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## EEOC v. Fun in Motion, Inc.

Judge Mark Filip

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## EEOC v. Fun in Motion, Inc.

### **Keywords**

EEOC, Fun in Motion, Inc., 05 C 6889, Consent Decree, Disparate Treatment, Retaliation, Sexual Harassment, Termination, Sex, Female, Retail, Employment Law, Title VII

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>EQUAL EMPLOYMENT OPPORTUNITY</b>	)
<b>COMMISSION,</b>	)
	)
<b>Plaintiff,</b>	)
	)
<b>v.</b>	)
	)
<b>FUN IN MOTION, INC.,</b>	)
	)
<b>Defendant.</b>	)

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**Case No. 05 C 6889**  
**Judge Filip**  
**Magistrate Judge**  
**Soat Brown**

**CONSENT DECREE**

**THE LITIGATION**

1. Plaintiff Equal Employment Opportunity Commission ("EEOC") filed this action alleging that Defendant Fun In Motion, Inc. ("FIM" or "Defendant") violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. ("Title VII"), and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a, by subjecting Charging Party Danielle D'Ambrosio ("D'Ambrosio") and a class of female employees to harassment because of their sex. The Complaint further alleges that Defendant violated Title VII by discriminating against D'Ambrosio by terminating her employment in retaliation for her opposing sexual harassment. On or about February 13, 2006, D'Ambrosio intervened in this action and is represented by private counsel.

2. In the interest of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations, the parties have agreed that this action should be finally resolved by entry of this Consent Decree (hereafter "Decree"). This Decree fully and finally

resolves any and all issues and claims arising out of the Complaints filed by EEOC and D'Ambrosio. Nothing in this Consent Decree shall be deemed to constitute an admission by either party with respect to the claims or defenses of the other.

**FINDINGS**

3. Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds the following:

a. This Court has jurisdiction of the subject matter of this action and of the parties.

b. The terms of this Decree are adequate, fair, reasonable, equitable, and just. The rights of EEOC, FIM, D'Ambrosio and the public interest are adequately protected by this Decree.

c. This Decree conforms with the Federal Rules of Civil Procedure, Title VII, and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of Title VII and will be in the best interests of the parties and the public.

**NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:**

**NON-DISCRIMINATION**

4. FIM, its officers, agents, employees, successors, assigns and all persons acting in concert with it are permanently enjoined from: (a) engaging in any employment practice that discriminates on the basis of sex; (b) engaging in or being a party to any action, policy or practice that is intended to or is known to them to have the effect of sexually harassing any female employee; and (c) creating, facilitating or tolerating the existence of a work environment that is sexually hostile to female employees.

5. FIM, its officers, agents, employees, successors, assigns and all persons acting in concert with it shall not engage in any form of retaliation against any person because such person has opposed any practice made unlawful under Title VII, filed a Charge of Discrimination under Title VII, testified or participated in any manner in any investigation, proceeding, or hearing under Title VII, or asserted any rights under this Decree.

**MONETARY RELIEF**

6. FIM shall pay \$21,500.00 to D'Ambrosio, inclusive of attorneys' fees, costs and expenses.

7. Payment to D'Ambrosio shall be in a manner and on terms separately agreed to by Defendant and D'Ambrosio and by her counsel, John S. Bishof, Jr. ("Bishof") of the Law Office of John Bishof, P.C. EEOC has had no role in negotiating, is not a party to, and has not approved the terms of the agreement entered into by D'Ambrosio, who has been counseled by Bishof with respect thereto.

**POSTING OF NOTICE**

8. Within five (5) business days following entry of this Decree, FIM shall post copies of the Notice (attached hereto as Exhibit A) to this Decree at FIM's Crystal Lake, Illinois facility. FIM shall post this Notice on the bulletin board(s) usually used by FIM for communicating with its employees. The Notice shall remain posted for two (2) years from the date of entry of this Decree. FIM shall take all reasonable steps to ensure that the posting is not altered, defaced or covered by any other material. FIM shall certify to EEOC in writing within ten (10) business days after entry of the Decree that the Notice has been properly posted. FIM shall permit a representative of EEOC to enter FIM's premises for purposes of verifying compliance with this Paragraph at any time during normal business hours without prior notice.

