. In its complaint, the United States alleges that the Defendant has pursued and continues to pursue policies and practices that discriminate against men and women, deprive or tend to deprive men and women of employment opportunities, and adversely affect the status of men and women as employees because of their sex, in violation of Section 703(a) of Title VII, 42 U.S.C. Section 2000e-2(a). More specifically, the Complaint alleges that the Defendant has violated Title VII by:

- (1) adopting and maintaining gender-segregated job classifications for janitorial positions in the Steubenville City School District;
- (2) failing or refusing to hire and to employ females in the Custodian I position and failing or refusing to hire and to employ males in the Custodian II position;
- (3) paying women who perform

custodian duties lower wages than males who perform the same or substantially similar duties; and (4) failing or refusing to take appropriate action to eliminate the discriminatory policies and practices and to correct the effects of those policies and practices. The Complaint further alleges that the Defendant failed or refused to hire Mr. Robert G. Minnifield, a male, on the basis of his sex, for a Custodian II position.

The United States and the Defendant, desiring that this action be settled by appropriate Consent Decree and without the burden of protracted litigation, agree to the jurisdiction of this Court over the parties and the subject matter of this action, and hereby waive, for purposes of this Consent Decree only, service of the Complaint and hearings and findings of fact and conclusions of law on all issues, and further agree to the entry of this Decree as final and binding among themselves as to the issues raised in the Complaint filed in this case.

This Decree, being entered with the consent of the parties, shall in no way constitute an adjudication or finding on the merits of the case nor be construed as either an admission of liability by the Defendant or a finding of wrongdoing or violation of any applicable federal or state law by the Defendant.

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It is therefore ORDERED, ADJUDGED AND DECREED as follows:

A. GENERAL INJUNCTIVE PROVISIONS AND RELIEF

1. The Defendant and its officers, agents, employees, successors and all persons in active concert or participation with it hereinafter shall not engage in any act or practice which has the purpose or effect of unlawfully discriminating against any employee of or applicant or potential applicant for employment with the Steubenville City School District with respect to any janitorial position on the basis of sex.

2. The Defendant shall not retaliate against or in any respect adversely affect any person because that person has opposed allegedly discriminatory policies or practices or because of that person's participation in or cooperation with the initiation, investigation, litigation or administration of this case or this Consent Decree.

3. The basic objectives of this Consent Decree are to ensure that men and women are considered for and compensated in janitorial positions on a non-discriminatory basis and that the present effects of any past discrimination, as alleged in the Complaint, have been remedied.

4. The Defendant shall no longer maintain separate janitorial job classifications based on sex and will merge prospectively the current Custodian I and Custodian II positions into one janitorial position. All present Custodians I and, if she accepts the Defendant's offer of a merged janitorial position made pursuant to paragraph 10 below, Sharon Grant, shall comprise the incumbents

of that merged position. Each incumbent in the merged position shall retain the seniority level and date of his or her present position. The Defendant shall recruit, consider, hire and compensate men and women for the merged janitorial position on the same basis.

5. The Plaintiff has independently verified that the Defendant has offered all incumbent employees in the Custodian II position a Custodian I position and, with the exception of Ms. Sharon Grant, each incumbent Custodian II has declined the offer of such a position. Beginning in the first pay period of the 1995-96 fiscal year all incumbent Custodian II employees and, if she declines the Defendant's offer of a merged janitorial position to be made pursuant to paragraph 10 below, Sharon Grant shall retain their current positions and duties and shall receive no less than 87.5 percent of the salary of an employee in the merged janitorial position with equivalent seniority with the Defendant. Upon the termination of the employment with the Defendant of each incumbent employee in the Custodian II position, that Custodian II position will be eliminated and, if necessary, replaced with a merged janitorial position.

6. The Defendant may develop a valid examination for use in the selection of new candidates for the merged janitorial position. If pursuant to paragraph 10 below Ms. Sharon Grant accepts a merged janitorial position, the Defendant shall apply \$8717 to the development and validation of an examination for use in the selection of new candidates for the merged janitorial position. If

pursuant to paragraph 10 below Ms. Sharon Grant does not accept a merged janitorial position, the Defendant shall apply \$10,386 to the development and validation of an examination for use in the selection of new candidates for the merged janitorial position.

