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# Equal Employment Opportunity Commission v. PMT Corporation

Judge David S. Doty

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# Equal Employment Opportunity Commission v. PMT Corporation

**Keywords**

Equal Employment Opportunity Commission, EEOC, E.E.O.C., PMT Corporation, Retail, Sex, Female, Age, ADEA, Disparate Treatment, Retaliation, Hiring, Title VII, Employment Law, Consent Decree, 14-599 (DSD/TNL), 0:14-cv-00599-DSD-TNL

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA  
Civil No. 14-599 (DSD/TNL)

U.S. EQUAL EMPLOYMENT	)	
OPPORTUNITY COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b>CONSENT DECREE</b>
	)	
PMT CORPORATION,	)	
	)	
Defendant.	)	
	)	

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Plaintiff Equal Employment Opportunity Commission (“EEOC”) filed a Complaint alleging that, since at least January 1, 2007, Defendant PMT Corporation (“PMT” or “Defendant”), refused to hire a class of females and applicants over the age of 40 for position of sales representative nationwide. The EEOC also alleged that PMT engaged in unlawful retaliation against a former employee for opposing PMT’s unlawful employment practices and for participating in protected activity. In PMT’s Answer to the EEOC’s Complaint, it denied that it violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* (“Title VII”), the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 626(b) (“ADEA”), and Title I of the Civil Rights Act of 1991.

In agreeing to the terms of this Consent Decree, the EEOC and Defendants, 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 Defendant were represented by counsel knowledgeable in this area of the law.

It is, therefore, the finding of the Court, based on the pleadings and the record as a whole, the consent of the parties, and upon review by the Court of these terms, that: (1) the terms of this Consent Decree constitute a fair and equitable settlement of all issues raised in the EEOC's Complaint; (2) implementation of this Decree will advance the purposes and provisions of Title VII, the ADEA, and Title I of the Civil Rights Act of 1991; and (3) this Consent Decree is intended to and does resolve claims of the EEOC pursuant to Title VII and the ADEA that are contained in its Complaint, *see* (ECF Document ("Doc.") No. 1).

Accordingly, it is hereby **ORDERED, ADJUDGED, and DECREED** that the following terms are given approval as set forth herein:

## **PART ONE**

### **GENERAL PROVISIONS**

#### **Section 101: Jurisdiction**

This Court has jurisdiction over the parties and the subject matter of this action. The Court shall retain jurisdiction of this action for the duration of this Decree for the purposes of entering all orders, judgments and decrees that may be necessary to implement the relief and enforce compliance with the terms provided herein.

#### **Section 102: Definitions**

“PMT” and “Defendant” as used and unless otherwise limited herein, means Defendant PMT Corporation’s operations and facilities nationwide. “EEOC” or “Commission,” as used herein, means the United States Equal Employment Opportunity Commission. “Parties,” as used herein, shall refer to the Defendants and the EEOC jointly.

#### **Section 103: Scope of Decree**

Unless otherwise stated, this Decree applies to all of PMT Corporation’s facilities and operations nationwide, whether now existing or hereafter acquired during the duration of the Decree.

#### **Section 104: Duration of Decree**

This Consent Decree shall remain in effect for a period of four (4) years from the Effective Date, and can be extended for good cause shown by the EEOC. Unless otherwise indicated herein, the provisions and agreements of this Decree are effective immediately upon the Effective Date of this Decree. The “Effective Date” as used herein shall mean the date upon which the District Court grants final approval of this Consent Decree.

#### **Section 105: Non-Discrimination in Employment**

PMT is enjoined from, and will not discriminate against females and applicants over the age of 40 in hiring for the position of sales representative.

#### **Section 106: Non-Retaliation**

PMT is enjoined from, and will not retaliate or discriminate against any of its employees, former employees, or applicants for employment, including but not limited to any individual who assisted with or participated in this lawsuit, or the EEOC’s pre-suit administrative investigation, because the individual has: (a) made a charge of discrimination or opposed an unlawful employment practice under Title VII, ADEA or any other law enforced by the EEOC, or (b) assisted or participated in any manner in an investigation, proceeding under Title VII, the ADEA, or any other law enforced by the EEOC.

### **Section 107: Record Retention**

PMT is enjoined from failing to, and will maintain all applications and employment records as required by Section 709(c) of Title VII, 42 U.S.C. § 2000e-8(c), and 29 C.F.R. § 1602.14. Further, PMT will retain, throughout the term of this Consent Decree all documents and information described in and required by this Consent Decree. PMT will maintain said documents and information in a format that can be produced or made available to the EEOC for inspection upon 20 days' notice during the term of the Consent Decree.

