

1 WILLIAM R. TAMAYO - #084965 (CA)
 2 JONATHAN T. PECK - #12303 (VA)
 3 SANYA P. HILL MAXION - #18739(WA)
 4 MARCIA L. MITCHELL - #18122 (WA)
 5 EQUAL EMPLOYMENT OPPORTUNITY
 6 COMMISSION
 San Francisco District Office
 350 The Embarcadero, Suite 500
 San Francisco, California 94105
 Telephone: (415) 625-5651
 Facsimile: (415) 625-5657

7 Attorneys for Plaintiff U.S. EQUAL EMPLOYMENT
 8 OPPORTUNITY COMMISSION

9 JENNIFER J. WALT-# 102026 (CA)
 10 KRISTIN E. HUTCHINS-#184429 (CA)
 11 LITTLER MENDELSON
 A Professional Corporation
 650 California Street, 20th Floor
 San Francisco, CA 94108-2693
 Telephone: (415) 433-1940
 Facsimile: (415) 743-6611
 12 Attorneys for Defendant THE STEPHENS INSTITUTE
 dba THE ACADEMY OF ART UNIVERSITY

13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**

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 17 **EQUAL EMPLOYMENT
 OPPORTUNITY COMMISSION,**

18 **Plaintiff**

19 **v.**

20 **STEPHENS INSTITUTE d/b/a THE
 ACADEMY OF ART COLLEGE,**

21 **Defendant.**

)
) **CIVIL ACTION NO.**
) **CIV. C-03-4383 PJH**

)
) **CONSENT DECREE**
) *and ORDER*

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) **E-Filing**
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 24 **I. INTRODUCTION**

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 26 1. The United States Equal Employment Opportunity Commission ("EEOC") filed this action
 27 alleging that the Stephens Institute dba The Academy of Art University ("the Academy")
 28 subjected David Banks, Oscar Jordan, Hayes Campbell and Taa Willis, all African-

1 Americans, to a racially hostile work environment based on their race, African-American.

2 The lawsuit also alleged that the Academy discharged David Banks due to his race.

3 2. The Academy contends that no unlawful discrimination, harassment or retaliation of any sort
4 occurred.

5 3. The EEOC and the Academy want to conclude fully and finally all claims arising out of the
6 above action without the expenditure of further resources and expenses in contested
7 litigation. They enter into this Consent Decree to further the objectives of equal employment
8 opportunity as set forth in Title VII.

9 **II. NON-ADMISSION OF LIABILITY**

10 4. This Consent Decree is not an adjudication or finding on the merits of this case and shall not
11 be construed as an admission of a violation of Title VII or any other statute by the Academy.

12 **III. PURPOSE OF THE DECREE**

13 5. The parties have entered into this Consent Decree in order to achieve the following
14 purposes:

15 a. To ensure the maintenance and support of policies and procedures that prohibit the
16 Academy from discriminating against, harassing, or retaliating against employees on
17 the basis of race.

18 b. To ensure that the Academy maintains and supports a policy and enforcement
19 program to effectively prevent discrimination based upon race.

20 c. To compensate David Banks, Taa Willis, Oscar Jordan and Hayes Campbell for
21 damages allegedly suffered in connection with the alleged discrimination by the
22 Academy.

23 d. To avoid the time, expense and uncertainty of further litigation.

24 **IV. DEFINITION OF TERMS**

25 6. "Claimants" refers to David Banks, the individual who filed the charge of discrimination
26 leading to the instant action, and Taa Willis, Oscar Jordan and Hayes Campbell, similarly
27 situated individuals who the EEOC contends are entitled to recover monetary relief pursuant
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1 to this Consent Decree. It is expressly agreed by all parties that no other individuals are
2 entitled to any monetary relief under the terms of this Consent Decree or stemming from the
3 Complaint filed in this lawsuit.

