

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Civil No. 08-5308 (DWF/AJB)

Plaintiff,

v.

CONSENT DECREE

MESABA AIRLINES,

Defendant.

Jean P. Kamp, Esq., and Nicholas J. Pladson, Esq., Equal Employment Opportunity Commission, counsel for Plaintiff.

Britt M. Gilbertson, Esq., Gregory J. Stenmoe, Esq., and Jason M. Hedican, Esq., Briggs & Morgan, PA, counsel for Defendant.

INTRODUCTION

Plaintiff Equal Employment Opportunity Commission (hereinafter the “Commission” or “EEOC”) has filed a Complaint captioned *EEOC v. Mesaba Airlines*, Civil No. 08-5308 (DWF/AJB), alleging that Defendant Mesaba Airlines (“Mesaba”) discriminated against Charging Party Laura Vallejos, a Customer Service Agent at its Minnesota facility, by refusing to permit schedule modifications during the first 90 days of her employment that would allow her to observe the Jewish Sabbath, as required by her sincerely held religious beliefs, in violation of Title VII of the Civil Rights Act of 1964. The EEOC also alleges Mesaba’s use of a policy prohibiting schedule modifications

during the first 90 days of employment resulted in discrimination against a class of employees in, and applicants to, Customer Service Agent positions at Mesaba facilities nationwide. Mesaba Airlines filed an Answer to the EEOC's Complaint denying the allegations in their entirety.

In reaching this Consent Decree, the EEOC and Mesaba, acting by and through their counsel, engaged in arms' length negotiations and a significant exchange of information. The parties have obtained sufficient information to assess reliably the relative merits of the claims and defenses. Throughout this process, the EEOC and Mesaba were represented by counsel knowledgeable in this area of the law.

THEREFORE, upon the consent of the parties, and upon review by the Court of these terms, it is

ORDERED, ADJUDGED, and DECREED that the following terms are given approval as set forth herein:

I. JURISDICTION, FINDINGS, AND DEFINITIONS

A. Jurisdiction

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

B. Findings

It is the finding of this Court, made on the pleadings and on the record as a whole and upon agreement of the parties, that: (i) the requirements of Title VII of the Civil Rights Act of 1964 will be carried out by the implementation of this Consent Decree, (ii) the terms of this Consent Decree constitute a fair and equitable settlement of all issues

raised in the EEOC's Complaint, and (iii) this Consent Decree is intended to and does resolve claims of the EEOC pursuant to Title VII that are based upon the EEOC's allegations.

C. Definitions

1. "Mesaba" means Mesaba Airlines' operations and facilities nationwide.
2. "Charging Party" means Charging Party Laura Vallejos, who filed a Charge of Discrimination, No. 444-2006-01901, against Mesaba Airlines.
3. For purposes of the monetary relief provided in this Decree, the "Settlement Class" consists of four former applicants to Customer Service Agent positions at Mesaba Airlines facilities nationwide. These four individuals are: Steven Mathias, Stephen Doncevic, Andrew Whellams, and Deborah Sellers.
4. "Employer" as used herein shall mean an employer as defined and interpreted under Title VII of the Civil Rights Act of 1964.
5. "Effective Date" as used herein shall mean the date upon which the District Court grants approval of this Consent Decree.

II. SCOPE OF CONSENT DECREE

A. The EEOC agrees that it will not bring any further claim against Mesaba relating to any claim brought or class allegations made as a part of this lawsuit. The

EEOC does not waive or in any manner limit its right to process or seek relief in any other charge or investigation based upon allegations not included in this litigation.

B. This Consent Decree shall be for a period of two (2) years and can only be extended for good cause shown. During the term of the Consent Decree, the Court shall retain jurisdiction of this cause for purposes of compliance and any disputes that may arise hereunder.

C. The Charging Party and the Settlement Class shall recover monetary awards pursuant to this Consent Decree. Monetary awards to the Charging Party and Settlement Class members will be allocated in the sole discretion of the EEOC. Persons who recover a monetary award under this Decree shall be required to sign the Release and Waiver attached as **Exhibit B** as a condition precedent to obtaining monetary relief under this Decree.

D. Mesaba Airlines has represented that, as of the Effective Date of this Decree, it is no longer an “employer” of Customer Service Agents. As a condition of this settlement, EEOC agrees that **Section VIII** and **Section IX** herein only operate against Mesaba to the extent it is an “employer” of Customer Service Agents. This Consent Decree is entered into based on the representation of Mesaba Airlines that, as of September 27, 2009, it has ceased to employ individuals in Customer Service Agent positions. If at any time during the term of this Consent Decree Mesaba Airlines resumes its status as an “employer” of Customer Service Agents, the injunctive relief in **Section VIII** and **Section IX** shall apply. All other portions of this Consent Decree shall

apply in full force to Mesaba Airlines from its Effective Date through the Term of the Decree.

III. ADHERENCE TO TITLE VII

Mesaba Airlines will not discriminate on the basis of religion in violation of Title VII in hiring, discipline, discharge or termination, and will not retaliate against persons who oppose matters made unlawful under Title VII or who participate in proceedings under that Act. Mesaba Airlines shall provide reasonable accommodation for its employees' and applicants' religious beliefs to the extent required by Title VII.

IV. MONETARY REMEDY

Mesaba Airlines shall pay the gross amount of \$130,000 to Charging Party Laura Vallejos and Settlement Class members Stephen Doncevic, Steven Mathias, Andrew Whellams. and Deborah Sellers. This amount will be allocated to Charging Party Laura Vallejos and Settlement Class members in amounts determined at the sole discretion of the EEOC, as reflected herein as **Exhibit C**.

