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## EEOC and Johnson v. EPI Advanced, LLC

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## EEOC and Johnson v. EPI Advanced, LLC

### **Keywords**

EEOC and Johnson, EPI Advanced, LLC and Engineered Products Industries, LLC, 3:09cv00108-SA-SAA, Consent Decree, Hostile Work Environment, Sex, Female, Hospitality, Employment Law, Title VII

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION**

<b>EQUAL EMPLOYMENT</b>	)
<b>OPPORTUNITY COMMISSION,</b>	)
	)
<b>Plaintiff,</b>	)
	)
<b>and</b>	)
	)
<b>CATHY JOHNSON,</b>	)
	)
<b>Plaintiff-Intervenor,</b>	)
<b>v.</b>	)
	)
<b>EPI ADVANCED, LLC and</b>	)
<b>ENGINEERED PRODUCTS</b>	)
<b>INDUSTRIES, LLC,</b>	)
	)
<b>Defendants.</b>	)

**DOCKET NO: 3:09cv00108-SA-SAA**

**CONSENT DECREE**

**I. INTRODUCTION**

Plaintiff U.S. Equal Employment Opportunity Commission ("the EEOC" or "the Commission") filed this action against EPI Advanced, LLC and Engineered Products Industries, LLC (collectively referred to herein as "the Defendants") under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 as amended, 42 U.S.C. Section 2000e *et seq.* (Title VII). In its Complaint, the Commission alleges that Defendants subjected Cathy Johnson and a class of female employees at its Sherman, Mississippi location to a hostile work environment based on sex, female. The Commission further alleges that Defendant's actions, and failure to take effective remedial relief, caused mental, emotional, and physical harm to Cathy Johnson and a class of similarly situated female employees.

On October 14, 2009, Cathy Johnson sought and was granted the right to intervene in this action.

Defendant denies the allegations contained in Commission's Complaint and the Plaintiff-Intervenor's Complaint.

## II. GENERAL PROVISIONS

Upon consent of the parties to this action, it is hereby ORDERED, ADJUDGED, and DECREED that:

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

B. The Consent Decree ("the Consent Decree") is entered into by the Commission and the Defendants. The Consent Decree, and its terms, shall be final and binding on the Commission and both Defendants, including its present and future representatives, agents, directors, officers, assigns and successors and all persons in active concert or participation with it.

C. The Consent Decree fully and completely resolves all issues, claims and allegations by Commission that are raised by the Commission in its Complaint in Case No.: 3:09cv00108 and the charge of discrimination filed by Cathy Johnson on December 12, 2007, Charge of Discrimination 490-2008-00629. The Consent Decree does not affect any other administrative charges which may be pending with the Commission or any other cases pending in this or any other court. The Consent Decree shall not constitute an adjudication of or finding on the merits of the case and shall not be construed as an admission by Defendant of a violation of Title VII. This paragraph shall not be construed as placing any limit on remedies available to the Court in the event that any party is found to be in contempt of the Consent Decree.

D. The Consent Decree shall be filed in the United States District Court for the Northern District of Mississippi, Western Division, and shall continue to be in effect for a period of three (3) years from the date the Consent Decree is entered by the Clerk. Any desired modification of the Consent Decree by any party must be made by motion to the Court.

E. The Court retains jurisdiction over this case in order to enforce the terms of the Consent Decree.

F. The Consent Decree shall apply to the Defendants' Sherman, Mississippi operations, and all employees, including temporary and contract employees, working in or for that facility, and all employees in any other location who provide EEO compliance and human resources support to, and supervisory and/or decision-making authority over operations at, the Sherman, Mississippi facility.

### **III. MONETARY RELIEF**

G. To resolve this lawsuit, Defendants shall pay \$ 190,000.00 in global monetary relief as compensatory damages. Within twenty (20) business days after the entry of this Consent Decree, Defendant shall remit \$ 75,000.00 of the global settlement amount to Plaintiff-Intervenor's counsel client trust fund to be distributed to Cathy Johnson. Within 20 business days after entry of the Decree, the Commission shall provide written notice of the specific monetary distribution to be provided to each of the class members along with their social security numbers and the address where each settlement check shall be delivered. Within ten days after receipt of such notice, Defendants shall make payments as directed by the Commission. At the same time that it issues the check to Plaintiff-Intervenor's counsel client trust fund and to each class member, Defendant shall also submit copies of each check and related

correspondence to the Regional Attorney, Faye A. Williams, U.S. Equal Employment Opportunity Commission, Memphis District Office, 1407 Union Avenue, Suite 901, Memphis, TN 38104.

