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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	NO. CV 13-01241-JFW (SPx)
)	
Plaintiff)	ORDER
)	GRANTING PARTIES' JOINT
v.)	MOTION FOR APPROVAL OF
)	SETTLEMENT AGREEMENT
CALIFORNIA DEPARTMENT)	
OF CORRECTIONS AND)	
REHABILITATION,)	
)	
Defendant.)	Judge: Hon. John F. Walter
)	

Having considered Plaintiff United States of America and Defendant California Department of Corrections and Rehabilitation's (collectively, the "Parties") Motion and finding good cause therefore,

IT IS HEREBY ORDERED that the Parties' Joint Motion for Approval of Settlement Agreement is GRANTED.

IT IS FURTHER ORDERED that the following terms of the Settlement Agreement are hereby approved by this Court and ORDERED:

1 This action was brought by Plaintiff United States of America (“United States”)
2 against Defendant California Department of Corrections and Rehabilitation (“CDCR”)
3 to enforce the provisions of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42
4 U.S.C. §2000e, *et seq.*, as amended, following the United States’ receipt from the U.S.
5 Equal Employment Opportunity Commission of a charge of discrimination that Joe B.
6 Cummings (“Mr. Cummings”) filed against CDCR. This Court has jurisdiction of the
7 action under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. §§ 1331 and 1345.

8 The United States’ Complaint alleges that CDCR violated Title VII, 42
9 U.S.C. § 2000e-2(a)(1), by discriminating against Mr. Cummings based on his sex.
10 More specifically, the United States alleges that CDCR subjected Mr. Cummings to a
11 hostile work environment because of his sex.

12 The United States and CDCR (also referred to collectively as the “Parties” and
13 singularly as “Party”), wanting this action to be settled by an appropriate Settlement
14 Agreement (“Agreement”) without the burdens and risks of further protracted
15 litigation, agree that this Court has jurisdiction over the Parties to, and the subject
16 matter of, this action. For purposes of entry of this Agreement’s terms only, the
17 Parties waive hearings and findings of fact and conclusions of law on all issues, and
18 they agree to entry of this Agreement’s terms as final and binding between them with
19 regard to the issues raised in the United States’ Complaint in this case.
20

21 This Agreement, being entered into with the consent of the United States and
22 CDCR, shall in no way constitute an adjudication or finding on the merits of the case,
23 nor be construed as an admission by CDCR or a finding of any wrongdoing or
24 violation of any applicable federal law or regulation.

25 In resolution of this action, the Parties hereby AGREE and the Court expressly
26 APPROVES, ENTERS, and ORDERS the following:

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I. DEFINITIONS AND PARTIES

1. The parties to this Agreement are the United States and CDCR.

2. CDCR and its current, former, and future agents, employees, officials, designees, and successors-in-interests are hereinafter referred to collectively as “CDCR.”

3. The terms “supervisor” and “administrator” include all employees, contractors, agents, and representatives of CDCR who manage, supervise, or have authority to affect the hiring, firing, discipline, assignments, or pay rates of CDCR employees, and all persons who establish policies or procedures for CDCR.

4. “Day” or “days” refers to calendar days and not business days, unless otherwise noted.

5. “Date of entry of this Agreement” refers to the date on which the Court enters the terms of this Agreement as an order.

6. “Confidential information” refers to information that CDCR is precluded by applicable law¹ or a governing collective bargaining agreement from disclosing. Confidential information includes an individual’s: (a) full name; (b) Social Security Number; (c) month, day, and year of birth; and (d) CDCR employee identification number.

II. PURPOSES OF THIS AGREEMENT

7. The purposes of this Agreement are to ensure that:

(a) CDCR does not subject any employee to discrimination on the basis of sex (including sexual harassment) or retaliation, in violation of Title VII;

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¹ For purposes of this Agreement, applicable law includes, among other things, common law, statutes, regulations, executive orders, and court orders.

- 1 (b) Pursuant to applicable law, CDCR maintains clear, meaningful, and
- 2 accessible policies and procedures prohibiting both sex discrimination
- 3 (including sexual harassment) and retaliation;
- 4 (c) Pursuant to applicable law, CDCR appropriately informs CDCR
- 5 personnel about the existence and meaning of those policies and
- 6 procedures;
- 7 (d) CDCR provides effective interactive training to CDCR supervisors and
- 8 managers on Title VII's prohibitions against sex discrimination (including
- 9 sexual harassment) and retaliation; and
- 10 (e) CDCR offers Mr. Cummings appropriate remedial relief, which is set
- 11 forth below.

