

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 WASHINGTON METROPOLITAN AREA)
 TRANSIT AUTHORITY,)
)
 Defendant.)

Civil Case No.: 17-0096 (ABJ)

FILED
MAR - 6 2017

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

CONSENT DECREE

I. Background

1. This matter is before the Court for entry of a Consent Decree that resolves a civil action brought by Plaintiff United States against Defendant Washington Metropolitan Area Transit Authority (“WMATA”) to enforce the provisions of Title I of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12111-17, and its implementing regulation, 29 C.F.R. Part 1630. Through 42 U.S.C. § 12117(a), Title I incorporates the powers, remedies, and procedures set forth in Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-2000e-17.

2. The United States alleges that WMATA discriminated against Bennie Vaughan, in violation of 42 U.S.C. §§ 12112(a) and 29 C.F.R. § 1630.4(a)(1)(ii), by 1) failing to engage Mr. Vaughan in an interactive process upon learning that he had a disability that, in the estimation of WMATA, might affect his ability to perform an essential job function of the

position to which he had applied and for which he had been provisionally hired, to-wit: Elevator/Escalator (ELES) Parts Supervisor; and 2) failing to hire Mr. Vaughan for the position of ELES Parts Supervisor because he has a disability, and/or was regarded by WMATA as having a disability. WMATA denies any and all of the allegations being made by the United States, and specifically denies that it discriminated against Mr. Vaughan in any way.

3. This matter was initiated by charge number 570-2014-01038, filed by Mr. Vaughan with the United States Equal Employment Opportunity Commission (“EEOC”). The EEOC investigated the charge, and found reasonable cause to believe that discrimination occurred. After attempts at conciliation failed between Mr. Vaughan and WMATA, the EEOC referred the charge to the United States Department of Justice.

4. The United States and WMATA (collectively, “the parties”) have agreed that it is in the parties’ best interests, and the United States believes that it is in the public interest, to resolve this lawsuit on mutually agreeable terms without further litigation. Accordingly, the parties agree and stipulate to the entry of this Consent Decree, without trial or further adjudication of any issues of fact or law.

The parties hereby AGREE and the Court expressly APPROVES, ENTERS, AND ORDERS THE FOLLOWING:

II. Jurisdiction and Venue

5. This action is brought to enforce the statutory and regulatory provisions of Title I of the ADA, which incorporates through 42 U.S.C. § 12117 the powers, remedies, and procedures set forth in Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-

5. This Court has authority to grant a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and

2202, and authority to grant equitable relief and monetary damages pursuant to 42 U.S.C. § 12117.

6. This Court has jurisdiction of this action under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. §§ 1331, 1343(a), and 1345.

7. The parties agree that venue is appropriate pursuant to 28 U.S.C. § 1391 because WMATA is headquartered in the District of Columbia.

8. The United States has authority to initiate legal proceedings to enforce Title I of the ADA through litigation. 42 U.S.C. § 12117(a).

9. WMATA is an interstate compact agency and, by the terms of its enabling legislation, an agency and instrumentality of the District of Columbia, State of Maryland, and Commonwealth of Virginia. Washington Metropolitan Area Transit Authority Compact, Pub. L. No. 89-774, 80 Stat. 1324 (1966), codified as amended at D.C. Code Ann. § 9-1107.01 *et seq.*

10. WMATA is a person within the meaning of 42 U.S.C. § 12111(7) and 42 U.S.C. § 2000e(a), an employer within the meaning of 42 U.S.C. § 12111(5) and 29 C.F.R. § 1630.2(e), and a covered entity within the meaning of 42 U.S.C. § 12111(2) and 29 C.F.R. § 1630.2(b).

III. Injunctive Relief

11. Within fifteen (15) days of entry of this Consent Decree, WMATA will disclose to the United States the identity of its staff person who has authority to address ADA compliance matters, and has the authority to address and resolve compliance issues. The designated employee will serve as the primary contact for disability-related issues that applicants and employees raise. Along with WMATA, the designated employee will be responsible for implementing the requirements of this Consent Decree.