4 **V. GENERAL PROVISIONS**

- 5 7. This Consent Decree is intended to and does effectuate the full, final, and complete
6 resolution of all allegations of unlawful employment practices and discrimination arising
7 from or relating to the original discrimination charge of discrimination, EEOC Charge
8 Number 370A11063 ("the Charge") and the Complaint filed in *EEOC v. Stephens Institute*
9 *dba The Academy of Art College*, Civil Case No.C-03-4383-PJH ("the Complaint"), pursuant
10 to Title VII of the Civil Rights Act of 1964, as well as any claims that could have been
11 brought as part of the Charge and/or Complaint.
- 12 8. This Consent Decree in no way affects the EEOC's right to process, in accordance with
13 standard Commission procedures, charges filed by individuals against Defendant alleging
14 violations of federal employment discrimination statutes. Charges include those pending as
15 of the effective date of this Consent Decree and filed in the future. Processing includes the
16 administrative investigation of a charge, conciliation, and commencement of a civil action
17 based upon a charge.
- 18 9. This Court has jurisdiction over the subject matter of and the parties to this action.
- 19 10. This Consent Decree constitutes a full resolution of the Complaint and the underlying charge
20 of discrimination filed with the EEOC.
- 21 11. This Consent Decree shall become effective upon its entry by the Court.
- 22 12. Each party shall bear its own costs and attorney fees.
- 23 13. The Court has reviewed the terms of this Consent Decree in light of the pleadings, the record
24 herein, and the applicable law, and now approves the Consent Decree in its entirety.

25 **VI. MONETARY RELIEF**

- 26 14. In settlement of the EEOC's claims of unlawful harassment and discriminatory discharge
27 alleged in the Complaint or related to this lawsuit, the Academy agrees to pay the gross sum
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1 of One Hundred Ten Thousand Dollars and No Cents (\$110,000.00) ("the Settlement Sum").
2 The EEOC will inform the Academy how the Settlement Sum shall be apportioned between
3 the Claimants no later than thirty (30) days after entry of this Consent Decree.

4 15. Payment to the Claimants shall be made no later than forty-five (45) days after entry of this
5 Consent Decree. The monetary relief shall be issued in checks drafted in each of the
6 Claimants' names and delivered to the EEOC for distribution. The Academy shall make
7 payment to the Claimants in the form of a business check, cashier's check or certified check.
8 The Academy also will issue an IRS Form 1099 for each of the checks issued pursuant to this
9 paragraph.

10 a. The Academy will mail the copies of the IRS Form 1099 to Marcia Mitchell,
11 Senior Trial Attorney for the EEOC, at 350 The Embarcadero, San Francisco,
12 CA 94105 simultaneously with the mailing of the checks.

13 b. Payment of monetary relief to the Claimants shall be contingent on the
14 execution of a general release of all claims by all Claimants and the expiration
15 of the seven-day revocation period contained in that release without any
16 revocation of the release.

17 **VII. GENERAL INJUNCTIVE RELIEF**

18 16. ***Discriminatory Harassment:*** Consistent with Section 703 of Title VII, 42 U.S.C. §2000e-2,
19 the Academy, its officers, agents, managers (including supervisory employees), successors
20 and assigns, and all those in active concert or participation with them, will make every
21 reasonable effort to comply with all requirements of Title VII with respect to providing a
22 work environment free from discrimination and harassment on the basis of race and free from
23 any action, policy or practice that is intended to or known to them to have the effect of
24 harassing or intimidating any employees on the basis of race or creating, facilitating or
25 permitting the existence of a work environment that is hostile to employees based on their
26 race.

27 17. ***Retaliation:*** Consistent with Section 704 of Title VII, 42 U.S.C. §2000e-3, the Academy, its
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1 officers, agents, managers (including supervisory employees), successors or assigns, and all
2 those in active concert or participation with them, agree not to engage in, implement or
3 permit any action, policy or practice with the purpose of retaliating against any of the
4 Claimants or any person who was identified as a possible claimant or witness in this action
5 because they opposed any practice of harassment or other discriminatory acts on the basis of
6 race made unlawful under Title VII; filed a Charge of Discrimination alleging any such
7 practice; or testified or participated in any manner in any investigation (including, without
8 limitation, any internal investigation undertaken by the Academy), proceeding or hearing in
9 connection with this case.

10 **VII. SPECIFIC INJUNCTIVE RELIEF**

11 18. The Academy affirms the following "Statement of Zero-Tolerance Policy and Equality
12 Objectives":

13 The Academy is firmly committed to maintaining a zero-tolerance
14 policy concerning discriminatory harassment and retaliation against
15 individuals who report harassment in the company's workplace; to
16 swiftly and firmly responding to any acts of harassment and retaliation
17 of which the company becomes aware; to implementing a disciplinary
18 system that is designed to strongly deter future acts of harassment or
19 retaliation; and to actively monitoring its workplace in order to ensure
20 tolerance, respect and dignity for all people.

18 This paragraph does not create any contractual or common law causes of action or other
19 rights that would not otherwise exist under statute.