12 **III. COMPLIANCE WITH TITLE VII**

- 13 8. CDCR agrees to comply with Title VII by not:
- 14 (a) discriminating against any employee of CDCR because of his/her sex
- 15 (including sexual harassment);
- 16 (b) creating, facilitating, or tolerating a hostile work environment based on
- 17 sex with regard to any employee of CDCR; and
- 18 (c) retaliating against any CDCR employee for opposing sex discrimination
- 19 (including sexual harassment) or for making a complaint, whether formal
- 20 or informal and in any forum (*e.g.*, internally, to a court, or to a local,
- 21 state, or federal agency), of sex discrimination (including sexual
- 22 harassment) or for assisting or participating in the investigation of a
- 23 complaint of sex discrimination (including sexual harassment).

24 **IV. POLICIES & PROCEDURES**

- 25 9. Within thirty (30) days from the date of entry of this Agreement, CDCR
- 26 shall:
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- 1 (a) review and, to the extent CDCR believes necessary, revise its existing
2 policies and procedures that prohibit sex discrimination (including sexual
3 harassment) and retaliation, or develop written policies and procedures
4 that prohibit sex discrimination (including sexual harassment) and
5 retaliation; and
- 6 (b) present to Trevor Blake or Raheemah Abdulaleem, counsel for the United
7 States, for review and comment, the policies and procedures prohibiting
8 sex discrimination (including sexual harassment) and retaliation at CDCR
9 that CDCR revises and/or develops pursuant to Paragraph 9(a) above.
10 Within fourteen (14) days of receiving the policies and procedures from
11 CDCR, the United States shall provide written comments, if any, on the
12 proposed policies and procedures. The Parties will work jointly and in
13 good faith to resolve any disagreements over the sex discrimination
14 (including sexual harassment) and retaliation policies and procedures.
- 15 10. CDCR's policies and/or procedures on sex discrimination (including
16 sexual harassment) and retaliation shall include, at a minimum, the following:
- 17 (a) a description of the manner in which a CDCR employee may make a
18 complaint of sex discrimination (including sexual harassment) and/or
19 retaliation, including the names and contact information for the EEO
20 Coordinator(s), as provided for in Paragraphs 20 and 21 below;
- 21 (b) a clear statement that a complaint of sex discrimination (including sexual
22 harassment) and/or retaliation may be written or oral;
- 23 (c) the identification of all individuals who are authorized to accept
24 complaints against CDCR of sex discrimination (including sexual
25 harassment) and/or retaliation;
- 26 (d) a statement that the EEO Coordinator(s) designated pursuant to Paragraph
27 20 below will promptly review complaints of sex discrimination
28

1 (including sexual harassment) and/or retaliation and submit them to the
2 hiring authority for determination of referral of the complaints to the
3 Office of Internal Affairs (OIA), Central Intake Unit, for investigation
4 consistent with current policy and procedure;

5 (e) a statement that CDCR will inform the complaining party of the results of
6 an investigation into a complaint of sex discrimination (including sexual
7 harassment) and/or retaliation in writing within thirty (30) days after
8 completion of the investigation; and

9 (f) a statement about how CDCR personnel can access the policies and
10 procedures that applicable law require(s) CDCR to maintain, devise, or
11 post.

12 11. CDCR shall post—on its internet page, on its intranet page, and in all
13 CDCR Division of Juvenile Justice (“DJJ”) buildings and administrative offices, in
14 prominent, conspicuous, centrally located places commonly used for posting notices
15 (e.g., bulletin boards) there—those Equal Employment Opportunity (EEO)-related
16 notices required of it by law. CDCR shall designate the EEO Coordinator at each DJJ
17 facility who is responsible for taking reasonable action to ensure that these notices
18 remain posted, that they are not defaced or altered in any fashion, and if they are
19 defaced or altered in any fashion, that they are immediately replaced.
20

21 12. Within ninety (90) days from the date of entry of the Agreement, CDCR
22 will distribute to all current DJJ employees, or inform all current DJJ employees how
23 to access, its policy prohibiting sex discrimination (including sexual harassment) and
24 retaliation that is developed or maintained pursuant to applicable law.

25 **V. TRAINING**

26 13. Within eighteen (18) months of the date of entry of this Agreement, all
27 DJJ supervisors and managers must be trained, in an interactive way, about their
28 responsibilities: under Title VII, and under CDCR’s policies prohibiting sex

1 discrimination (including sexual harassment) and retaliation (including their role, if
2 any, in helping CDCR to comply with Paragraph 14 below). Such training shall
3 specifically include discussion of the written policies and procedures prohibiting sex
4 discrimination (including sexual harassment) and retaliation that are devised or
5 maintained by CDCR pursuant to applicable law. Also during the first eighteen (18)
6 months of the Agreement, CDCR will provide supplemental training on prohibited sex
7 discrimination (including sexual harassment) and retaliation to the individuals
8 identified in the March 4, 2014 email from counsel for the United States to CDCR.