12. WMATA and its officials, agents, and employees, will not discriminate against any employee or applicant for employment on the basis of disability in violation of Title I of the ADA and its implementing regulation.

13. WMATA will not withdraw an offer of employment based on the results of a post-offer pre-employment medical examination or medical inquiry unless it has objective evidence that the reason for withdrawing the offer is job-related and consistent with business necessity, and the job in question cannot be performed by providing the employee with a reasonable accommodation. See 42 U.S.C. §§ 12111(3), 12112(d), 12113(a) & (b). Nothing in this Consent Decree shall be construed to require WMATA to violate any Federal law or regulation.

14. WMATA shall implement policies and procedures to ensure that if WMATA considers an applicant with a disability to pose a direct threat as defined in 42 U.S.C. § 12111(3), then WMATA shall conduct an individualized assessment of the applicant's present ability to safely perform the essential functions of the job based on a reasonable medical judgment that relies on the most current medical knowledge and the best available objective evidence, as required by 29 C.F.R. § 1630.2(r). Any such individualized assessment shall require a dialogue with the applicant about the particular essential function of the job that gives rise to WMATA's concern, and what reasonable accommodations might permit the applicant to fulfill that function. The dialogue obligation is fulfilled when WMATA discloses to an applicant the particular disability and the particular essential job function that gives rise to WMATA's concern, and the applicant has a fair opportunity to respond to that concern with further explanation of the disability and/or a request for reasonable accommodation of that disability. Prior to conducting an individualized assessment of an applicant, WMATA will confer with relevant managers to

ensure that the essential job function in question is actually a function being performed by individuals working in the position in question.

15. WMATA will provide live training lasting at least ninety (90) minutes on the subject of Title I of the ADA (“ADA Training”) to all employees who conduct pre-employment, post-offer medical examinations, or who possess the final approval authority in employment decisions, including hiring or promoting employees (collectively, “supervisors”), within one (1) year from the date the DOJ notifies WMATA that the training has been approved. WMATA will provide interactive training lasting at least ninety (90) minutes on the subject of Title I of the ADA to all current and new supervisors, whether by hire or promotion, within one (1) year of the start of their employment as supervisors.

16. At least thirty (30) days before WMATA begins training the personnel identified in Paragraph 15, WMATA shall seek the United States’ approval of the ADA Training and the trainer. WMATA may fulfill this obligation by notifying the United States of the identities of trainers it is considering, and shall send to the United States by email the proposed curricula for the training as well as the resumes of the trainers under consideration. If the United States does not approve of a proposed trainer or training curriculum, then WMATA must select a different one. WMATA will maintain attendance logs of all employees who attend the ADA Training and submit these to the United States, as required by Paragraph 23 below, and such logs shall contain the names and signatures of attendees as well as the date of the training.

17. WMATA shall also provide the ADA Training to all new employees hired or promoted after the initial training who will make personnel decisions related to the ADA, including reasonable accommodation requests. The ADA Training shall be provided to these employees within one (1) year of the start of their position, and on an annual basis thereafter for the term of

this Decree. WMATA shall maintain attendance logs for all newly hired or promoted employees who attend the ADA Training.

18. Within ninety (90) days of the entry of this Consent Decree, WMATA shall draft and provide to the United States written employment policies and procedures related to the administration and use of pre-employment medical examinations or inquiries in compliance with Title I of the ADA and this Consent Decree. These policies shall extend to the implementation of an interactive process for employees and prospective employees with disabilities, as discussed in Paragraph 14. The United States may make changes to these policies that WMATA will consider for adoption, or it may suggest alternative language or other changes to those policies. Whether the United States makes changes or not, WMATA must draft and implement employment policies and procedures that comply with Title I of the ADA and this Consent Decree. WMATA shall have a standing obligation to revise these policies to stay consistent with the ADA, this Consent Decree, and guidance from the United States, and must notify the United States of any changes to such policies that occur during the period of this consent decree.

