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## EEOC v. PJAX, Inc. (03-0759)

Judge Terrence F. McVerry

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## EEOC v. PJAX, Inc. (03-0759)

### **Keywords**

EEOC, PJAX Inc., 03-0759, Consent Decree, Disparate Treatment, Sexual Harassment, Sex, Female, Transportation, Employment Law, Title VII

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

PJAX, INC.,

Defendant.

CIVIL ACTION NO. 03-0759

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U.S. DISTRICT COURT

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CONSENT DECREE

This Consent Decree (the "Decree") is made and entered into by and between Plaintiff Equal Employment Opportunity Commission ("Commission" or the "EEOC") and Defendant PJAX, Inc. ("PJAX") (collectively, the "Parties").

The Commission filed this action against PJAX to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* ("Title VII"). In its Complaint, the Commission alleges that PJAX discriminated against Charging Party Mary Francis Brining by subjecting her to a hostile work environment, on the basis of her sex –female. The Commission also alleges that PJAX maintained a policy and practice of subjecting female employees, as a class, to a hostile work environment on the basis of sex. PJAX denies all allegations.

The parties being aware of the risks, uncertainties and costs of continued litigation are now desirous of resolving the claims asserted in this action. The parties do not object to the jurisdiction of the Court over this action and waive a hearing and the entry of Findings of Fact

and Conclusions of Law. The parties agree to the entry of this Consent Decree ("Decree") subject to the final approval of the Court.

It is **ORDERED, ADJUDGED AND DECREED:**

1. The Court has jurisdiction over the subject matter of this action and of the Parties for purposes of entering and enforcing this Decree.

2. The Commission is the agency of the United States government authorized by Congress to investigate allegations of unlawful employment discrimination based upon sex or gender, to bring civil actions based upon these allegations of unlawful practices, and to seek relief for individuals affected by such practices.

**Scope of Consent Decree**

3. The duration of this Decree shall be two (2) years from the date of its entry. During that time, this Court shall retain jurisdiction over this matter and the Parties for purposes of enforcing compliance with the Decree, including issuing such orders as may be required to effectuate the purposes of the Decree.

4. Unless otherwise stated, the Decree shall apply to PJAX's headquarters and trucking facility, both located in Gibsonia, Pennsylvania.

5. This Decree is intended to and does effectuate the full, final and complete resolution of all allegations of unlawful employment practices and discrimination encompassed by EEOC Charge No. 172A200683, the EEOC's November 12, 2002 Letter of Determination, and the complaint filed in EEOC v. PJAX, Inc., Civil Action No. 03-0759. Specifically, the Decree constitutes a complete and final settlement and resolution of all claims of sexual harassment, sex-based harassment, sex discrimination, age discrimination, retaliation or constructive discharge that were asserted in EEOC Charge No. 172A200683, and/or

encompassed in the EEOC's November 12, 2002 Letter of Determination, and/or asserted by the EEOC or otherwise encompassed in this action under Title VII, the Age Discrimination in Employment Act ("ADEA") and/or the Equal Pay Act ("EPA"), all as amended, arising from June 2, 1999 through the date of this Decree.

6. The Decree, being entered with the consent of the EEOC and PJAX, shall not constitute an adjudication or finding on the merits of the case.

**Injunctive Relief**

7. PJAX, its officers, agents, servants, employees and all persons acting or claiming to act in its behalf and interest hereby agree to comply with the provisions of Title VII and agree in this Decree to be enjoined, and are enjoined, from unlawfully discriminating against females because of their sex by subjecting them to sexual harassment or any derogatory treatment which creates an unlawful hostile work environment.

8. PJAX, its officers, agents, servants, employees and all persons acting or claiming to act in its behalf and interest hereby agree to comply with the provisions of Title VII and agree in this Decree to be enjoined, and are enjoined, from engaging in any unlawful retaliation or coercion against any person because such person filed a charge, testified or participated in any manner in the EEOC's investigation giving rise to this action or testified or participated in this action, or received any benefits under this Decree.