20 19. In order to accomplish the objectives embodied in the Statement of Zero-Tolerance Policy
21 and Equality Objectives and this Consent Decree, the Academy shall review its existing
22 policies, procedures and practices to ensure compliance with the standards set forth below.

23 ***EEO and Harassment Policies***

24 a. The Academy's equal employment opportunity ("EEO") and harassment
25 policies shall: (i) include definitions of discriminatory harassment, with
26 specific reference to harassment based on race (ii) include examples to
27 supplement the definitions of harassment based on race; (iii) provide for
28 substantial discipline and/or corrective action for incidents of discriminatory

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harassment; (iv) include strong non-retaliation language with examples to supplement the definition of retaliation, (v) provide for substantial discipline for incidents of retaliation; (vi) provide that complaints of harassment and/or retaliation will be accepted irrespective of whether they are made verbally or in writing; (vii) explain that Defendant will conduct a prompt and thorough investigation after a complaint is made or received and will take remedial action upon conclusion of an investigation; and (viii) indicate that, promptly upon the conclusion of the investigation of a complaint, Defendant will communicate to the complaining party the results of the investigation and the remedial actions taken or proposed, if any. If any revisions to the Academy's existing policies are necessary in order to conform to the requirements set forth above, the necessary revisions shall be made within forty-five (45) days after entry of this Consent Decree.

- b. The Academy shall effectively disseminate policies that comply with the requirements of subsection a, above, by:
 - i. distributing copies to all current employees within 10 days of its adoption;
 - ii. Giving a copy of the policy to and reviewing the policy with all new employees upon each employee's hire.
- c. The Academy will submit a copy of its EEO and harassment policies to EEOC at the same time it submits its verification of completion of training pursuant to Section IX.

Complaint Procedures

- d. The Academy's complaint procedure shall encourage employees to come forward with complaints about violations of its harassment policy. As part of the policy, the Academy shall provide its employees with convenient, confidential and reliable mechanisms for reporting incidents of harassment

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and retaliation. The Academy's complaint procedure and harassment policy shall notify employees that they can lodge a complaint with their immediate supervisor or the Director of Human Resources and shall provide the name and telephone numbers for the Director of Human Resources. Contact information for the Director of Human Resources also shall be continuously posted in a prominent place at all of the Academy's business locations.

e. The Academy will submit a copy of its complaint procedures to the EEOC at the same time it submits its verification of completion of training pursuant to Section IX.

Supervisor Accountability.

- f. The Academy agrees that it shall impose appropriate discipline – up to and including termination, suspension without pay, or demotion – upon any supervisor or manager who the Academy determines has engaged in harassment or has knowingly permitted any such conduct to occur in his or her work area or among employees under his or her supervision, or who the Academy determines has retaliated against any person who complains or participates in any investigation or proceeding concerning any such harassment.
- g. The Academy shall communicate this policy to all current supervisors and managers within sixty (60) days after entry of this Consent Decree, and thereafter on an annual basis.
- h. The Academy shall communicate this policy to new supervisors and managers at the time they are hired or promoted to supervisor/manager.
- i. The Academy agrees that it shall advise all managers and supervisors of their duty to actively monitor their work areas to ensure employee compliance with the harassment policy, and to report any incidents and/or complaints of harassment and/or retaliation of which they become aware to the Director of

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Human Resources.

Harassment Training

- j. Within six (6) months of entry of this Consent Decree, the Academy will ensure that all of its employees, including supervisors and managers, have received the applicable level of training, as set forth below:
 - i. All employees shall undergo anti-harassment training as part of their new-hire orientation. Such training shall consist of (1) watching two videos, one on sexual harassment and the other on diversity and workplace harassment in general, and (2) participating in a question-and-answer session covering the videos, the Academy policies, and the Academy's employee handbook. Existing employees who have already viewed the harassment video and engaged in the related question-and-answer session as of entry of this Consent Decree shall only be required to view the video on diversity.
 - ii. All non-managerial employees shall be required to take annual on-line, interactive "refresher" course covering equal employment opportunity and workplace harassment (or a course with substantially similar content). The refresher training shall be provided and completed twelve (12) to fifteen (15) months after completion of the training provided pursuant to the preceding paragraph.
 - iii. In addition to receiving the training described in subsections (i) and (ii) above, managers and supervisors shall be required to participate annually in a three-hour live training entitled "Managing Within the Law" (or a course with substantially similar content) and to take an on-line, interactive course on

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equal employment opportunity and workplace harassment or managers or a course with substantially similar content). Those managers and supervisors who participated in and completed the "Managing Within The Law" program on October 29, 2004 will not be required to repeat the training.