9 14. Within eighteen (18) months of the date of entry of this Agreement,
10 CDCR must, in an interactive way, train all DJJ employees, who have not already been
11 trained pursuant to Paragraph 13 above, about their rights and responsibilities under
12 Title VII and under CDCR's policies and procedures prohibiting sex discrimination
13 (including sexual harassment) and retaliation. The interactive training program must,
14 at a minimum, detail: what Title VII prohibits, and what CDCR's policies prohibit,
15 regarding sex discrimination (including sexual harassment) and retaliation; how to
16 report alleged sex discrimination (including sexual harassment) and/or retaliation; how
17 CDCR will address those complaints; and how employees can access CDCR's policies
18 about sex discrimination (including sexual harassment) and retaliation.
19

20 15. Within sixty (60) days of the date of entry of this Agreement, CDCR shall
21 submit to the United States: the name(s) of the individual(s) selected to conduct the
22 DJJ trainings required by Paragraphs 13 and 14 above, and descriptions of the
23 proposed training programs. Also at that time, CDCR shall certify to the United States
24 that: the individuals selected to conduct the training are qualified pursuant to
25 Cal. Code Regs. tit. 2, § 11023, subd. (a)(9); the training format and content comply
26 with the requirements set forth in Cal. Code Regs. tit. 2, § 11023, subd. a(2), (b), and
27 (c); and any on-line training complies with the requirements of Cal. Code Regs. tit. 2, §
28 11023, subd. (a)(2)(B) and (C).

1 16. Within thirty (30) days after fulfilling all training-related requirements in
2 Paragraphs 13 and 14 above, CDCR shall advise, in a written declaration signed under
3 the penalty of perjury, counsel for the United States that the training has been
4 completed and that all supervisors and managers required to attend such training in
5 accordance with Paragraph 13 above in fact did so, unless unavailable for reasons that
6 are acceptable to the United States or deemed to be good cause by the Court.

7 17. CDCR shall retain attendance records to support the representations made
8 in the written declaration referenced in Paragraph 16 above. CDCR shall also retain
9 records as required by Cal. Code Regs. tit. 2, § 11023.

10 18. Consistent with current California law, *see generally* Cal. Gov't Code
11 § 12950.1 and Cal. Code Regs. tit. 2, § 11023, at least once every two years all CDCR
12 supervisors and managers must be trained about their responsibilities, under Title VII
13 and under CDCR's policies prohibiting sexual harassment and retaliation.

14 19. Consistent with current California law, *see generally* Cal. Gov't Code
15 § 12950.1 and Cal. Code Regs. tit. 2, § 11023, within six months of becoming a
16 supervisor or manager (unless such manager already received this training as a
17 supervisor) at CDCR one must receive training about his/her responsibilities, under
18 Title VII and under CDCR's sexual harassment and retaliation policy.

19
20 **VI. PROCEDURES FOR ACCEPTANCE AND INVESTIGATION**
21 **OF COMPLAINTS OF SEXUAL HARASSMENT**

22 20. Within thirty (30) days after the date of entry of the Agreement, CDCR's
23 hiring authority will designate local EEO Coordinators who are authorized to receive
24 and process employee complaints of sex discrimination (including sexual harassment)
25 and/or retaliation, whether the complaints are directly from the employees themselves
26 or via the employees' supervisors or other officials, as provided by CDCR's policies
27 prohibiting sex discrimination (including sexual harassment) and/or retaliation. The
28 EEO Coordinators shall maintain neutral roles and must remain free of conflicts of

1 interest. The EEO Coordinators shall keep written records of all complaints of sex
2 discrimination (including sexual harassment) and/or retaliation, including records of
3 their investigations and their responses thereto.

4 21. Within thirty (30) days of a hiring authority's designation of a local EEO
5 Coordinator: CDCR shall provide notice to all impacted DJJ employees (*i.e.*, those
6 employees for whom the designee will act as EEO Coordinator) of the name and
7 contact information of the designated EEO Coordinator by posting that information in
8 the same manner as all other EEO legal notices are required to be posted.

