

RECEIVED

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DEC 30 2003

OFFICE OF  
JUDGE TENA CAMPBELL

DISTRICT OF UTAH

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DISTRICT OF UTAH


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DEPUTY CLERK

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Entered on docket

12-31-03 by:

  
Deputy Clerk

Equal Employment Opportunity  
Commission,

Plaintiff,

vs.

Newonics, Inc.,

Defendant.

CASE NO. 2:02 CV-0632C

Judge Tena Campbell

**CONSENT DECREE**

The United States Equal Employment Opportunity Commission (the "Commission" or "EEOC") filed this action against Newonics, Inc., ("Newonics" or "Defendant") to enforce Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, and the Equal Pay Act. In the Complaint, the Commission alleged that Defendant discriminated against Ms. Deborah Wayland in violation of the Equal Pay Act, 29 U.S.C. §§ 206 (d)(1) and 215(a)(2) and Title VII, 42 U.S.C. § 2000e-2(a), by paying her lower wages than those paid to male employees performing substantially equal work. The Commission further alleged that Defendant discriminated against Ms. Wayland in violation of Title VII, 42 U.S.C. § 2000e-2(a), because of her sex, female and retaliated against her when she complained about unequal wages. Defendant denies that it violated the Equal Pay Act, or otherwise discriminated against Ms. Wayland and contends that there were justifiable, non-

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discriminatory reasons for any pay differences.

In the interest of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations, the Parties have agreed that this action should be finally resolved by entry of this Decree.

The Parties do not object to the jurisdiction of the Court over this action and waive their rights to a hearing and the entry of findings of fact and conclusions of law.

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

1. This Decree resolves all claims of the Commission against Defendant, including back pay, compensatory and punitive damages, interest, injunctive relief, attorney's fees, and costs arising out of the issues in this lawsuit.

**INJUNCTION**

2. Defendant and its officers, agents, employees, successors, assigns, and all persons in active concert or participation with it, both at the time that this Decree becomes effective and for the duration of this Decree, agree that for the duration of the Decree, and at all times thereafter, they are enjoined from: (a) unlawfully paying any female employee less than a male employee for substantially equal work; (b) terminating any employee due to his or her sex.

**MONETARY RELIEF**

3. Defendant hereby agrees to pay the sum of twenty thousand dollars (\$20,000), as set forth in the following paragraphs.

4. These payments represent settlement of back wages in the amount of \$2,000.00 and compensatory damages in the amount of \$18,000.00. Defendant will pay all payroll taxes it owes on the back wages for the tax year during which payment is made, and deduct the additional payroll taxes owed by Ms. Wayland. Defendant will issue United States Internal Revenue Service Form 1099 to Ms. Wayland for the compensatory damages for the tax year during which payment is made.

5. The settlement shall be paid as follows:

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- a. An initial payment of \$2,000.00, representing back wages shall be made within ten days of the entry of this Decree.
  - b. A second payment of \$2500.00, shall be made thirty days after the payment specified in paragraph a.
  - c. Subsequent payments of \$1500.00 per month shall be made on the first of each month, commencing on February 1, 2004, and continuing until paid.
  - d. There shall be no penalty for early payment.
  - e. The damage amount will be secured by a personal guarantee executed by Cheri McPhie and Douglas McPhie, attached as Exhibit A.
6. Defendant shall pay the settlement amounts to Ms. Deborah Wayland by check or money order made payable to Ms. Wayland and mailed to the address provided by the Commission. Within three business days of the issuance of each check or money order, Defendant shall submit a copy of the check or money order and all related correspondence to Mary Jo O'Neill, Regional Attorney, Equal Employment Opportunity Commission, 3300 North Central Avenue, Suite 690, Phoenix, Arizona 85012.

#### **OTHER RELIEF**

7. Defendant shall expunge from the personnel file of Ms. Wayland: (a) all references to the charge of discrimination filed against Defendant that formed the basis of this action; (b) all references to Ms. Wayland's participation in this action; (c) any derogatory document which relates to complaints or investigation of complaints of wage discrimination and unlawful termination based on sex; and (d) any other documents relating to the reasons for the termination of Ms. Wayland's employment (Defendant may retain documentation showing that her employment ended, however).
8. Defendant shall continue to institute and carry out policies and practices that help assure a work environment free from wage discrimination based on sex, and unlawful termination based on sex. To assist Defendant in its efforts to assure such a work environment, Defendant shall take the actions provided in paragraphs 9 through 16 of this

Decree.