## **PART TWO**

### **POSTING, TRAINING, RECRUITMENT, AND HIRING PROCESS**

#### **Section 201: Posting**

PMT will post the Notice attached to this Decree as Exhibit A in conspicuous locations visible to applicants and employees at its corporate headquarters, where notices to employees and applicants are customarily posted. The Notice in Exhibit A shall remain posted throughout the term of this Decree. PMT will promptly replace any Notice upon discovery that it has been defaced, destroyed, or in any way unreadable.

### **Section 202: EEO Posters**

PMT will 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.

### **Section 203: Diversity, Harassment, and Anti-Discrimination Training**

PMT will offer diversity, harassment, and anti-discrimination training. The training will, at a minimum, be conducted on an annual basis during the term of this Decree and is mandatory for all PMT employees. The training will be conducted by an outside trainer knowledgeable in the area of employment discrimination law.

### **Section 204: Hiring Training**

Within 90 days of the Effective Date of this Decree, PMT will provide training to all individuals involved in the selection of Sales Representatives. This training must include specific training on what constitutes an unlawful employment practice under Title VII and the ADEA, including sex and age discrimination in hiring. The training must also include instruction regarding the record retention requirements of Title VII and the ADEA. Prior to providing this training, PMT will provide a copy of the material to be used at the training to the EEOC, and the EEOC will be given an opportunity to review and provide reasonable input on the content of the training.

This training will be given to: PMT's Owner and President ; all Human Resource personnel; all Managers, Supervisors, and any other PMT personnel who screen, hire, interview, or recommend for hire applicants for the Sales Representative position. This training will also be given to any individual promoted or newly hired into a managerial—or supervisory—level decision-making position. These individuals will be trained within thirty days of hire or promotion. This training will be repeated once per year after the first training is given, for the duration of the Decree.

Only those who have completed this hiring training may screen, interview, or participate in any way with the hiring process for Sales Representative positions.

All training under this Decree must be provided by an outside trainer.

### **Section 205: Recruitment**

PMT will conduct good faith outreach recruitment in an effort to attract qualified women and qualified applicants over the age of 40 for Sales Representative openings.

### **Section 206: Hiring Practices and Process**

Within 90 days from the Effective Date of this Decree, PMT will hire an Outside Expert knowledgeable in the area of employment discrimination laws and human resources to ensure Title VII and ADEA compliance with: (1) the criteria used to screen, interview, and select Sales Representatives, (2) any

interview guides and hiring criteria used in the Sales Representative hiring process, and (3) any records retention policies that pertain to the Sales Representative hiring process to ensure compliance with Title VII, the ADEA and all other laws enforced by the EEOC.

Prior to selecting the Outside Expert, the PMT will provide notice to the EEOC of the identity of the Outside Expert, and the EEOC will be permitted to object to the selection of the identified Outside Expert. If the EEOC does object to the Outside Expert initially selected by PMT, then PMT shall have an opportunity to identify a second Outside Expert. If the EEOC reasonably and in good faith objects to all Outside Experts identified by PMT, the EEOC will provide three alternative Outside Experts, from which PMT must select one.

Once selected, the Outside Expert must complete the review described above and provide a Written Report outlining their recommendations within 60 days. A copy of the Written Report shall be provided to the EEOC.

Within 90 days of receiving the Written Report from the Outside Expert, PMT will implement all changes or modification recommended by the Outside Expert in order to ensure its hiring process is compliant with Title VII and the ADEA. Further, all persons who screen, interview or participate in any way in the hiring process for the Sales Representative position must agree to follow the approved hiring processes.

The Outside Expert shall also be retained to assist PMT with implementing any recommendations contained in the Written Report.

After implementing the revised hiring process, or 90 days after receiving the Written Report (whichever is later), PMT will provide the EEOC with a written summary describing the implementation of the revised hiring process.

After the initial Written Report, the Outside Expert will be retained to perform annual reviews of PMT's hiring process that, at a minimum, must encompass the scope of the initial Written Report, and provide a written report identifying any recommended changes or modifications to PMT's hiring process. All recommended changes or modifications identified by the Outside Expert during the annual reviews shall be implemented by PMT. The Outside Expert will provide a copy of the written report to the EEOC following these annual reviews.

### **Section 207: Enforcement of Hiring Practices and Process**

Within 90 days of receiving a Written Report from the Outside Expert (Section 206), PMT will notify affected employee of its intent to coach, evaluate and discipline employee for failing to follow the revised hiring process.