9 **VI. INDIVIDUAL RELIEF FOR MR. CUMMINGS**

10 22. No later than ten (10) days from the date of entry of this Agreement, the
11 CDCR shall notify Mr. Cummings of the terms of this Agreement by delivering to him
12 in his workplace, a notice letter in the form set forth in Attachment A, a copy of this
13 Agreement, a copy of a Release in the form set forth in Attachment B, and a copy of
14 the Payee Data Record (Std. 204 Form) set forth in Attachment C. At that time, CDCR
15 shall give Mr. Cummings, to sign and date, an acknowledgement form indicating what
16 he received and when.

17 23. CDCR shall send a copy of the signed and dated acknowledgement form
18 referred to in Paragraph 22 above to counsel for the United States within five (5) days
19 of when Mr. Cummings receives the documents identified in Paragraph 22 above and
20 signs and dates the acknowledge form referenced in Paragraph 22 above.

21 24. To receive the relief provided to him under this Agreement, Mr.
22 Cummings must execute the Release form provided with the notice letter and return it
23 to CDCR within thirty (30) days from when he receives the notice letter and Release
24 referred to in Paragraph 22 above. The Court may, for good cause, reasonably extend
25 that deadline.

26 25. CDCR shall provide the United States with a copy of Mr. Cummings'
27 executed Release form within seven (7) days from when CDCR receives that form.
28

1 26. CDCR will make its best efforts within thirty (30) days of when CDCR
2 receives the executed Release and Payee Data Record (Std. 204 Form) from Mr.
3 Cummings, and no later than sixty (60) days from when CDCR receives the executed
4 Release from Mr. Cummings, to pay Mr. Cummings a total of \$50,000, via check,
5 which is designated as compensatory damages and thus is not subject to withholding
6 deductions. However, for good cause shown as determined by the Court, that period
7 may be reasonably extended by the Court until a date or event certain, and interest in
8 an amount determined by the Court may be awarded if payment occurs more than sixty
9 (60) days from when CDCR receives the executed Release from Mr. Cummings.
10 Good cause includes: lack of a State (California) budget, a funding shortfall despite a
11 State (California) budget, the processing efforts of the State (California) Controller's
12 Office, and other events not attributable to CDCR. Nothing in this Paragraph 26 shall
13 relieve CDCR's obligation to pay to Mr. Cummings the total amount that CDCR has
14 agreed to pay him under this Agreement and, if any, interest awarded by the Court per
15 this Paragraph 26. Mr. Cummings will be required to provide a Payee Data Record
16 (Std. 204 Form) before the processing of any request for payment to him under this
17 agreement, and CDCR will issue to Mr. Cummings a Form 1099, and any other
18 appropriate tax form(s), for this amount. Also within fourteen (14) days of when
19 CDCR receives the executed Release from Mr. Cummings, CDCR will take the
20 necessary steps to credit Mr. Cummings with an additional 40 hours' worth of paid
21 annual leave (vacation). CDCR undertakes no representations as to the tax
22 consequences of the payments to Mr. Cummings, and Mr. Cummings shall hold
23 harmless Defendant CDCR from any and all tax consequences.
24

25 27. Within twenty-one (21) days of when CDCR issues payment to Mr.
26 Cummings, CDCR will provide the United States with a copy of the check referenced
27 in Paragraph 26 above.
28

1 **VII. COMPLIANCE MONITORING**

2 28. Within thirty (30) days of receiving a written request from counsel for the
3 United States, CDCR will provide to the United States copies of any complaints or
4 charges of sexual harassment against CDCR (at any of its DJJ facilities) or its
5 employees, agents, or representatives (at any of its DJJ facilities) that are made to: (a)
6 CDCR directly (including, for example, those made to an EEO Coordinator, those
7 made in a manner that is otherwise pursuant to CDCR's applicable sexual harassment
8 policies, or those made to CDCR's Office of Civil Rights); or (b) the California
9 Department of Fair Employment and Housing or another state agency that is
10 authorized to receive such complaints, and that have been served on CDCR. If CDCR
11 provides redacted documents to the United States in response to any request per this
12 Paragraph, the United States may request unredacted copies of those documents. If the
13 United States requests unredacted copies of those documents, within thirty (30) days of
14 the request CDCR must provide those documents to the United States or request that
15 the Court enter a protective order governing whether the confidential information must
16 be disclosed and, if so, what limits apply to the United States' use or disclosure of that
17 information.
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19 29. CDCR shall, within thirty (30) days of when such disciplinary action is
20 taken, provide the United States with written notice of any written or more severe
21 disciplinary action taken against Mr. Cummings during the life of the Agreement.