### **RECORD KEEPING**

9. FIM shall maintain and make available for inspection and copying by EEOC records (including names, social security numbers, addresses, and telephone numbers) of each employee or applicant who complains of sexual harassment and/or retaliation. FIM shall maintain such records whether or not any such report or complaint is made formally or informally. Such records shall include the name of the complainant, the date of the report or complaint, what was alleged, the name(s) of any witnesses, what actions, if any, FIM took to resolve the complaint, and the resolution of the report or complaint.

10. FIM shall make all documents or records referred to in Paragraph 9 above available for inspection and copying within ten (10) business days after EEOC so requests. In addition, FIM shall require personnel within its employ whom EEOC reasonably requests for purposes of verifying compliance with this Decree to cooperate with EEOC and to be interviewed.

### **REPORTING**

11. FIM shall furnish to EEOC the following written reports semi-annually for a period of two (2) years following entry of this Decree. The first report shall be due six (6) months after entry of the Decree. The final report shall be due twenty-three (23) months after entry of the Decree. Each such report shall contain:

- (a) A summary of the information recorded by FIM pursuant to Paragraph 9;
- (b) A certification by FIM that the Notice required to be posted in Paragraph 8, above, remained posted during the entire six (6) month period preceding the report.

### **TRAINING**

12. During each of the two (2) years covered by this Decree, all of FIM's store

managers, supervisors and human resources personnel shall participate in an annual training session by a trainer paid for by FIM and approved by EEOC regarding sexual harassment and retaliation and FIM's policies regarding such discrimination. Any new human resources employee shall receive such training prior to starting work. The training session shall take place within ninety (90) days of entry of this Decree.

13. FIM shall obtain EEOC's approval of its proposed trainer prior to the training session. FIM shall submit the name, address, telephone number, resume and training proposal of the proposed trainer, including all proposed training materials, to EEOC at least fifteen (15) days prior to the proposed date(s) of the training. EEOC shall have five (5) business days from the date of receipt of the information described above to accept or reject the proposed trainer. In the event that EEOC fails to respond within such five (5) business days, then the trainer proposed by FIM shall be deemed accepted by EEOC. In the event EEOC does not approve FIM's designated trainer, FIM shall have five (5) business days to identify an alternate trainer. In the event that EEOC fails to respond within such five (5) business days, then the alternate trainer proposed by FIM shall be deemed accepted by EEOC. EEOC shall have five (5) business days from the date of receipt of the information described above to accept or reject the alternate trainer. If the parties cannot through this process agree on a trainer, then they shall seek the Court's assistance.

14. FIM shall certify to EEOC in writing within five (5) business days after the training has occurred that the training has taken place and that the required personnel have attended. Such certification shall include: (i) the date, location and duration of the training; and (ii) a copy of the registry of attendance, which shall include the name and position of each person in attendance.

15. FIM shall also provide EEOC with any and all copies of pamphlets, brochures, outlines or other written material(s) provided to the participants of the training session(s).

**DISPUTE RESOLUTION**

16. In the event that any party to this Decree believes that another party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of the alleged non-compliance and shall afford the alleged non-complying party ten (10) business days to remedy the non-compliance or to satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within ten (10) business days, the complaining party may apply to the Court for appropriate relief.

**DURATION OF THE DECREE AND RETENTION OF JURISDICTION**

17. All provisions of this Decree shall be in effect (and the Court will retain jurisdiction of this matter to enforce this Decree) for a period of two (2) years immediately following entry of the Decree, provided, however, that if, at the end of the two (2) year period, any disputes under ¶16, above, remain unresolved, the term of the Decree shall be automatically extended (and the Court will retain jurisdiction of this matter to enforce the Decree) until such time as all such disputes have been resolved.

**MISCELLANEOUS PROVISIONS**

18. Each party to this Decree shall bear its own expenses, attorney's fees and costs.

19. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, assigns, and successors of FIM.

20. If any provision(s) of the Decree are found to be unlawful, only such provision(s) shall be severed, and the remainder of the Decree shall remain in full force and effect.

21. When this Decree requires the submission by FIM of reports, certifications, notices, or other materials to EEOC, they shall be mailed to: FIM Title VII Settlement, Equal Employment Opportunity Commission, 500 West Madison Street, Suite 2800, Chicago, Illinois, 60661. When this Decree requires submission by EEOC of materials to FIM, they shall be mailed to: Fun In Motion, Inc., 490 Windy Point Lane, Glendale Heights, Illinois 60139, attention Alan Arden, with a copy to Mark J. Unterberger, Lurie & Unterberger, Ltd., 30 North LaSalle Street, Suite 2040, Chicago, Illinois 60602.