Defendant shall prepare and distribute 1099 tax reporting forms to Plaintiff-Intervenor Cathy Johnson and the class members. Plaintiff-Intervenor Cathy Johnson and all class members receiving compensation herein agree that all funds paid hereunder are for the compromise value of the personal injury and/or emotional distress claimed in this action. Plaintiff-Intervenor Cathy Johnson and all class members agree to hold Defendants harmless from any and all tax liability asserted by any taxing authority for any penalties, interest or other assessments levied or sought from Defendants for monies paid under this Consent Decree. Plaintiff-Intervenor Cathy Johnson and all class members receiving payments hereunder will defend, indemnify and hold Defendants harmless from all claims for unpaid taxes arising from the payment of funds made pursuant to this Decree.

### **III. GENERAL INJUNCTIVE RELIEF**

H. Defendants shall not engage in any employment practice which constitutes unlawful sexual harassment under Title VII. Specifically, Defendants are enjoined from subjecting any female employee to sexual harassment.

I. Defendants shall develop effective policies, procedures, practices and programs to ensure that employees are not subjected to sexual misconduct. The prohibited sexual misconduct shall include, but not be limited to, sexually offensive or derogatory, explicit or implicit, statements, noise, leers, jokes, music, items, images, photographs, pictures, drawings, cartoons and/or graffiti.

J. Defendants shall develop policies, procedures, practices and programs that ensure the conduct of good-faith investigations and inquiries into reports of sexual misconduct, and that allow employees to raise concerns or complaints about sexual misconduct without fear of retaliation. Defendants shall conduct good-faith investigations, and meet the obligations imposed by the Consent Decree, without regard to whether an outside employment agency, or any other third party, also conducts anti-harassment activities in relation to one of Defendants' employees. Anti-harassment activities included, but are not limited to, inquiries, investigations, personnel action, or disciplinary/corrective action.

K. Defendants shall develop policies, procedures, practices and programs that ensure retention of and ready access to documents related to, or generated by, allegations of sexual misconduct by each of its past and current employees. Defendants shall develop policies, procedures, practices and programs that ensure consideration of past allegations and findings of sexual misconduct against an employee in investigating and making determinations on current allegations of sexual misconduct against that same employee.

L. Defendants shall develop policies, procedures, practices and programs that ensure that employees, supervisors and managers who engage in sexual misconduct will be subject to discipline, up to and including discharge. Defendants shall require that supervisor and manager evaluations include as a rating factor the supervisor's and manager's enforcement of and compliance with Title VII, the Consent Decree, and Defendants' sexual harassment policies and procedures.

M. Defendants shall develop policies, procedures, practices and programs that ensure distribution and dissemination of its policies, procedures, practices and

programs to all its employees, supervisors, and managers. Defendants shall develop policies, procedures, practices and programs which ensure that all employees, supervisors and managers are encouraged and know how to report sexual misconduct

N. Defendants shall comply fully with all provisions of the Consent Decree and Title VII. Nothing in this Consent Decree, either by inclusion or exclusion, shall be construed to limit the obligations of Defendant Defendants under Title VII or the Commission's authority to process or litigate any charge of discrimination which may be filed against Defendants in the future.

#### **IV. SPECIFIC INJUNCTIVE RELIEF**

O. Defendants shall require that sexual misconduct that is discovered or observed by, or brought to the attention of, a supervisor or manager be relayed by the supervisor or manager to the Defendant's department of human resources/personnel (including the Human Resources/Personnel Director or employees designated by the Director to receive sexual misconduct reports or complaints). Defendants shall provide that employees may report sexual misconduct to the department of human resources/personnel, or to any of Defendant's supervisors or managers.

P. On discovery by Defendant's Human Resources Director of sexual misconduct or on receipt by the department of human resources/personnel of a report or complaint of sexual misconduct, the department of human resources/personnel shall initiate an investigation of the alleged misconduct within twenty-four (24) hours of discovery or receipt of the information, or on the first business day after discovery or receipt. The Plant Controller shall issue a written notice of complaint or warning directed to any employee, supervisor, or manager who is accused of subjecting any



employee to sexual misconduct. The investigation initiated by the Human Resources Director shall include, but not be limited to, interviewing all named witnesses, including the alleged victim, harasser and other persons alleged to have knowledge of the relevant events. The investigation shall include, but not be limited to, identifying and interviewing all persons with knowledge about prior instances of sexual misconduct by the alleged harasser, and reviewing all documents related to prior instances of sexual misconduct by the alleged harasser. Under no circumstance, except on the request of Commission, or any other government law enforcement entity, shall Defendants forego an investigation or resolution of allegations of sexual misconduct required by the Consent Decree.