7. If the Defendant develops a validated examination at a cost less than the sum dedicated pursuant to paragraph 6 above, the Defendant shall be able to devote any excess money to any use.

8. This Decree does not obligate the Defendant to hire unnecessary personnel or persons who are not qualified by valid qualification standards.

B. INDIVIDUAL RELIEF

Without admitting the contentions of the United States as set forth in its Complaint and in settlement of the claims of the United States with respect to those contentions, as well as the claim of each individual who is offered and accepts relief under this Decree, the Defendant agrees to do the following:

9. The Defendant agrees to offer to Mr. Robert G. Minnifield, the charging party in EEOC Charge No. 220881795, a monetary award of \$40,955.17 within thirty (30) days from the date of this Decree. As a condition of obtaining the relief provided him by this Decree, Mr. Minnifield shall execute a release in the form set forth in Appendix A. Within sixty (60) days of receipt of the release the Defendant will send Mr. Minnifield a check for the amount due to him. Mr. Minnifield has informed the United States that he no longer desires a position as Custodian II, and therefore

the Defendant is not required under this Decree to offer Mr. Minnifield any job opportunity relief.

10. The Defendant agrees to offer to Ms. Sharon Grant, a female presently employed as a Custodian II by the Defendant, a position with the Defendant in the merged janitorial position with her present seniority level and date as described in paragraph 4 above. The Defendant agrees to make such offer within seven (7) days from the date of final entry of this decree. Ms. Grant will have a trial period of employment in the merged janitorial position. This trial period shall last ten (10) days during which Ms. Grant is actively working in the merged janitorial position. This trial period shall begin no later than three (3) days after she accepts such employment for the trial period pursuant to this Decree. Within the ten (10) working day trial period, Ms. Grant will notify the Defendant whether she desires to remain in the merged janitorial position.

- a. If Ms. Grant decides to remain in the merged janitorial position, the Defendant shall pay to Ms. Grant a monetary award of \$11,324.42. The Defendant will send to Ms. Grant a check for the amount due her within seventy-five (75) days from Ms. Grant's notification to the Defendant of her decision.
- b. If Ms. Grant decides not to remain in the merged janitorial position, the Defendant shall restore her to her previous position within two (2) days after Ms. Grant's decision and provide relief to her pursuant to above

paragraph 5.

As a condition of obtaining any relief to be offered by the Defendant under this Decree, Ms. Grant shall execute a release in the form set forth in Appendix A.

11. If Ms. Grant elects to accept the Defendant's offer of employment in a merged janitorial position, the Defendant shall contribute its full share to any pension plan Ms. Grant would have had if she had received the salary of a Custodian I from March 1, 1992 to August 1, 1994 rather than the salary of a Custodian II. The monetary award shall not be reduced by the Defendant's pension plan payments; however, any contribution Ms. Grant would have been required to make under the pension plan during this period shall be paid into the pension plan from her monetary award.

12. All monetary awards shall be subject to withholding, as appropriate, for all federal, state and local income and federal social security taxes. The reason for and amounts of such withholding shall be indicated clearly in documentation accompanying each check. The Defendant shall separately pay the employer's share of any federal social security taxes due.

13. The Defendant agrees to notify Mr. Minnifield and Ms. Grant of the terms of this Consent Decree within seven (7) days of its entry by mailing to them, by certified mail, return receipt requested, a copy of the letter in the form set forth in Appendix B (Mr. Minnifield) and Appendix C (Ms. Grant) and enclosing a copy of this Decree and a copy of the appropriate release attached as Appendix A. The letters identified as Appendices B and C will

advise Mr. Minnifield and Ms. Grant that in order to accept the relief offered he or she must return the Appendix A release to the Defendant within thirty (30) days of his or her receipt of the Appendix B or C letter.

C. RECORDKEEPING

14. The Defendant shall maintain for the duration of this Decree all records (including machine-readable records) necessary to monitor the implementation of this Decree. Such records shall include all documents and records, including hiring authorizations, job specifications, employment applications, personnel files, interview notes, vacancy notices or announcements, newspaper advertisements, correspondence and memoranda, pertaining to the janitorial position.

15. The United States Department of Justice shall have the right to inspect and copy any and all of the above documents and records upon reasonable notice to the Defendant without further order of this Court. In addition, the Defendant shall make available such additional information or records relating to the subject matter of the Decree as the United States Department of Justice requests in writing. Further, with respect to the implementation of the Decree the parties may, without further order of the Court, use all discovery allowed under the Federal Rules of Civil Procedure.