9. PJAX agrees to and will maintain policies and practices which assist in creating and maintaining a work environment free from unlawful sex discrimination and sexual harassment and will take the actions set forth in Paragraphs 21 through 23 of this Decree to achieve that goal.

**Monetary Relief to Charging Party**

10. Within ten (10) days of entry of this Decree, Ms. Brining will execute and deliver to PJAX a Release agreed to by and between PJAX and Brining and her counsel.

11. Within ten (10) days of receipt of Ms. Brining's executed Release and subject to and in consideration for Ms. Brining's executed Release, PJAX shall pay Charging Party Mary Francis Brining monetary relief in the total amount of \$300,500.00 in full settlement of all allegations of unlawful employment practices and discrimination encompassed by EEOC Charge No. 172A200683, the EEOC's November 12, 2002 Letter of Determination, and the complaint filed in EEOC v. PJAX, Inc., Civil Action No. 03-0759. All of the monetary relief paid to Ms. Brining pursuant to the Release and this Decree, except for \$500.00 being paid to her for attorneys' fees, is acknowledged to be compensatory damages under the Civil Rights Act of 1991, 42 U.S.C. § 1981a. This check will be sent directly to Ms. Brining, and a photocopy of the check will be mailed to the EEOC, to the attention of M. Jean Clickner, Trial Attorney, EEOC, Liberty Center, Suite 300, 1001 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

12. When required under the law, PJAX will issue to Ms. Brining a United States Internal Revenue Services Form 1099. Charging Party will be responsible for paying any required taxes on the amounts otherwise disbursed to her.

13. If Ms. Brining has died or dies at any time before issuance of or depositing or cashing her checks, Ms. Brining's estate personal representative or heir(s) shall receive the payments that Ms. Brining would have otherwise received.

**Monetary Relief to Eligible Claimants**

14. Within one hundred eighty (180) days of entry of this Decree, each Eligible Claimant will execute and deliver to PJAX a Release, a copy of which is appended hereto as

Attachment C. Subject to and in consideration for each Eligible Claimant's executed release, PJAX shall pay the total settlement amount of \$200,000 to be distributed on a *pro rata* basis to JoAnn Bowlin, Patricia A. Knapp, Denise M. Kelly, and Patricia A. Lindsey, the "Eligible Claimants". All of the monetary relief paid to the Eligible Claimants pursuant to each Release and this Decree is acknowledged to be compensatory damages under the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

15. Each Eligible Claimant will receive three payments which will, in total, represent the full monetary relief due to the Eligible Claimant, except as provided in Paragraph 19. Within ten (10) days of receipt of an executed Release from an Eligible Claimant, PJAX will pay directly to that Eligible Claimant by check, cashier's check, or money order the first of the three installment payments. This first installment payment shall be the *pro rata* portion of \$67,333.67. PJAX will make its second payment to each Eligible Claimant within twelve (12) months of the date of its first payment. This second installment payment shall be the *pro rata* portion of \$67,333.66. PJAX will make its third and final payment to each Eligible Claimant within twenty-four (24) months of the date of its first payment to the Eligible Claimant but not later than sixty (60) days prior to the expiration of this Decree. This third and final installment payment shall be the *pro rata* portion of \$67,333.66.

16. PJAX shall mail all checks, cashier's checks, or money orders directly to each Eligible Claimant at the current address provided by EEOC and will issue United States Internal Revenue Form 1099 to all Eligible Claimants for all payments. Within ten (10) days of payment to each Eligible Claimant, PJAX will submit a copy of each check and related correspondence to the attention of M. Jean Clickner, Trial Attorney, EEOC, Liberty Center, 1001 Liberty Avenue, Suite 300, Pittsburgh, Pennsylvania 15222.

17. PJAX shall promptly notify the EEOC in writing if any checks issued to Eligible Claimants are returned or are not cashed after a period of thirty (30) days has elapsed after being mailed. If any checks mailed by PJAX pursuant to this Decree are returned or not cashed, PJAX shall take at its own expense reasonable steps, which includes but is not limited to computer, motor vehicle, and credit searches, to determine the Eligible Claimant's most current address and to effectuate either delivery or cashing of the check. If after exhausting such reasonable steps, any check has been returned or remains uncashed, PJAX shall promptly notify the EEOC.