## **Section 208: Performance Evaluations**

PMT shall develop, implement, or revise its performance evaluation criteria for managers, supervisors, human resources personnel and executive level employees to include measures for performance compliance with EEO laws and with Defendant's anti-discrimination and retaliation policies and procedures. This shall specifically include holding managers and supervisors accountable for failing to report and/or take appropriate action with respect to unlawful employment practices as required under Defendant's policies and procedures, Title VII and the ADEA. Managers and supervisors shall be held accountable for the harassment of any employees by or against personnel under their supervision. Managers and supervisors shall also be held accountable for any mishandling of complaints or investigations by personnel under their supervision.

## **PART THREE**

### **MONETARY RELIEF FOR THE SETTLEMENT CLASS**

#### **Section 301: Eligibility as Members of the Settlement Class**

Women and applicants over the age of 40 of either gender who applied for a Sales Representative position at PMT between January 1, 2007 and January 1, 2016, and any other individual(s) for whom the EEOC sought relief in its Complaint, are eligible for monetary relief under this Decree.

### **Section 302: Monetary Compensation**

PMT shall pay the total gross amount of \$1,020,000 in monetary compensation to the class members meeting the eligibility definition in Section 301. In addition, pursuant to Part 4, PMT shall also pay up to \$50,000 for the costs and expenses relating to the parties' engagement of a third party claims administrator to identify and distribute the payment to eligible claimants and provide related tax reporting forms. Any unused balance of the \$50,000 allocated amount for claims administration shall revert to PMT. PMT assumes no responsibility for administration of the settlement funds. Monetary awards to the Settlement Class will be allocated in the sole discretion of the EEOC. To the extent a Class Member meets the eligibility definition in Section 301, PMT will not challenge the Class Member's entitlement to monetary compensation under this Decree. 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.

**PART FOUR**  
**CLAIMS PROCESS**

**Section 401: Claims Administrator**

The EEOC will retain the services of a third-party claims administrator (“Claims Administrator”) and, as such, is exclusively responsible for claims administration of the settlement proceeds. Within 30 days of the Effective Date of this Decree, PMT will pay the full amount of the \$1,020,000 monetary compensation provided in Section 302 to a settlement fund maintained by the Claims Administrator and, as noted in Section 302, shall pay up to \$50,000 to the claims administrator to identify, distribute and report such settlement payments to class members.

**Section 402: Information for Claimant Identification**

The parties acknowledge and agree that the Claims Administrator has been provided information sufficient to identify the potential class members defined in Section 301.

**Section 403: Claimants Ineligible for Relief**

Any individual for whom the Claims Administrator or EEOC is unable to find a current home address or an email address will not be eligible for relief under this Consent Decree.

#### **Section 404: Payments to Claimants**

After the EEOC or Claims Administrator receives a signed Release (**Exhibit B**) for an individual, the Claims Administrator will pay the class member in the amounts determined for the individual in consultation with and as directed by the EEOC.

#### **Section 405: Claims Administration**

Within 15 days of the Effective Date, the Claims Administrator shall mail a Notice of Settlement to potential Claimants. The date the Notice is mailed shall be called the **Notice Mail Date**.

Potential Claimants shall have sixty (60) days from the Notice Mail Date within which to respond to the Notice of Settlement. The date the response period concludes shall be called the **Response Deadline**.

For all notices that are returned as undeliverable, the Claims Administrator shall attempt to identify or locate current addresses to effect mailing. The Claims Administrator's efforts to provide notice to otherwise undeliverable addresses shall terminate on the **Response Deadline**.

Within 15 days of the **Response Deadline**, the Claims Administrator shall provide the EEOC with a preliminary list of eligible Claimants. Thereafter, the EEOC shall have up to twenty (20) days to review and make additions or changes to the list of eligible Claimants. Upon completing its review, EEOC shall provide the Claims Administrator with a Final List of

Claimants.

Within thirty (30) days of receiving the EEOC's Final List of Claimants, the Claims Administrator shall distribute payments to Claimants.

Payment instruments shall be void one-hundred and eighty (180) days after issuance.

Within ten (10) days of the final distribution of payments to Claimants, the Claims Administrator shall provide an Accounting of Payments and Copies of all signed Releases to the EEOC and PMT.

## **PART FIVE**

### **CONTINGENCY FOR REMAINING FUNDS**

If, for any reason, any part of the monetary amount paid by PMT pursuant to Section 302 is unable to be paid, the remainder shall be escheated pursuant to applicable unclaimed property laws.