19. To implement these policies, WMATA shall: (a) integrate the new policies into its policy manuals; (b) make the new policies available on any internet or intranet websites used by WMATA to post personnel policies; (c) distribute the new policies to each of its current supervisors, administrators and officers; and (d) obtain a signed acknowledgement that each supervisor, administrator, officer, and employee has received the new policies. The signed acknowledgments shall be placed in each person's personnel file and retained for the term of this Decree. The obligations of parts (c) and (d) of this paragraph shall be fulfilled if WMATA electronically distributes the new policies to the relevant personnel and tracks personnel review of the new policies in a manner consistent with WMATA's ordinary procedures. Any such

electronic tracking must require the relevant personnel to proactively represent that they have received the policies in question.

20. Within ten (10) days from the date that WMATA implements the policies set forth in Paragraph 18, WMATA shall provide the United States with a copy of the final policies implemented by WMATA and written confirmation that the policies have been implemented in the manner prescribed in Paragraph 19.

21. During the term of this Consent Decree, all of WMATA's existing and future contracts with any medical examiners (or any entity providing medical examiners) must require the medical examiner to comply with WMATA's employment policies and procedures related to the administration and use of pre-employment medical examinations or inquiries and with the ADA. This compliance shall extend to the means by which a medical examination or inquiry of an applicant or employee is conducted. In addition, in all of its existing and future contracts with any medical examiners (or any entity providing medical examiners), WMATA shall require that each medical examiner is provided with training materials that cover the same content as the ADA Training described above in Paragraph 15, prior to the medical examiner's commencement of services for WMATA.

IV. Record Keeping and Reporting Requirements

22. For the term of this Decree, WMATA shall retain all records and documents, including electronic messages, relating to (a) the training curriculum and attendance logs for all ADA Trainings set forth in Paragraphs 15, 17, and 21; and (b) all lawsuits, written complaints, charges of discrimination, or grievances that any applicants or employees file against WMATA alleging disability discrimination.

23. Six (6) months after the entry of this Consent Decree, and every six (6) months thereafter during the term of this Consent Decree, WMATA will provide a written report (“Report”) to the United States on its efforts to comply with this Consent Decree. The Report will include, for the preceding six-month period:

- a. A specific acknowledgment that WMATA has, for the instant reporting period, complied with the requirements of the Consent Decree, including the policies set forth in Paragraph 18 and the training requirements specified in Paragraphs 15, 17, and 21, and to the extent WMATA experienced any difficulties in its efforts to comply with the Consent Decree during the six-month reporting period, those difficulties should be detailed along with a proposed plan to address any such difficulties;
- b. All copies of the attendance logs maintained for the ADA trainings; and
- c. Notification regarding any lawsuit, written complaint, charge, or grievance alleging that WMATA has violated Title I of the ADA by excluding an otherwise qualified applicant for a position because he or she has a disability, has a record of a disability, or was regarded as having a disability; or by using qualification standards or other selection criteria that are not consistent with business necessity and that screen out an applicant from being hired. This notice will include a description of the nature of the allegation, the name of the individual making the allegation, and all non-privileged documentation in WMATA’s possession that is relevant to the allegation.

24. For the term of this Consent Decree:

- a. WMATA shall provide a description to the United States of the circumstances surrounding each decision to withdraw an offer of employment based on the results of a post-offer, pre-employment medical examination or inquiry. This

description shall include the name, last known address, telephone numbers, and email addresses of the applicant (if known); the date that the employment offer was withdrawn; and the justification for the withdrawal (including any medical report generated). WMATA shall provide such a report for any applicant whose offer of employment at WMATA was rescinded for medical reasons, and for any applicant whom WMATA instructed to correct a medical issue in order to be employed, but who failed to do so for over thirty (30) days, or who failed to respond to WMATA's instructions for over thirty (30) days. WMATA shall send this description to the United States as a part of the Report referenced in Paragraph 23 of this Decree.