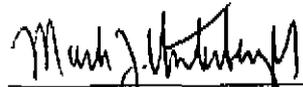
**ENTERED AND APPROVED FOR:**

For the EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
1801 L Street, N.W.  
Washington, D.C. 20507

For FUN IN MOTION, INC.

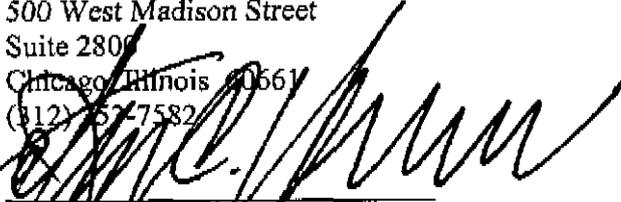
JAMES LEE  
Deputy General Counsel

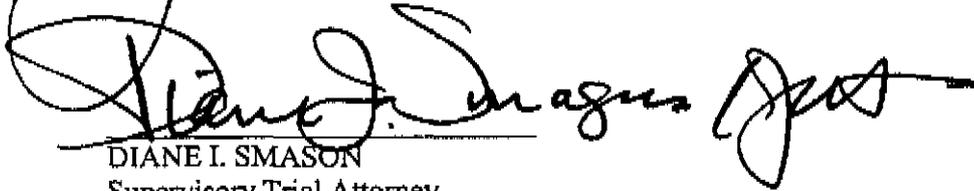
GWENDOLYN YOUNG REAMS  
Associate General Counsel

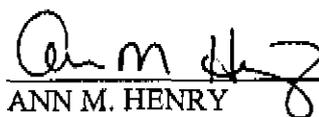
  
\_\_\_\_\_  
MARK J. UNTERBERGER  
Lurie & Unterberger, Ltd.  
30 North LaSalle Street  
Suite 2040  
Chicago, Illinois 60602  
312/236-3380

**EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION**

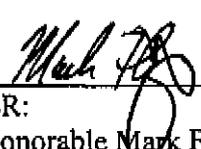
500 West Madison Street  
Suite 2800  
Chicago, Illinois 60661  
(312) 527-7582

  
\_\_\_\_\_  
JOHN C. HENDRICKSON  
Regional Attorney

  
\_\_\_\_\_  
DIANE I. SMASON  
Supervisory Trial Attorney

  
\_\_\_\_\_  
ANN M. HENRY  
Trial Attorney

DATE: 8-4-06

  
\_\_\_\_\_  
ENTER:  
The Honorable Mark Filip  
United States District Judge

**EXHIBIT A**

**NOTICE TO ALL FUN IN MOTION, INC. EMPLOYEES**

This Notice is being posted pursuant to a Consent Decree entered by the federal court in EEOC v. Fun In Motion, Inc., No. 05 C 6889, resolving a lawsuit filed by the Equal Employment Opportunity Commission ("EEOC") against Fun In Motion, Inc. ("FIM").

In its suit, EEOC alleged that FIM discriminated against female employees by subjecting them to a sexually hostile work environment and retaliating against a female former employee by terminating her for opposing sexual harassment. FIM filed an Answer in which it denied the allegations.

To settle the case, FIM and EEOC have entered into a Consent Decree, which provides, among other things, that:

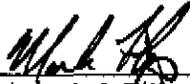
- 1) FIM will make a settlement payment to the female former employee;
- 2) FIM is enjoined from discriminating against women on the basis of sex and from subjecting women to sexual harassment;
- 3) FIM is enjoined from retaliating against any person because (s)he opposed any practice made unlawful by Title VII, filed a Title VII charge of discrimination, participated in any Title VII proceeding, or asserted any rights under the Consent Decree; and
- 4) FIM will provide mandatory training to its store managers, supervisors and human resources personnel regarding sexual harassment, retaliation, and FIM's policies regarding such discrimination.

EEOC enforces the federal laws against discrimination in employment on the basis of race, color, religion, national origin, sex, age or disability. If you believe you have been discriminated against, you may contact EEOC at (312) 353-8195. EEOC charges no fees and has a TTD number.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

This Notice must remain posted for two years from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to: FIM Title VII Settlement, EEOC, 500 West Madison Street, Suite 2800, Chicago, IL 60661.

8-4-06  
Date

  
\_\_\_\_\_  
Judge Mark Filip  
United States District Court