Q. Defendants shall memorialize all sexual misconduct reports and complaints in writing, obtain written statements, make written findings of facts (including the names and contact information for witnesses) and make written recommendations and/or determinations. These, and any other documents generated by or related to a sexual misconduct investigation, shall be retained in an independent sexual misconduct file maintained by department of human resources/personnel.

R. Defendants shall require that any employee determined to have engaged in sexual misconduct in violation of its policy be notified by Defendants in writing of the determination, and required to attend at least three (3) hours of anti-harassment counseling within 30-days of the issuance of the determination. The requirement for three (3) hours of training shall not apply to employees whose employment is terminated prior to or immediately on the issuance of a sexual misconduct determination. Defendants shall bear the cost of the training employees determined to have engaged in sexual misconduct. Willful failure of an employee to attend counseling

on the direction of the Defendants shall be entered into the employee's the confidential file and shall be grounds for discipline, up to and including termination. The requirement to attend at least three hours of anti-harassment counseling shall be the minimum action Defendants shall take against an employee determined to have engaged in sexual misconduct.

S. Defendants shall not retaliate against any person because of that person's complaint of discrimination, opposition to any practice made unlawful under Title VII, or filing of a charge, giving of testimony or assistance, or participation in any manner in any investigation, hearing or proceeding under Title VII.

T. Defendants shall not divulge, directly or indirectly to any employer or potential employer of Plaintiff-Intervenor or any claimant any of the facts or circumstances related to the underlying charge of discrimination against Defendants, or the lawsuit resulting from the charge of discrimination filed by Plaintiff-Intervenor or any claimant or any of the events relating to or Plaintiff-Intervenor's or any claimant's participation in the litigation of this matter.

U. Defendants shall, to the degree reasonably possible, ensure that allegations of sexual misconduct and retaliation, and the associated investigation and determination, shall be kept confidential.

#### **V. POSTING OF NOTICE**

V. Within 60 business days after entry of the Consent Decree, Defendants shall post 8½-inch-by-11-inch sized copies of the Notice attached as Exhibit A to the Consent Decree on all bulletin boards usually used by Defendants for announcements, notices of employment policy or practice changes to employees at its Sherman, Mississippi facility. Defendants shall provide a copy of the signed Notice, and an

indication of the date(s) and location(s) of its posting, to the attention of the Regional Attorney of the Commission's Memphis District Office, at the address set forth above, within ten days of the posting. Defendants shall permit a representative of the Commission to enter Defendants' premises at its Sherman, Mississippi facility at any time during normal business hours for the purpose of verifying compliance with this paragraph. Defendants shall take all reasonable steps to ensure that the posting is not altered, defaced, covered by any other material, or removed. Should the posted copy become altered, defaced, covered or removed, or become otherwise illegible, Defendants shall re-post promptly a legible copy in the same manner as heretofore specified. The posted Notice shall be the same type, style and size as the printing on Exhibit A and shall bear the signature of the President of EPI Advanced, LLC.

#### **VI. TRAINING**

W. Defendants shall provide training at its Sherman, Mississippi facility on the requirements of Title VII on the following terms:

1. Within six months of the effective date of this Decree, Defendants shall provide training to its Sherman, Mississippi employees (including hourly and temporary employees), supervisors and managers. The individual(s) who conduct training required by this Decree shall be knowledgeable in Title VII, with special emphasis on sexual harassment. Defendants shall submit the name(s), address(es), telephone number(s) and resume(s) of the trainer(s) together with the training dates and copy of materials to the Regional Attorney, Faye A. Williams, U.S. Equal Employment Opportunity Commission, Memphis District Office, 1407 Union Avenue, Suite 901, Memphis, TN 38104. The training shall address employee and

management rights and obligations under Title VII, with a special emphasis on Title VII's prohibitions against sexual harassment and Defendants' policy against sexual harassment. The training shall include a description of types of behavior which alone, or combined with other behaviors, could constitute sexual harassment. The training also shall explain the steps employees may take to report sexual misconduct, and contain assurance of confidentiality and non-retaliation. The training will be repeated (with modifications to ensure its compliance with the law) annually during each remaining 12-month period that the Decree is in effect.