18. In the event that any Eligible Claimant has not executed a Release within one hundred eighty (180) days of entry of the Decree or in the event that PJAX has been unable to deliver a check to an Eligible Claimant or such check is not cashed within one-hundred eighty (180) days of receipt of an executed Release, the portion of the total settlement amount attributed to that Eligible Claimant shall be distributed in the final payment, on a pro-rata basis, to the other Eligible Claimants.

19. If any Eligible Claimant has died or dies at any time before issuance of or depositing or cashing his or her checks, the estate personal representative, or heir(s) of that person shall receive the payments that the deceased Eligible Claimant would have otherwise received.

#### **Other Non-Monetary Relief**

20. Within ten (10) days after entry of this Decree, PJAX will post the Notice attached hereto as Attachment A in all places where notices to employees customarily are posted at its Gibsonia, Pennsylvania headquarters and Pittsburgh terminal. The Notice shall be posted and maintained for the duration of the Decree and shall be signed by a responsible official of PJAX with the date of actual posting shown thereon. Should the Notice become defaced,



marred, or otherwise made unreadable, PJAX will ensure that new readable copies of the Notice are posted in the same manner as heretofore specified. Within thirty (30) days of entry of the Decree, PJAX shall forward to the EEOC's Pittsburgh Area Office, attention, M. Jean Clickner, Trial Attorney, a copy of the signed Notice attached hereto and written certification that the Notice referenced herein has been posted and a statement of the location(s) and date of posting.

21. Within thirty (30) days from the entry of the Decree, PJAX agrees to revise and submit its "Anti-Discrimination Policy," which discusses Title VII and the right of employees to work in an environment that is free of unlawful discrimination on the basis of sex, to the EEOC's Pittsburgh Area Office, attention, M. Jean Clickner, Trial Attorney. The revised written policy must include at minimum:

- a. a complete and legal definition of the terms "sexual harassment" and "disparate treatment;"
- b. an internal and confidential process by which any employee may make a claim of sexual harassment or disparate treatment;
- c. an internal and confidential process by which any such claim will be investigated and, if possible, resolved;
- d. a provision explaining that no employee will be retaliated for lodging a claim of discrimination or for participating in the making or investigation of such claim;
- e. a method by which such policy will be distributed and/or published to all incumbent employees and to all new employees.

Within one hundred twenty (120) days of entry of the Decree, PJAX will distribute and/or publish its revised Anti-Discrimination policy to all employees.

22. Pursuant to the Consent Decree filed in EEOC v. PJAX, Inc., Civil Action No. 03-01535, District of Maryland ("the Baltimore Decree"), PJAX has agreed to create a Human Resources Specialist Position. The Baltimore Decree is attached hereto as Attachment B and Paragraph 25 of that Decree incorporated herein by reference. In addition to the duties outlined

in Paragraph 25 of the Baltimore Decree, the incumbent(s) of the Human Resources Specialist Position will be responsible for investigating sexual harassment complaints and complaints of sex-based disparate treatment and will make good faith efforts to achieve the goal of creating and maintaining a work environment free of sexual harassment and disparate treatment of female employees.

23. PJAX will provide, within one hundred twenty (120) days from the date of entry of the Decree, three (3) hours of training regarding federal anti-discrimination laws to all officers and supervisors employed at its headquarters and its Pittsburgh terminal located in Gibsonia, Pennsylvania, and will also provide, within one hundred twenty (120) days from the date of entry of the Decree, one (1) hour of training regarding federal anti-discrimination laws to all non-supervisory administrative employees employed at its headquarters and its Pittsburgh terminal located in Gibsonia, Pennsylvania. This training will be conducted by an outside consultant or law firm approved by the EEOC, which approval will not be unreasonably withheld. Within ten (10) business days of providing each such training session, PJAX will furnish the EEOC with a signed attendance list, the date and duration of the training, an outline of the training conducted, and a certification of completion of the mandatory training.