## **PART SIX**

### **REPORTING REQUIREMENTS**

#### **Section 601: Initial Report**

PMT will submit a report to the EEOC detailing compliance with this Decree within 180 days of the date of the Decree. PMT will certify to the EEOC that it has complied with Sections 105-107, 201-208, and 302 of this Decree and will provide the EEOC with a current copy of its diversity, harassment, and anti-discrimination policies and training materials.

## **Section 602: Annual Reports**

After the Initial Report (Section 601), PMT will submit annual reports for the duration of this Decree on or before October 1st of each subsequent year. In each report, PMT shall include the following information for the previous 12-month period:

a. the dates and topics of all training programs offered pursuant to this decree, and a copy of all written materials used at these training sessions;

b. the name and position of each employee who attended those training programs;

c. a description of, and explanation for, any changes made to the Sales Representative hiring process;

d. a description of all good faith efforts to recruit women and applicants over the age of 40 for Sales Representative positions;

e. a copy of all audits made of PMT's hiring methods or practices, including annual reports made by the Outside Expert;

f. an Excel spreadsheet containing applicant-related data and records for persons whose proposed application/resume/etc. were reviewed to be a Sales Representative during the preceding 12-month period consisting of the following fields:

1. Last name;
2. First name;
3. Gender;
4. Date of birth;
5. Address;
6. Phone number;
7. E-mail address;
8. Date(s) of application
9. Position location
10. Hiring event;
11. Department/Division;
12. Whether the applicant possessed a bachelor's degree (Y/N);
13. Whether the applicant possessed minimum qualifications for the sales representative job;
14. Whether the applicant was interviewed;
15. Date(s) of Interview(s);
16. Identity of Interviewer(s);
17. Whether the applicant was hired or not hired;
18. Reason not hired, (if applicable);

Applicants will be requested to voluntarily provide information regarding "applicant flow" such as age, gender, disability and veteran status. It will be kept separate from other information obtained from an applicant.

For applicants hired into sales representative positions, in addition to the above fields:

19. Date of hire;
20. Age on Date of Hire;
21. Assigned sales territory;
22. Supervisor/Sales Manager;
23. Pay;
24. Date of Separation/Resignation/Termination (if applicable);
25. Reason for Separation/Resignation/Termination.

The produced spreadsheets should have separate pages for applicant data and hired-employee data.

## **PART SEVEN**

### **ADMINISTRATION OF THE DECREE**

#### **Section 701: Role of EEOC**

The EEOC may review compliance with this Decree. As part of such review, the EEOC may request, examine and copy documents upon 20 days' notice.

#### **Section 702: EEOC Monitoring**

In the event that the EEOC alleges that a violation of this Decree has occurred, the EEOC will give notice to PMT in writing specifically identifying the alleged violation. PMT will have 20 days in which to investigate and respond to the allegation.

#### **Section 703: Court Enforcement**

If the parties are unable to resolve a dispute pursuant to Section 702, the EEOC may petition the Court to order compliance. If the Court finds that PMT has failed to comply with a provision of the Consent Decree, the Court may order appropriate relief in its discretion.

#### **Section 704: Successor Liability**

The terms of this Decree shall be binding upon the Defendant, its officers, directors, agents, and any present and future successors and assigns of PMT. If PMT is sold, merged, acquired, or consolidated with another company, PMT will provide, sufficiently in advance of the sale to effect

meaningful notice to the buyer, notice of the EEOC's Complaint and a copy of this Decree. PMT will notify the EEOC within fourteen days after closing of any sale, merger, acquisition, or consolidation that timely notice to the buyer was made.

**Section 705: Severability**

If one or more provisions of this Decree are rendered unlawful or unenforceable by an act of Congress or by a decision of the United States Supreme Court or the U.S. Court of Appeals for the Eighth Circuit, the Parties will attempt to agree upon what, if any, amendments to this Decree to propose to the Court (see Section 706), to effectuate the purposes of the Decree. In any event, all unaffected provisions will remain enforceable to the maximum extent permitted by law

**Section 706: Amendment**

This Decree may not be amended or modified except upon written agreement of the Parties and with subsequent approval of the Court. Any proposed amendment to this Decree must be signed by a duly authorized representative for each party. Such amendment must then be presented by the Court by joint motion of the parties.

**Section 707: Computation of Time Periods**

All time periods prescribed or allowed by this Decree shall be computed in accordance with the Federal Rules of Civil Procedure.

**PART EIGHT**

**COSTS OF IMPLEMENTATION OF THE CONSENT DECREE**

Unless otherwise provided in this Decree, PMT will bear all costs associated or incurred as a result of implementation or compliance with the terms and provisions of the Consent Decree, except as provided herein.