### **NOTICE**

9. Defendant shall post for the duration of this Decree, in a prominent place frequented by its employees at its facilities, the Notice attached as Exhibit B. The Notice shall be the same type, style and size as set forth in Exhibit B.

### **TRAINING**

10. Defendant shall continue to provide training on wage discrimination and unlawful termination based on sex, according to the following terms:

A. Defendant shall retain and pay a consultant/lecturer who shall provide training to its employees for a period of two years from the date of this Decree, on the issues of addressing wage discrimination and unlawful termination based on sex. During the first year, the consultant/lecturer shall conduct one live seminar training session. The live session in the first year may be videotaped for use in subsequent years. All of Defendant's employees, including managers, officers, and directors, shall attend the live session or a videotaped showing of the live session each year. Defendant may at its election have duplicative videotaped sessions to accommodate staffing needs. Defendant shall be responsible for any additional costs to provide such duplicative sessions.

B. Defendant shall obtain the EEOC's approval of the consultant/lecturer selected by Defendant to provide the training described above. At least sixty (60) days prior to the proposed training session, Defendant shall submit the name(s), address(es), telephone number(s) and resume(s) of the proposed consultant/lecturer(s), together with the dates of the proposed training session and an outline of the contents of the training, to the Regional Attorney of the Phoenix District Office of the EEOC, at the address provided above. The Commission shall have thirty (30) days from the date of receipt of the information described above to accept or reject the proposed consultant/lecturer and/or the contents of the seminar. In the event the Commission does not approve the designated consultant/lecturer and/or the contents of the training and Defendant refuses, after appropriate notice, to make the

requested changes or modifications, the Commission may designate the consultant/lecturer at a cost not to exceed \$2000.00 per seminar session, which shall be paid by Defendant.

C. During the first year, 2004, the seminar training sessions shall be conducted within six months of the entry of this Decree. During the second year, the seminar-training sessions shall be conducted between eleven (11) and thirteen (13) months after the completion of the preceding session.

D. The seminar training sessions shall be no less than two hours, plus fifteen to thirty minutes of questions and answers. All of Defendant's employees shall register when they attend a seminar-training session. The registry of attendance shall be retained by Defendant for the duration of this Decree.

E. The seminars shall include: (1) what constitutes wage discrimination and unlawful termination based on sex; (2) that Title VII and the Equal Pay Act are violated by wage discrimination based on sex; (3) that Title VII is violated by termination based on sex; (4) how to prevent wage discrimination and unlawful termination based on sex; (5) how to provide a work environment free from wage discrimination and unlawful termination based on sex; and (6) to whom and by what means employees may complain if they feel they have been subjected to wage discrimination or unlawful termination based on sex in the workplace. The session shall also review and explain Defendant's policies set out in this Decree.

F. During the live training sessions, Defendant's President shall speak to the employees about the legal consequences faced by companies that tolerate wage discrimination and unlawful termination based on sex; the importance of maintaining an environment free of wage discrimination and unlawful termination based on sex, and Defendant's policies in regard to wage discrimination and unlawful termination based on sex, referred to in paragraph 12 of this Decree. The President shall explain that managers and supervisors will be evaluated, in part, on their enforcement of policies prohibiting wage discrimination and unlawful termination based on sex, and their response to complaints of wage discrimination or unlawful termination based on sex.

11. The Commission, with reasonable notice, may designate Commission representatives to attend and participate in the seminar-training sessions, and the representatives shall have the right to attend and fully participate in the sessions.