- iv. Managers and supervisors with responsibility for hiring and termination must also take an on-line, interactive course covering lawful hiring and termination of employees. This training will be completed within six months.
- v. Managers and supervisors shall also be required to take an annual on-line, interactive "refresher" course on equal employment opportunity and workplace harassment for managers (or a course with substantially similar content). The refresher training shall be provided and completed twelve (12) to fifteen (15) months after completion of the training required by subsections (iii) and (iv) above.
- vi. The cost of the training described above shall be borne by the Academy.
- vii. The Academy will retain records documenting when all live training provided pursuant to this section was completed. The records will identify the employees who attended the training. The Academy also will retain records reflecting the identities of all employees who received video or on-line training and the date(s) of completion of the training. The Academy will provide copies of these records to the EEOC with the reports required by Paragraphs 22 and 23 below.

VIII. EMPLOYMENT REFERENCES

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2 20. The Academy shall not disclose any information or make references to any charges of
3 discrimination or this lawsuit in responding to employment reference requests for
4 information about any of the Claimants. However, in order for this provision to apply, the
5 Claimants must direct all persons seeking references to the Director of Human Resources.

IX. REPORTING

- 6
7 21. Six (6) months after entry of this Consent Decree and again every six months thereafter for
8 the effective term of this Consent Decree, the Academy will submit reports to the EEOC
9 summarizing any complaints of racial harassment received by the Academy during the
10 preceding six-month period. The reports will include the identities of the complainant(s)
11 unless the complainant requests confidentiality and the alleged harasser(s) and a summary of
12 action taken in response to the complaint. In cases where the complainant has requested
13 confidentiality, the Academy may refer to the complainant by a unique numerical identifier,
14 but must still include the identity of the alleged harasser and a summary of action taken in
15 response to the complaint) in its report to the EEOC. The Academy will attach copies of the
16 corresponding written records.

- 17 22. Within six (6) months of the entry of this Consent Decree, the Academy will send the EEOC
18 a statement verifying its compliance with the Harassment Training provisions of
19 Paragraph 19.

- 20 23. The Academy shall submit a final report to the EEOC thirty (30) days before this Consent
21 Decree expires containing a statement verifying its compliance with the terms of this Consent
22 Decree.

23 **X. RETENTION OF JURISDICTION AND EXPIRATION OF CONSENT DECREE**


- 24 24. This Consent Decree shall terminate two (2) years from the date of entry by the Court, unless
25 the EEOC petitions this Court for an extension of the Decree because of noncompliance by
26 the Academy. If EEOC determines that the Academy has not complied with the Consent
27 Decree, EEOC will provide written notification of the alleged breach to the Academy and
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1 will not petition the Court for an enforcement hearing sooner than forty-five (45) days after
2 providing written notification. Following the written notice the parties shall make good faith
3 efforts to resolve the issue. If the parties are unable to informally resolve the issue, the
4 Academy shall be permitted to file a response to the EEOC's petition no later than fourteen
5 (14) days before the enforcement hearing. At the enforcement hearing the Court shall
6 consider the papers submitted by the parties as well as any additional evidence or argument
7 they may present at the hearing. If the Court finds the Academy to be in substantial violation
8 of the terms of this Consent Decree, the Court may extend this Consent Decree.

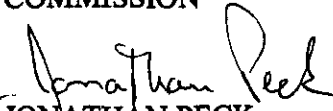
9 25. This Court shall retain jurisdiction over this action for the purposes of enforcing the
10 provisions of this Consent Decree. This Consent Decree shall expire by its own terms at the
11 end of two (2) years without further action by the parties.

12 Respectfully submitted,


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14 DATED: 2/11, 2005


WILLIAM TAMAYO
Regional Attorney
U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION


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16
17 DATED: 2/11, 2005


JONATHAN PECK
Supervisory Trial Attorney
U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

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20 DATED: 2/11, 2005


MARCIA MITCHELL
Senior Trial Attorney
U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

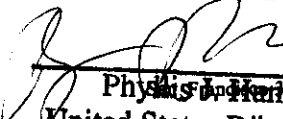
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23 DATED: 2/14, 2005


JENNIFER J. WALT
LITTLER MENDELSON
Attorney for Defendant

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26 APPROVED AND SO ORDERED:

IT IS SO ORDERED

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28 U.S. District Court Judge Phyllis J. Hamilton


Phyllis J. Hamilton
United States District Judge