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D. REPORTING

16. Within sixty (60) days after the awarding of individual relief under this Decree, the Defendant shall provide to the United States a report showing the disposition of all such individual relief.

17. For purposes of this Decree, a reporting period shall run from November 1 through October 31.

18. Within thirty (30) days after the close of each reporting period during the duration of this Decree, the Defendant shall provide to the United States a report for that reporting period showing the following:

- a. The number of persons, by sex, employed by the Steubenville City Board of Education in the merged janitorial position as of the last day of the reporting period;
- b. The number of persons, by sex, who applied for the janitorial position during the reporting period;
- c. A list of all persons hired by the Steubenville City Board of Education in the merged janitorial position during the reporting period, showing each individual's name, sex, and date of hire, and;
- d. A list of all written complaints of discrimination on the basis of sex related to employment with or made by employees of the Steubenville City Board of Education during the reporting period, together with a copy of each such complaint.

E. COSTS

19. The parties shall bear their own costs in this action, including any attorney's fees; provided, however, the parties retain the right to seek costs that may arise out of any future presentation of a matter to the Court for resolution in the future.

F. ADDITIONAL PROVISIONS

20. Whenever the parties are unable to agree on a specific matter falling within the general provisions of the Decree that contemplates mutual agreement, any party may move the Court for a resolution.

21. For a period of at least three months after the entry of this Consent Decree, a copy of this Consent Decree shall be posted prominently on a bulletin board used for notices at the Personnel Office of the Steubenville City Board of Education, as well as on a bulletin board or the equivalent used by or available to janitorial employees in each school in the Defendant's school system along with a notice that copies of the Decree are available for taking, without charge, from the main business office of the Steubenville City Board of Education.

G. RETENTION OF JURISDICTION

22. This Court shall retain jurisdiction over this action for the purpose of entering any orders or judgments which may be necessary to implement the relief provided herein. After three (3) years this matter shall be dismissed unless the United States

moves, upon notice to the Defendant, for its continuation in order to carry out the purposes of the Decree.

H. EFFECTIVE DATE

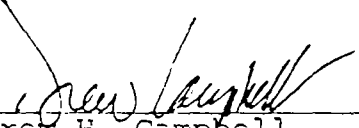
23. This Consent Decree shall be effective as of the first pay period following its entry by this Court.

ENTERED THIS _____ DAY OF _____ 199__

UNITED STATES DISTRICT JUDGE

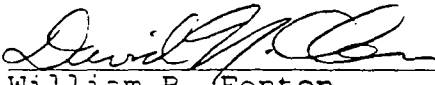
AGREED AND CONSENTED TO:

For the Defendant:



Drew H. Campbell
Bricker & Eckler
100 S. Third Street
Columbus, OH 43215-4291
(614) 227-2300

For the Plaintiff:



William B. Fenton
David Y. Chen
Attorneys
Civil Rights Division
U.S. Department of Justice
P.O. Box 65968
Washington, D.C. 20035-5968
(202) 514-3898

APPENDIX A

RELEASE OF ALL CLAIMS

State of _____)
County of _____) ss

Contingent upon payment to me by the Steubenville City Board of Education of _____ Dollars and/or any other relief that is being offered to me, pursuant to the provisions of the Consent Decree entered by the Honorable [Judge's name], United States District Judge, on [Date] in the case of United States v. The Steubenville City Board of Education, Civil No. [Case number] (S.D. Ohio); I [Full name of claimant], release and discharge The Steubenville City Board of Education, and its current, former and future officials, employers and agents, from all legal and equitable claims, known or unknown, arising out of this action or other legal, equitable or administrative claims or causes of action arising out of any discrimination on the basis of sex with respect to policies or practices of the Steubenville City Board of Education relating to its Custodian I and Custodian II positions in violation of any federal, state or local laws, statutes, regulations or ordinances occurring before the execution of this Release, including EEOC Charge No. 220881795.

I understand that the payment to be made to me and/or any other relief that is being offered to me does not constitute an admission by any of the parties released of the validity of any claim raised by me, or on my behalf.

This Release constitutes the entire agreement between the

Defendant and myself, without exception or exclusion.