### **POLICIES AND PROCEDURES**

12. Within sixty (60) days of the entry of this Decree, Defendant shall develop written policies concerning wage discrimination and unlawful termination based on sex, to conform with the law, and submit the policy for review to the Regional Attorney of the Phoenix District Office of the EEOC at the address provided above. These written policies must include at a minimum:

A. A strong and clear commitment to a workplace free of wage discrimination and unlawful termination based on sex;

B. A clear and complete definition of wage discrimination and unlawful termination based on sex;

C. A statement that wage discrimination and unlawful termination based on sex is prohibited and will not be tolerated;

D. A clear and strong encouragement of persons who believe they have been subjected to wage discrimination or unlawful termination based on sex to come forward;

E. The identification of specific individuals, internal and external to Defendant, with their telephone numbers, to whom employees, who have been subjected to wage discrimination or unlawful termination based on sex, can report the unlawful conduct, including a written statement that employees may report the unlawful conduct to designated persons outside of their chain of management. The statement shall explain that, should a non-English speaking employee seek to report wage discrimination or unlawful termination based on sex, Defendant shall provide an interpreter for purposes of taking the report and further communicating with the employee about the reported incidents;

F. An assurance that Defendant will investigate allegations of wage discrimination

or unlawful termination based on sex promptly, fairly, reasonably and effectively, using appropriate investigators, and that appropriate corrective action will be taken by Defendant to make victims whole and to eradicate the unlawful conduct.

G. A description of the consequences, up to and including termination, that will be imposed upon violators of the policy;

H. A promise of maximum feasible confidentiality for persons who believe that they have been subjected to wage discrimination or unlawful termination based on sex;

I. An assurance of non-retaliation for persons who believe they have been subjected to wage discrimination or unlawful termination based on sex, and for witnesses.

13. These policies shall be distributed to each of Defendant's current employee within ninety (90) days of the entry of this Decree. These policies shall be distributed to all new employees of Defendant when hired. These policies also shall be posted in a prominent place frequented by the employees.

14. Defendant shall promptly and appropriately investigate all complaints by its employees of wage discrimination or unlawful termination based on sex. The investigation must include a finding of whether the alleged conduct occurred, a credibility assessment, if necessary; interviews of all potential victims and witnesses identified; and concurrent notes of the investigation. Defendant shall take immediate appropriate corrective action to make victims of the unlawful conduct whole, to discipline those who engaged in the unlawful conduct, and to eradicate the unlawful conduct.

15. Defendant shall not retain documents related to the investigation of complaints of wage discrimination or unlawful termination based on sex in any of the complainant's personnel files. All disciplinary actions taken against employees for violation of Defendant's policies regarding wage discrimination or unlawful termination based on sex shall be retained in the wrongdoer's personnel file. In those cases in which no conclusion could be reached on the allegations, the investigation documents shall be retained in an investigation file.

#### **REPORTING BY DEFENDANT AND ACCESS BY EEOC**

Consent Decree



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16. Defendant shall report in writing and in affidavit form to the Regional Attorney of the Commission's Phoenix District Office, at the address provided, beginning six months from the date of the entry of this Decree, and thereafter every year for the duration of the Decree, the following information:

- A. Any changes, modifications, revocations, or revisions to its policies and procedures which concern or affect the subjects of wage discrimination and unlawful termination based on sex.
- B. The name, address, position, social security number, and telephone number of any individual who has brought allegations, whether formal or informal, of wage discrimination and/or unlawful termination based on sex, against Defendant' personnel including, but not limited to, management officials and/or non-management employees, during the first six months, and thereafter every year, preceding the report to the EEOC. The nature of the complaint, investigatory efforts made by Defendant, and corrective action taken, if any, also shall be specified.
- C. The registry of persons attending the seminars required in paragraph 10 of this Decree and a list of current personnel employed by Defendant on the days of the seminar training sessions.
- D. Confirmation that (1) the Notice required in paragraph 9 of this Decree was posted and the locations where it was posted; (2) the policies required in paragraph 12 were distributed to each current and new employee of Defendant, and posted; (3) the expungement Ms. Wayland's personnel files required in paragraph 15 of this Decree took place, the date of the expungement, and the specific documents expunged.

17. The Commission, upon reasonable notice and agreement, shall have the right to enter and inspect Defendant's premises and work sites to ensure compliance with this Decree and the prohibitions of wage discrimination and unlawful termination based on sex contained in the Equal Pay Act and Title VII.