V. TRAINING

Mesaba will retain an outside trainer to conduct a diversity training program for all Human Resources employees and management personnel involved in any hiring or new employee training processes. This training will include instruction on the laws against religious discrimination and the obligation of employers to provide reasonable accommodation for the sincerely held religious beliefs of their employees. The training shall be on an annual basis during the term of this Consent Decree. An agenda for the

training, all materials to be used and or distributed at the training and identification of the outside trainer will be provided to counsel for the EEOC at least one month before the training, and the EEOC counsel can object to either the agenda or the speaker no later than two weeks prior to the training.

VI. POSTING AND POLICIES

A. Mesaba will continue to post and cause to remain posted the posters required to be displayed in the workplace by EEOC regulation 29 C.F.R. §1601.30 at its facilities nationwide.

B. Mesaba shall post and cause to remain posted the notice attached hereto as **Exhibit A** at each of its facilities nationwide in a location where employee notices are typically posted for the term of this Consent Decree.

VII. STATEMENT TO EMPLOYEES

Mesaba's president or Chief Executive Officer will publish a statement to Mesaba employees affirming Mesaba's commitment to treating all employees with respect and dignity, regardless of religion.

VIII. REPORTING TO THE EEOC

A. During the term of this Decree, Mesaba will report to the EEOC on a semi-annual basis all requests for a religious accommodation that it received from Customer Service Agents or applicants to Customer Service Agent positions, identifying the employee or applicant requesting the accommodation, the date of the request, the accommodation requested, whether the accommodation was granted or denied, and the

reason for the denial of the request (setting forth the specifics of any “undue burden” defense).

B. During the term of this Decree, Mesaba will report to the EEOC on a semi-annual basis whether it disciplined any Customer Service Agent for asserting a need for, or acting upon a previously refused request for, a religious accommodation. The report will identify the Customer Service Agent being disciplined, the date of the discipline, the type of discipline received, and the reason for the discipline.

C. Semi-annually during the term of this Decree, Mesaba will notify the EEOC of any complaints of religious discrimination or retaliation, the name and address of the person making the complaint, and the disposition of the complaint. Mesaba will submit to the EEOC any documents that the EEOC requests relating to the complaint.

IX. RECORDKEEPING REQUIREMENTS

A. During the term of this Consent Decree, Mesaba shall keep records of all requests for religious accommodations made by any applicant to or employee of Mesaba Airlines. Such records shall include the identity of the requesting employee or applicant, the requesting individual’s position, the date of the request, the accommodation requested, whether the accommodation was granted or denied, and the reason for the denial of the request (setting forth the specifics of any “undue burden” defense).

B. During the term of this Consent Decree, after notice of the basis upon which EEOC has determined that it has reasonable cause to believe that there has been a failure to comply with the terms of this Decree, Mesaba shall allow representatives of the EEOC

to review Mesaba's compliance with this Consent Decree by inspecting and photocopying relevant documents and records, interviewing employees and management officials (with counsel present) on their premises, and inspecting its premises. Any such notice by EEOC may generally describe such basis and need not identify the source of EEOC's information or any particular persons involved. Mesaba shall not have any right to object to or contest EEOC's determination prior to the inspection. Any review of compliance, as described in this subsection, shall be initiated by written notice to Mesaba's attorney of record at least ten (10) business days in advance of any inspection of Mesaba's documents or premises. Notwithstanding anything herein to the contrary, Mesaba is not waiving any attorney-client privilege or work-product doctrine with respect hereto.

X. COSTS AND ATTORNEY FEES

Each party shall bear that party's own costs and attorney fees.

Dated: December 22, 2009

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge

BRIGGS AND MORGAN, P.A.

DATE: : 12/17/09

By s/Gregory J. Stenmoe

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ATTORNEYS FOR PLAINTIFF

EXHIBIT A

NOTICE TO EMPLOYEES

This Notice is posted pursuant to a Consent Decree resolving a lawsuit with the Equal Employment Opportunity Commission (www.eeoc.gov). The EEOC brought suit against Mesaba Airlines alleging that it discriminated against a Customer Service Agent and four applicants to the Customer Service Agent position by refusing to provide them with reasonable accommodations for their religious beliefs during training.

The Consent Decree resolving this lawsuit provides monetary relief to five individuals and provides the following:

- Annually for the next two years, Mesaba Airlines shall provide training to all management and Human Resources personnel on the Title VII of the Civil Rights Act of 1964 and its prohibitions against religious discrimination, including the requirement that employers reasonably accommodate the religious beliefs of employees and applicants for employment.
- Mesaba Airlines shall comply with Federal law prohibiting employment discrimination on the basis of religion, and will not retaliate against any individual for complaining about discriminatory employment practices.

Dated: December 22, 2009

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge

EXHIBIT B

RELEASE AND WAIVER

In consideration for \$ _____ paid to me by Mesaba Airlines, in connection with the resolution of EEOC v. Mesaba Airlines, Case No. 08-CV-5308 (DWF/AJB) (D. Minn.), I waive my right to recover for any claims arising under Title VII of the Civil Rights Act of 1964 that I had against Mesaba Airlines prior to the date of this Release and Waiver that were included in the claims alleged in EEOC's complaint in EEOC v. Mesaba Airlines, Case No. 08-CV-5308 (DWF/AJB) (D. Minn.).

Date: _____

Signature: _____

EXHIBIT C

CLAIMANT

SETTLEMENT DISTRIBUTION

Laura Vallejos	\$65,000.00
Stephen Doncevic	\$20,000.00
Steven Mathias	\$20,000.00
Deborah Sellers	\$15,000.00
Andrew Whellams	\$10,000.00