**PART NINE**

**ATTORNEY'S FEES AND COSTS**

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

**PART TEN**

**NOTICES TO THE EEOC**

Unless otherwise stated, all notices, reports and correspondence required under this Decree shall be delivered to the following address:

EEOC – Minneapolis Area Office  
ATTN: Legal Unit – PMT Consent Decree  
330 Second Avenue S., Suite 720  
Minneapolis, MN 55401

**IT IS SO ORDERED.**

Date: March 4, 2016

s/David S. Doty

**David S. Doty, Judge**  
**United States District Court**

**BY CONSENT:**

**FOR DEFENDANT  
PMT CORPORATION**

s/David J. Duddleston  
David J. Duddleston #139804  
Brian T. Benkstein #325545  
Jackson Lewis, P.C.  
225 South Sixth Street  
Suite 3850  
Minneapolis, 55402  
(612) 341-8131  
[duddleston@jacksonlewis.com](mailto:duddleston@jacksonlewis.com)  
[brian.benkstein@jacksonlewis.com](mailto:brian.benkstein@jacksonlewis.com)

**FOR PLAINTIFF  
U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION**

P. David Lopez  
General Counsel  
  
131 M Street, NE  
5th Floor  
Washington, D.C. 20507

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s/John C. Hendrickson

John C. Hendrickson  
Regional Attorney

---

s/Jean P. Kamp  
Jean P. Kamp  
Associate Regional Attorney

Chicago District Office  
500 West Madison Street, Suite 2800  
Chicago, Illinois 60661  
(312) 353-8551

---

s/Nicholas J. Pladson  
Nicholas J. Pladson #388148  
Laurie A. Vasichek #171438  
Sr. Trial Attorneys  
Minneapolis Area Office  
330 Second Avenue South  
Suite 720  
Minneapolis, Minnesota 55401  
(612) 335-4047  
(612) 335-4061  
[nicholas.pladson@eeoc.gov](mailto:nicholas.pladson@eeoc.gov)  
[laurie.vasichek@eeoc.gov](mailto:laurie.vasichek@eeoc.gov)

**EXHIBIT A**  
**EMPLOYEE NOTICE**

This Notice is being distributed and posted pursuant to a Consent Decree entered by the U.S. District Court for the District of Minnesota in a case between the **United States Equal Employment Opportunity Commission (EEOC)** and PMT Corporation, Civil Action No. 0:14-cv-00599. In that case, the EEOC alleged that PMT Corporation unlawfully refused to hire females and any applicant over the age of 40 for Sales Representative Positions because of their sex and/or age. The EEOC also alleged that PMT Corporation retaliated against an employee for reporting the company's unlawful employment practices to the EEOC, and that PMT Corporation failed to keep and maintain personnel records as required by federal law.

PMT answered the Complaint and denied all allegations of discrimination and wrongdoing.

Federal law prohibits discrimination against any employee, former employee, or job applicant because of the individual's sex, race, color, religion, national origin, disability, age (over 40), or genetic information.

Federal law also prohibits retaliation of any kind against any person who has opposed any practice made unlawful under federal law because and individual has filed a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

As a result of the Consent Decree, PMT Corporation agrees to pay a monetary compensation to a class of victims, will comply with Federal law prohibiting sex discrimination, age discrimination, retaliation and will keep and maintain those employment records required to be kept by Federal law.

PMT Corporation will also provide training to its employees regarding their rights to be free from discrimination under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and will make changes to certain hiring and personnel policies to comply with Federal law.

Questions Concerning this notice may be addressed to:

ATTN: EEOC v. PMT Consent Decree  
U.S. Equal Employment Opportunity Commission  
Minneapolis Area Office  
330 Second Avenue S., Suite 720  
Minneapolis, MN 55401

**EXHIBIT B**

**RELEASE AND WAIVER**

In consideration for \$ \_\_\_\_\_ paid to me by PMT Corporation, in connection with the resolution of *EEOC v. PMT Corporation*, Civ. No. 0:14-cv-00599 (DSD/TNL) (D. Minn.), I waive my right to recover for any claims of [sex discrimination] [retaliation] [under Title VII of the Civil Rights Act of 1964] [and/or] [age discrimination under the Age Discrimination in Employment Act of 1967], that I had against PMT Corporation at the time or prior to the date of this Release and Waiver, and which were the subject of the Consent Decree in *EEOC v. PMT Corporation*, Civ. No. 0:14-cv-00599 (DSD/TNL) (D. Minn.).

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
[Name]