2. Each training session shall last two hours, and Defendants shall generate a registry containing signatures of all persons in attendance at each training. Each registry shall be retained by Defendants for the duration of the Consent Decree.
3. Each training session shall be delivered in accord with an outline prepared at least one-week in advance of the training. The outline, all training materials (pamphlets, brochures, agendas, videos), and the registry shall be delivered to the Commission's Memphis District Office, to the attention of the Regional Attorney at the address set out above, within 30 days after each training session. Acceptance or review of these materials by the Commission shall not constitute approval of the said materials, but may be retained for compliance purposes.
4. During the term of the Consent Decree, Defendants shall agree to provide a 1-hour training session, covering the areas described in paragraph one

above, to each new employee within 90 days after the employee's hire to Sherman, Mississippi store. All employees, however, shall be required attend the annual training irrespective of their abbreviated orientation training. Written proof of a new employee's attendance at an abbreviated training session shall be delivered to the Commission's Regional Attorney at the address set forth above within 120-days after the training. The abbreviated training session shall be coordinated, but not necessarily conducted by corporate counsel for Defendants.

X. Defendants shall provide to the Commission in writing within 15 business days before each training session(s), a listing by payroll number of all current employees at the Sherman, Mississippi facility, including managers and supervisors, as of the date of the training. After the training sessions have occurred, Defendants shall certify to the Commission in writing that the training has taken place and that the required personnel have attended. Such certification shall include: (i) the dates, location and duration of the training sessions; and (ii) a copy of the registry of attendance, which shall include the payroll number and union or management designation of each person in attendance. The payroll listing and the certification shall be delivered to the Commission, via first-class mail, to the attention of the Regional Attorney.

## **VII. REPORTING REQUIREMENTS**

Y. Defendant Defendants shall submit to the attention of the Regional Attorney, Equal Employment Opportunity Commission, Memphis District Office, 1407 Union Avenue, Suite 901, Memphis, TN 38104 every 120 days following the effective date of the Consent Decree, a report containing the following:

- (1) the name(s) of all Sherman, Mississippi employees who file complaints or report sexual misconduct;
- (2) the supervisor, manager or HR person to whom the complaint, or report, of sexual misconduct was made;
- (3) the date the complaint or report first was made, and (if not to the Human Resources Director) the date the complaint or report was received by the Human Resources Director;
- (4) a description factual of the alleged underlying conduct, including whether the alleged harasser was a supervisor, manager or co-worker;
- (5) a statement that Defendants was/was not aware of prior sexual misconduct by the accused harasser, or reports or allegations of sexual misconduct by the accused harasser;
- (6) whether the investigation is still pending, or concluded;
- (7) if concluded, Defendants' findings and a description of any personnel (i.e., disciplinary, corrective, performance evaluation) or training action taken in response to the allegation and/or the finding.

Defendants should take all reasonable steps to discover information responsive to the seven listed items including, but not limited, surveying staff in the department of Human Resources/Personnel, surveying supervisors and managers, and reviewing records. If Defendants are unaware of any sexual misconduct, or any reports or allegations of sexual misconduct, by the alleged harasser, it should so state. The report to the Regional Attorney should be signed and affirmed by the Human Resources Director.

#### **VIII. NOTIFICATION OF SUCCESSORS**

Z. Defendants shall provide prior written notice to any potential purchaser of defendant's business, or a purchaser of all or a portion of defendant's assets, and to any other potential successor, of the Commission's lawsuit, the allegations raised in the Commission's complaint, and the existence and contents of the Decree.

#### **IX. ENFORCEMENT**

AA. If the Defendants fail to comply with the terms of this Decree, in whole or in part, the Commission has a right to enforce the obligations under the Decree. The Commission shall provide ten days notice to Defendants of any deficiency in complying with the terms of the decree. If the parties are unable to reach agreement regarding resolution of any such deficiency in Defendants' compliance with the terms of the Decree, the Commission will then have the option of petitioning the Court for relief.

#### **X. COSTS AND ATTORNEY FEES**

BB. The Commission and Defendants shall bear its own attorney's fees and costs incurred in this action up to the date of the entry of this Decree.