- b. Should Mr. Vaughan apply for a position and WMATA finds that Mr. Vaughan's disability raises a concern about his ability to perform an essential job function, WMATA will notify the United States and then engage with Mr. Vaughan in an interactive process regarding accommodations for the performance of that function, in accordance with Title I of the ADA, 29 C.F.R. § 1630.2(r), and Paragraphs 14 and 18 of this Decree.

25. All information provided by WMATA to the United States under this Consent Decree must be sent to the United States by email or overnight courier service to: Douglas Kern, DJ #205-16-19, doug.kern@usdoj.gov, or Anne S. Raish, Acting Chief, Attn: Douglas Kern, Trial Attorney, DJ #205-16-19, U.S. Department of Justice, Civil Rights Division, Disability Rights Section, 1425 New York Avenue, N.W., Fourth Floor, Washington, DC 20005.

V. Future Employment

26. Mr. Vaughan is encouraged to monitor the WMATA website for job opportunities and apply for any position for which he feels he meets the minimum requirements. As a condition of employment, Mr. Vaughan will be subject to a background check, and medical and other examinations as required for the position and consistent with the ADA.

VI. Specific Remedial Relief for Bennie Vaughan

27. WMATA will offer to pay Mr. Vaughan a lump sum monetary award of \$175,000.00. There will be no withholdings from the award for tax or other purposes, and Mr. Vaughan remains responsible for taxes owed, if any.

28. Within forty-five (45) days of the effective date of this Consent Decree, WMATA will notify Mr. Vaughan of the individual relief offered to him by this Decree by sending to Mr. Vaughan by certified mail, return receipt requested, a copy of this signed Consent Decree, along with a Notice Letter and Release of Claims and Election Form (attached as Exhibits 1 and 2, respectively). In order to accept the relief offered by WMATA, Mr. Vaughan must execute and return the Release of Claims and Election Form (Exhibit 2) to WMATA within thirty (30) days of receipt.

29. WMATA will send the United States a copy of Exhibits 1 and 2 when they are sent to Mr. Vaughan.

30. If Mr. Vaughan accepts the relief in Paragraph 27, then WMATA must pay the monetary amount of \$175,000.00 to Mr. Vaughan by check within thirty (30) days of receipt of the signed Release of Claims and Election Form from Mr. Vaughan.

31. Within fifteen (15) days of paying the monetary sum set forth in Paragraph 27 to

Mr. Vaughan, WMATA shall send the United States proof of payment and a copy of his signed Release of Claims Form.

VII. Enforcement

32. The United States may review WMATA's compliance with this Consent Decree at any time and may enforce this Consent Decree if the United States believes that any portion of this Decree has been violated by WMATA. The parties shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Consent Decree prior to bringing such matters to the Court for resolution. However, in the event the United States contends that there has been a failure by WMATA, whether willful or otherwise, to perform in a timely manner any act required by this Consent Decree or otherwise to act in conformance with any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act, and an award of any damages, costs, and reasonable attorneys' fees which may have been occasioned by the violation or failure to perform.

33. Failure by the United States to enforce any provision of this Consent Decree is not a waiver of the United States' right to enforce any provision of this Consent Decree.

34. If any part of this Consent Decree is found by any Court to be unenforceable, the other parts of the Consent Decree shall nonetheless remain in full force and effect.

35. This Consent Decree does not remedy any other potential violations of the ADA or any other law that is not specifically addressed herein, nor does it affect WMATA's continuing responsibility to comply with the ADA.

36. This Consent Decree will remain in effect for two (2) years from the date of its entry. For the term of this Decree, the Court retains jurisdiction to enforce it. The United States

may apply to the Court for such further orders as may be necessary for, or consistent with, the enforcement of this Consent Decree. The effective date of this Decree shall be the date that the Court approves and enters the Decree as a final order of the Court.

37. This Decree shall terminate, and this action shall be dismissed without further order of this Court, two (2) years from the effective date of this Decree.