I acknowledge that a copy of the Consent Decree in this action has been made available to me.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Signed this _____ day of _____, 199__.

[FULL NAME TYPED]

Social Security Number _____

Other Identification _____

Subscribed and sworn to before me this

_____ day of _____, 199__.

Notary Public

My Commission expires:

APPENDIX B

NOTICE LETTER

VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Mr. Robert Minnifield
1439 Oregon Avenue
Steubenville, Ohio 43952

Re: United States v. The Steubenville City Board of Educa-
tion, Civil No. [Case no.] (S.D. Ohio)

Dear Mr. Minnifield:

A Consent Decree has been entered settling a complaint of employment discrimination filed by the United States against the Steubenville City Board of Education. Under the terms of the Consent Decree entered on [date], in the case of the United States v. The Steubenville City Board of Education, Civil No. [Case no.] (S.D. Ohio), you are being offered a monetary award of \$40,955.17. This sum is subject to withholding for federal, state and local income taxes and your share of federal social security taxes as appropriate and will be paid to you by the Defendant within sixty (60) days of its receipt of your release. You may obtain the monetary award by completing and returning the enclosed Release to the following address:

[INSERT ADDRESS]

The Release may be returned by mail or in person. If you return the Release in person, please bring your social security card or other identification with you. You will at that time be asked to sign the Release before a notary public. If you return your Release by mail, the Release must be signed and notarized before you mail it.

The monetary award is offered to you on the following condition: If you accept the monetary award, the Defendant will require you to release it from all employment discrimination claims based on sex you may presently have against it arising out of this action and EEOC Charge No. 220881795.

IF YOU FAIL TO SUBMIT THE RELEASE, AS DIRECTED IN THIS LETTER, WITHIN THIRTY (30) DAYS FROM YOUR RECEIPT OF THIS LETTER, YOU WILL FORFEIT YOUR RIGHTS TO ANY MONETARY AWARD UNDER THIS DECREE, UNLESS YOU CAN SHOW GOOD CAUSE FOR YOUR FAILURE TO DO SO WITHIN A REASONABLE TIME THEREAFTER.

A copy of the Consent Decree is enclosed. If you have any questions concerning the Consent Decree or your right to relief, you may call collect or write to the following attorney at the U.S. Department of Justice in Washington, D.C.:

David Y. Chen
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
P.O. Box 65968
Washington, D.C. 20035-5968
(202) 307-5769

Or you may call or write to the following attorney for the Steubenville City Board of Education:

[INSERT NAME AND ADDRESS]

Sincerely,

[Defendant]

Enclosure

APPENDIX C

NOTICE LETTER

VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Ms. Sharon Grant
[Address]
[City, State and Zip Code]

Re: United States v. The Steubenville City Board of Educa-
tion, Civil No. [Case no.] (S.D. Ohio)

Dear Ms. Grant:

A Consent Decree has been entered settling a complaint of employment discrimination filed by the United States against the Steubenville City Board of Education (Board). Under the terms of the Consent Decree entered on [Date], in the case of the United States v. The Steubenville City Board of Education, Civil No. [Case no.] (S.D. Ohio), you are being offered a position in the merged janitorial position with your present seniority date and level in the Custodian II position. You will have a ten (10) day trial period in the merged janitorial position. You may decide at any time during the trial period either

- (A) to remain in the merged janitorial position or
- (B) to return to your prior Custodian II position.

If you decide to remain in the merged janitorial position, you -- -- will be offered a monetary award of \$11,324.42. This sum is subject to withholding for federal, state and local taxes and your share of federal social security taxes as appropriate and will be paid to you by the Board within seventy-five (75) days after you notify of the Board of your decision. You may obtain the monetary award by completing and returning the enclosed Release to the following address:

[INSERT ADDRESS]

The Release may be returned by mail or in person. If you return the Release in person, please bring your social security card or other identification with you. You will at that time be asked to sign the Release before a notary public. If you return your Release by mail, the Release must be signed and notarized before you mail it.

The monetary award is offered to you on the following

condition: if you accept it, the Board will require you to release it from all employment discrimination claims based on sex you may presently have against it arising out of this action and EEOC Charge No. 220881795.