#### **COSTS AND DURATION**

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18. Each Party shall bear its costs and attorney's fees incurred as a result of this action through the filing of this Decree.
19. The duration of this Decree shall be twenty-four (24) months from its entry. This Court shall retain jurisdiction over this action for the duration of the Decree, during which the Commission may petition this Court for compliance with this Decree. Should the Court determine that Defendant has not complied with this Decree, the Court may order appropriate relief, including extension of this Decree for such period as may be necessary to remedy its non-compliance, an award of attorney's fees and costs, and fines for contempt of court.
20. In the event Defendant is in non-compliance with any provision of this Decree and refuses to come into compliance after appropriate notice from the Commission, and the Commission petitions the Court to order Defendant to comply, Defendant shall pay all attorney's fees and costs incurred by the Commission to enforce the Decree.
21. Absent extension, this Decree shall expire by its own terms at the end of twenty-four (24) months from the date of entry without further action by the Parties.
22. The Parties agree to entry of this Decree subject to final approval by the Court.

Dated this 30 day of Dec, 2003

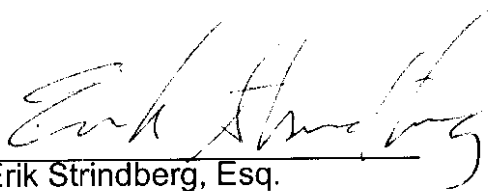
  
TENA CAMPBELL  
United States District Judge

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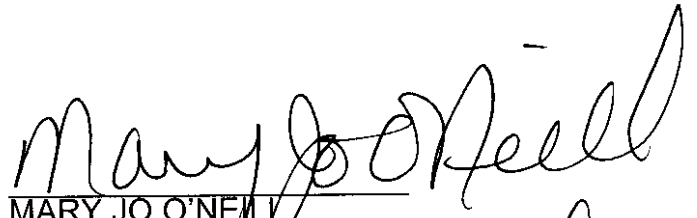
 Sally Shanley

APPROVED AND CONSENTED TO:

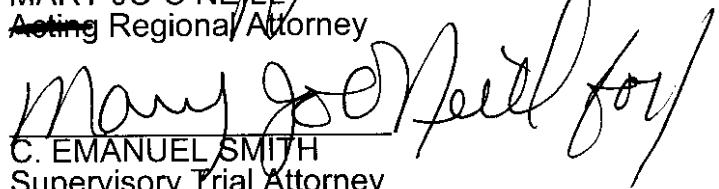


Erik Strindberg, Esq.  
Lauren I. Scholnick, Esq.  
Strindberg & Scholnick, L.L.C.  
44 Exchange Place, 2<sup>nd</sup> Floor  
Salt Lake City, UT 84111

Attorneys for Defendant



MARY JO O'NEILL  
~~Acting~~ Regional Attorney



C. EMANUEL SMITH  
Supervisory Trial Attorney



SALLY C. SHANLEY  
Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

Phoenix District Office  
3300 North Central Avenue, Suite 690  
Phoenix, Arizona 85012  
(602) 640-5032  
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 23<sup>rd</sup> day of December, 2003 a true and correct copy of the foregoing

was mailed, first class, postage prepaid, to:

Erik Strindberg, Esq.  
Lauren I. Scholnick, Esq.  
Strindberg & Scholnick, L.L.C.  
44 Exchange Place, 2<sup>nd</sup> Floor  
Salt Lake City, Utah 84111  
Attorneys for Defendant

Carlie Christensen  
Civil Chief  
Maggie H. AbuHaidar  
Assistant U. S. Attorney  
UNITED STATES ATTORNEY  
185 South State, #400  
Salt Lake City, Utah 84111  
Associated Local Counsel for Plaintiff

Phyllis Brady

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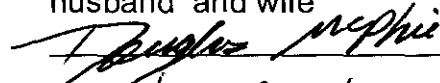
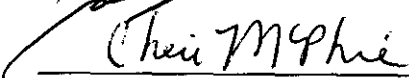
**EXHIBIT A**