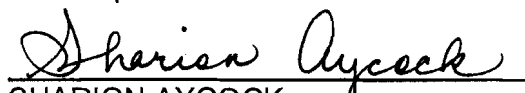
#### **XI. DURATION OF DECREE**

CC. The duration of the Consent Decree shall be 36 months from its entry. The Court shall retain jurisdiction over this action for the duration of the Consent Decree, during which Defendants or the Commission may petition this Court for compliance with the Consent Decree. Should the Court determine that either party has not complied with this Consent Decree, appropriate relief, including extension of the Consent Decree for such period as may be necessary to remedy its non-compliance, may be ordered.

Absent extension, the Consent Decree shall expire by its own terms at the end of 36 months from the date of entry, without further action by the Parties.

The parties agree to the entry of the Consent Decree subject to final approval by the Court.

IT IS SO ORDERED THIS THE 18<sup>th</sup> day of June, 2010.

  
SHARION AYCOCK  
UNITED STATES DISTRICT JUDGE

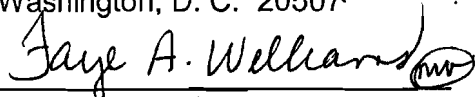
ATTORNEYS FOR EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:

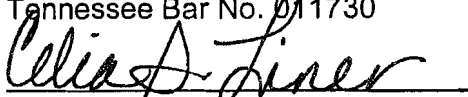
  
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Associate General Counsel

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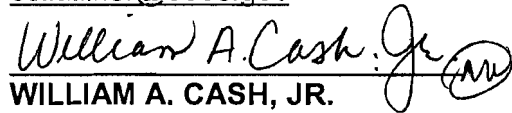
  
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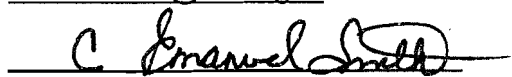
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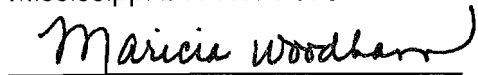
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ATTORNEYS FOR DEFENDANTS EPI ADVANCED, LLC AND

ENGINEERED PRODUCTS INDUSTRIES, LLC:

A handwritten signature in black ink, appearing to read 'R. Pepper Crutcher', written over a horizontal line.

R. PEPPER CRUTCHER  
E. RUSSELL TURNER  
ANNE HARLAN LATINO

Balch & Bingham LLP  
40 E. Capitol Street, Suite 200  
Jackson, MS 39201  
Telephone: (601) 961-9900

**EXHIBIT 1**

**NOTICE TO ALL DEFENDANTS EMPLOYEES**

This Notice is being posted pursuant to a Consent Decree entered by the federal court in EEOC v. EPI Advanced, LLC and Engineered Products Industries, LLC, Civil Action Number: 3:09-108-SA-SAA, resolving a lawsuit filed by the Equal Employment Opportunity Commission ("EEOC") against EPI Advanced, LLC and Engineered Products Industries, LLC, ("Defendants").

Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, *et seq.*, as amended, ("Title VII"), prohibits discrimination against employees and applicants for employment based upon race, color, sex, religion, or national origin. Title VII further prohibits retaliation against employees or applicants who avail themselves of the rights under Title VII by engaging in protected activities, such as filing a charge of discrimination and/or testifying or participating in a Commission investigation. The EEOC is the federal agency which investigates charges of unlawful employment discrimination. The EEOC has the authority to bring lawsuits in federal court to enforce Title VII.

In its lawsuit, the EEOC alleged that Defendants fostered or tolerated a working environment at its Sherman Plant that was hostile to female employees, in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). Defendants denied these allegations.

To resolve the case, Defendants and the EEOC have entered in to a Consent Decree which provides, among other things, that Defendants: (1) will not discriminate on the basis of sex ; (2) will maintain records of prior complaints of sexual harassment; (3) will immediately investigate and resolve allegations of sexual harassment; (4) will require supervisors and managers to address allegations of sexual harassment; (5) will develop strong anti-harassment policies and procedures; (6) will hold supervisors and managers accountable for not complying with sexual harassment policies and procedures; and (7) will train all employees on preventing and addressing sexual harassment. Defendants agrees that it will not retaliate against any person because she or 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.

**This Notice must remain posted for three (3) 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 the: Regional Attorney, Memphis District Office, 1401 Union Avenue, Suite 901, Memphis, Tennessee 38104.**

**FOR DEFENDANTS EPI ADVANCED LLC  
And ENGINEERED PRODUCTS INDUSTRIES,  
LLC.**

DATE: \_\_\_\_\_