22 30. CDCR shall retain the following records during the term of this
23 Agreement, or for the period of time required by applicable federal, CDCR, or state
24 records retention requirements, whichever is longer:

- 25 (a) the provisions and effective date of the policies and procedures
26 implemented pursuant to Paragraph 9 above and distributed to CDCR's
27 employees;
28 (b) documents reflecting that CDCR has complied with this Agreement;

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(c) all posted notices and posters displayed in its facilities and intended to convey information regarding the prohibition of sexual harassment, sex discrimination, and retaliation, as set forth in Paragraph 11 above; and

(d) all documents that come into its possession relating to any written or verbal complaints of sexual harassment, sex discrimination, or retaliation, made by any employee, including documents relating to CDCR's investigation and resolution of any such complaints.

31. The United States may review CDCR's compliance with this Agreement at any time during the term of this Agreement and accordingly shall have the right to inspect and copy any non-attorney-client-privileged documents related to CDCR's compliance with this Agreement, upon thirty (30) days' written notice to CDCR, without further order from this Court. CDCR may redact confidential information from any documents requested per this Paragraph. Any dispute as to the propriety of those redactions may be handled via the dispute resolution protocol set forth in Paragraph 32 below.

VIII. DISPUTE RESOLUTION

32. The Parties shall attempt in good faith to informally resolve any dispute that may arise under this Agreement. If the Parties are unable to resolve the dispute expeditiously, during the period of the Agreement, either Party may move the Court for a resolution of the dispute upon seven (7) days' written notice to the other Party.

IX. MODIFICATION OF THE AGREEMENT

33. This Agreement constitutes the entire agreement and commitments of the Parties. The Parties, without Court approval, may jointly agree to modifications of time limits set forth in this Agreement. The Parties may jointly agree to other modifications of this Agreement only with the approval of the Court.

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1 **X. JURISDICTION OF THE COURT**

2 34. The Court shall maintain jurisdiction over this case throughout the
3 duration of this Agreement for the purposes of enforcing the terms of the Agreement
4 and resolving any disputes between the Parties with respect to the terms or
5 implementation of the Agreement.

6 **XI. TERMINATION DATE**

7 35. Without further order of the Court, this Agreement will expire on the later
8 of: (a) the date that is eighteen (18) months from the date of entry of this Agreement;
9 or (b) when CDCR shows, to the United States' or the Court's satisfaction, that CDCR
10 has fully complied with its obligations under the Agreement to pay Mr. Cummings, to
11 educate and train its personnel regarding its policies and procedures for prohibiting sex
12 discrimination (including sexual harassment) and retaliation as provided for in this
13 Agreement; and to provide certification regarding training pursuant to Paragraphs 13
14 through 16 above.

15 **XII. GENERAL PROVISIONS**

16 36. If any provision of this Agreement is found to be unlawful, only the
17 specific provision in question shall be affected and the other provisions shall remain in
18 full force and effect.

19 37. Each Party shall bear its own costs, expenses, and attorneys' fees in this
20 action, including the costs of compliance or monitoring, except that the Parties shall
21 retain the right to seek costs for any matter that, in the future, may arise from this
22 Agreement and require resolution by this Court during the life of the Agreement.

23 38. With the written consent of both Parties' counsel, all documents required
24 to be delivered to the United States under this Agreement may be sent via electronic
25 mail to Raheemah Abdulaleem (at Raheemah.Abdulaleem@usdoj.gov) or Trevor
26 Blake (at Trevor.Blake@usdoj.gov). Without that written consent, documents required
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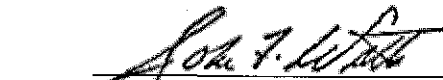
1 to be delivered under this Agreement to the United States shall be sent via overnight
2 delivery to:

3 Raheemah Abdulaleem
4 Trevor S. Blake II
5 Senior Trial Attorneys
6 Employment Litigation Section
7 Civil Rights Division
8 United States Department of Justice
9 601 D Street, N.W., PHB Room 4910
10 Washington, D.C. 20530

11 39. With the written consent of both Parties' counsel, all documents required
12 to be delivered to CDCR under this Agreement may be sent via electronic mail to
13 Kenneth C. Jones (at Kenneth.Jones@doj.ca.gov). Without that written consent,
14 documents required to be delivered under this Agreement to the CDCR shall be sent
15 via overnight delivery to:

16 Kenneth C. Jones
17 Supervising Deputy Attorney General
18 300 South Spring Street, Suite 1702
19 Los Angeles, CA 90013
20

21
22 **IT IS SO ORDERED** this 21ST day of April 21, 2014.

23
24 
25 The Hon. John F. Walter
26 United States District Judge
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