## PERSONAL GUARANTY OF PAYMENT

1. FOR VALUABLE CONSIDERATION, the undersigned ("Guarantors") personally guaranty and promise to pay up to TWENTY THOUSAND DOLLARS (\$20,000) of the payments due by Newonics, Inc. ("Newonics") to be paid to EEOC in the event that Newonics fails to make the payments as required in paragraph 3 of the Consent Decree entered in the lawsuit captioned EQUAL EMPLOYMENT OPPORTUNITY COMMISSION V. NEWONICS, INC., 2:02 CV-0632C in the United States District Court for the District of Utah (the "Consent Decree"). All payments made by Newonics shall reduce the amount guaranteed by the Guarantors under this Guaranty on a dollar-for-dollar basis by the amount of the payments made. In no event shall Guarantors obligations under this Guaranty exceed \$20,000.00
2. The obligations of Guarantors hereunder shall survive and continue in full force and effect until a total of \$20,000, has been paid pursuant to the Consent Decree. Guarantors shall not be liable for Newonics 's failure to comply with any other provision of the Consent Decree.
3. Newonics and EEOC may not, without the prior written consent of Guarantors, renew, modify, compromise, extend, accelerate or otherwise change the time for payment or the amount of any payment or otherwise change the terms of the Consent Decree or any part thereof.
4. In the event of any court proceedings arising out of this Guaranty, the prevailing party's court costs and attorneys' fees shall be paid by the non-prevailing party and set by the court and not by jury.
5. This Guaranty shall be governed by and construed according to the laws of the State of Arizona.
6. Any action or proceeding arising out of this Guaranty shall be brought solely in a court of competent jurisdiction located in the United States District Court for the District of Utah.

SIGNED this 20 day of November , 2003

Guarantors  
Cherie McPhie and Douglas McPhie,  
husband and wife

Address: 2550 So. Decker Lake Blvd #11  
West Valley City, UT 84129

**EXHIBIT B**

## **NOTICE TO ALL EMPLOYEES OF NEWONICS, INC.**

This Notice is posted pursuant to a Consent Decree entered into between Newonics, Inc. and the Equal Employment Opportunity Commission (the EEOC).

It is unlawful under federal law, Title VII of the Civil Rights Act and state law to discriminate against an employee on the basis of sex, including sexual and gender based harassment, in the recruitment, hiring, firing, compensation, assignment, or other terms, and conditions or privileges of employment. Sexual harassment includes unwelcome or offensive sexual advances or touching, requests for sexual favors, or other verbal or physical conduct directed at a person because of his/her sex. It is also unlawful to retaliate against any person because the person protested discriminatory practices or contacted the EEOC.

An employer shall not discriminate against any employee on the basis of sex, including sexual and gender-based harassment, and shall not retaliate against any employee.

If you believe you have been discriminated against by your employer, you have the right to seek assistance from:

- (1) EEOC, 3300 North Central Avenue, Suite 690, Phoenix, Arizona 85012, (602) 640-5000; or
- (2) The Utah Antidiscrimination Division of the Labor Commission (the UALD) (801-532-6840)

You have the right to file a charge with the EEOC or the UALD if you believe you are being discriminated against.

No Retaliation Clause. No action may be taken against you by any supervisory or management official of Newonics, Inc., for (1) opposing discriminatory practices made unlawful by federal or state law; (2) filing a charge or assisting or participating in the filing of a charge of discrimination; or (3) assisting or participating in an investigation or proceeding brought under Title VII. Should any such retaliatory actions be taken against you, you should immediately contact the EEOC at the address or telephone numbers listed above.

United States District Court  
for the  
District of Utah  
December 31, 2003

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:02-cv-00632

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Erik Strindberg, Esq.  
STRINDBERG & SCHOLNICK  
44 EXCHANGE PL 2ND FL  
SALT LAKE CITY, UT 84111  
EMAIL

Maggie H. Abuhaidar, Esq.  
US ATTORNEY'S OFFICE  
, 84111  
EMAIL

Sally Shanley, Esq.  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
PHOENIX DISTRICT OFFICE  
3300 N CENTRAL AVE STE 690  
PHOENIX, AZ 85012-1848  
EMAIL