#### **Compliance and Dispute Resolution**

24. In the event that either Party to the Decree believes that the other party has failed to comply with any provision(s) of the Decree, the complaining Party shall notify the alleged non-complying Party in writing of such alleged non-compliance and afford the alleged non-complying Party thirty (30) business days to remedy the alleged 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 thirty (30) business days, the complaining Party may apply to the Court for appropriate relief.

25. In the event any dispute or question arises as to the interpretation or implementation of this Decree, the Parties shall attempt, in good faith, to resolve such dispute or question informally within thirty (30) business days. If the Parties are unable to resolve the dispute or question, the issue shall be submitted to the Court for final decision.

26. The Parties agree that the Court shall retain jurisdiction over this Decree in order to enforce its provisions.

#### **Other General Provisions**

27. In computing any period of time prescribed or allowed by this Decree, unless otherwise stated, such computation shall be made consistent with the Federal Rules of Civil Procedure.

28. PJAX shall pay all the administrative and/or other costs associated with its obligations under this Decree, including the payment of monetary relief, recruiting and hiring a human resources specialist, and providing training as set forth herein.

29. This Decree shall be filed in the United States District Court for the Western District of Pennsylvania.

30. The Commission and PJAX shall bear their own costs and attorneys' fees for this lawsuit.

31. The case shall be and hereby is dismissed with prejudice, subject to this Court's jurisdiction to enforce the provisions of this Consent Decree.

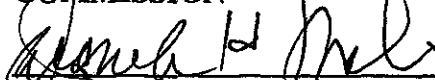
FOR DEFENDANT, PJAX, INC.

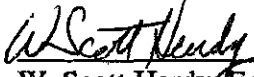
FOR PLAINTIFF


COHEN & GRIGSBY, P.C.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

  
James B. Brown, Esquire

  
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11 Stanwix Street, 15<sup>th</sup> Floor  
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M. Jean Clickner, Esquire  
Trial Attorney

Dated: 11/20/03

1001 Liberty Avenue  
Pittsburgh, PA 15222  
(412) 644-6439

Dated: 11/24/03

Approved by the Court this \_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Terrence F. McVerry  
United States District Judge

ATTACHMENT A

NOTICE

This notice is being posted as part of the resolution of *EEOC v. PJAX, Inc.*, Civil Action Number 03-cv-03515 (D. Md.) and *EEOC v. PJAX, Inc.*, Civil Action Number 03-0759 (W.D. Pa.). The EEOC brought these actions enforce provisions of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, which prohibits discrimination on the basis of sex, age and disability. PJAX, Inc. fully supports and will comply with these statutes in all respects. It will not engage in any employment practice which operates to deny equal employment opportunities in violation of these statutes.

Under Section 703(a) of Title VII of the Civil Rights Act of 1964, it is unlawful for an employer "to fail or refuse to hire ... any individual ... because of such individual's ... sex ...."

Under Section 623(a)(1) of the Age Discrimination in Employment Act, "it shall be unlawful for an employer to fail or refuse to hire .. any individual ... because of such individual's age.

Under Section 102 of Title I of the Americans with Disabilities Act ("ADA"),

No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

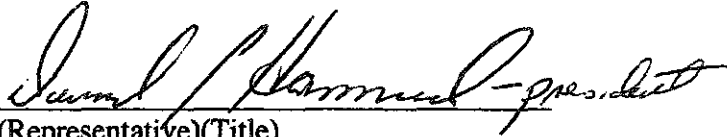
WE WILL NOT engage in any acts or practices made unlawful by the above sections.

WE WILL NOT discriminate or retaliate in any manner against any person because of opposition to any practice declared unlawful by any of the above provisions.

WE WILL conduct our hiring practices without regard to an employee's sex and ensure that females are given equal encouragement and opportunities to assume the positions of driver and dockworker.

PJAX, INC.  
(Employer)

Dated: 11/20/03

  
(Representative)(Title)