IF YOU FAIL TO SUBMIT THE RELEASE, AS DIRECTED IN THIS LETTER, WITHIN THIRTY (30) DAYS FROM YOUR RECEIPT OF THIS LETTER, YOU WILL FORFEIT YOUR RIGHTS TO ANY MONETARY AWARD UNDER THIS DECREE, UNLESS YOU CAN SHOW GOOD CAUSE FOR YOUR FAILURE TO DO SO WITHIN A REASONABLE TIME THEREAFTER.

A copy of the Consent Decree is enclosed. If you have any questions concerning the Consent Decree or your right to relief, you may call collect or write to the following attorney at the U.S. Department of Justice in Washington, D.C.:

David Y. Chen
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
P.O. Box 65968
Washington, D.C. 20035-5968
(202) 307-5769

Or you may call or write to the following attorney for the Steubenville City Board of Education:

[INSERT NAME AND ADDRESS]

Sincerely,

[Defendant]

Enclosure

EXHIBIT 2

NOTICE OF A FAIRNESS HEARING

TO: ALL INCUMBENT JANITORIAL EMPLOYEES OF THE STEUBENVILLE CITY BOARD OF EDUCATION

RE: United States v. The Steubenville City Board of Education, Civil No. [Case no.] (S.D. Ohio)

The United States has filed a Complaint in the United States District Court for the Southern District of Ohio, Eastern Division against The Steubenville City Board of Education (Defendant) to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000e, et seq. (Title VII).

In its Complaint the United States alleges, among other things, that the Defendant violated Title VII by

1. adopting and maintaining gender-segregated job classifications for janitorial positions in the Steubenville City School District;
2. failing or refusing to hire and to employ females in the Custodian I position and failing or refusing to hire and employ males in the Custodian II position;
3. paying women who perform custodian duties lower wages than males who perform the same or substantially similar duties; and
4. failing or refusing to take appropriate action to eliminate the discriminatory policies and practices and to correct the effects of those policies and practices.

The United States also alleges that the Defendant failed or refused to hire Mr. Robert G. Minnifield, a male, on the basis of his sex, for a Custodian Class II position.

On [Date] the Court tentatively approved and entered the Consent Decree (Decree) which resolved all issues raised in the Complaint, including relief issues.

The Decree provides for the following relief:

1. The Defendant shall not discriminate against any employee, applicant or potential applicant for employment with the Steubenville City School District as a janitorial employee, and shall not retaliate against any individual because that individual has opposed discriminatory practices or because of that individual's participation in or cooperation with the initiation,

investigation, or litigation of this lawsuit or administration of this Decree.

2. The Defendant (a) shall no longer maintain separate janitorial job classifications based on sex, (b) shall merge prospectively the current Custodian I and Custodian II positions into one position and (c) shall recruit, consider, hire and pay men and women for that merged position on the same basis.
3. The Defendant shall apply at least \$8717 to the development and validation of an examination for use in the selection of new candidates for the merged janitorial position.
4. All incumbent Custodian Class II employees will receive no less than 87.5 percent of the salary of the newly created merged janitorial position.
5. Mr. Robert Minnifield will be offered \$40,955.17.
6. Ms. Sharon Grant will be offered a two week trial in the newly created merged janitorial position. If she chooses to remain in the position, she will receive \$11,324.42.

The Court will conduct a fairness hearing on [Date] at [Time] at the following address:

United States District Court for the Southern District
of Ohio, Eastern Division
United States Courthouse
85 Marconi Blvd.
Columbus, Ohio 43215

At this hearing the United States and the Defendant will ask the Court to approve and enter the Decree after the Court considers any objections regarding the proposed relief from persons who may be affected.

The Court will consider only written objections at the fairness hearing, so if you wish to object, you must make your objection in writing. Your objection must state the name and number of this case, your name, address and telephone number and the reason(s) for your objection(s). Your objection must be postmarked no later than thirty (30) days after the issuance of this notice. You must send your objection to each address below:

1. Honorable [Judge's name]
United States District Court Judge
United States District Court for the Southern District
of Ohio, Eastern Division

United States Courthouse
85 Marconi Blvd.
Columbus, Ohio 43215

2. David Y. Chen, Esq.
United States Department of Justice
Civil Rights Division
Employment Litigation Section
P. O. Box 65968
Washington, D.C. 20035-5968
3. Drew H. Campbell, Esq.
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215-4291

If you have any questions, you may write to the Department of Justice attorney named above or you may call (800) [Number].