VIII. Additional Provisions

38. This Consent Decree constitutes the entire ordered agreement between the parties relating to this action, *United States v. Washington Metropolitan Area Transit Authority* (D.D.C.), Department of Justice Number 205-16-19, and EEOC charge number 570-2014-01038. No other statement, promise, or agreement, either written or oral that is not contained in this Consent Decree, including its attachments, will be enforceable.

39. This Consent Decree is binding on WMATA, its agents and employees, and successors-in-interest.

40. Each party will assume its own costs and expenses, including attorneys' fees.

41. A signatory to this document in a representative capacity for WMATA represents that he or she is authorized to bind WMATA to this Consent Decree.

42. For the term of this Consent Decree, WMATA will preserve all records required by this Consent Decree.

43. WMATA shall post a copy of this Decree or any information contained herein on its website, and it shall maintain that posting for the duration of the Decree.

44. The Parties agree that, as of the effective date of this Decree, litigation is not "reasonably foreseeable" concerning the matters described in Paragraphs 1-3. To the extent that

either party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in Paragraphs 1-3, the party is no longer required to maintain such a litigation hold. Nothing in this Paragraph relieves either party of any other obligations imposed by this Decree.

45. The time frame for completion of any act required by this Decree may be modified with the mutual written consent of the Parties, except that the termination date may be extended only by Order of the Court.

SO ORDERED this 6th day of March, 2017.

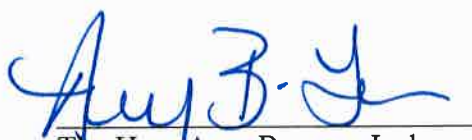

The Hon. Amy Berman Jackson
United States District Judge

Exhibit 1

BY OVERNIGHT MAIL



Mr. Bennie Vaughan
[INSERT ADDRESS]

Re: United States v. Washington Metropolitan Area Transit Authority,
Civil Action No. 17-CV-00096 (D.D.C.)
EEOC Charge No. 570-2014-01038

Dear Mr. Vaughan:

The United States District Court for the District of Columbia has entered a Consent Decree agreed to by the United States and the Washington Metropolitan Area Transit Authority (“WMATA”) to resolve the charge you filed in this matter. A copy of the Consent Decree is enclosed.

Under the Consent Decree, WMATA is offering you a payment of \$175,000.00. In order to accept WMATA’s offer, you must sign the enclosed Release of Claims (“Release”) document and return it to WMATA within thirty (30) days of your receipt of this letter. You may return the Release by mail to:

PATRICIA Y. LEE
General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth St. NW
Washington, DC 20001

The remedial relief is offered to you on the following condition: if you accept it, you will be required to release WMATA from all claims you may have against it, arising out of EEOC Charge # 570-2014-01038 and United States v. Washington Metropolitan Area Transit Authority, Civil Action No. 17-CV-00096, filed in the U.S. District Court for the District of Columbia. Within thirty (30) days of WMATA’s receipt of your executed Release, WMATA will send you a check in the amount of \$175,000.00.

If you have any questions concerning this letter or the Consent Decree, you may contact Douglas Kern with the Department of Justice at (202) 616-9664.

Michael K. Guss
Associate General Counsel

Enclosure: Copy of Executed Consent Decree; Release of Claims Document

**Washington
Metropolitan Area
Transit Authority**

600 Fifth Street, NW
Washington, D.C. 20001
202/962-1234

By Metrorail:
Judiciary Square-Red Line
Gallery Place-Chinatown
Red, Green and
Yellow Lines

A District of Columbia
Maryland and Virginia
Transit Partnership

Exhibit 2

RELEASE OF CLAIMS

U.S. v. Washington Metropolitan Area Transit Authority
Civil Action No. 17-CV-00096 (D.C.)
EEOC Charge #570-2014-01038

This Release Agreement (“Release”), effective as of _____ (“Effective Date”), is made and entered into by and between Bennie Vaughan (“Mr. Vaughan”) and Washington Metropolitan Area Transit Authority (“WMATA”).

RECITALS

- A. **WHEREAS**, Mr. Vaughan was an applicant for employment with WMATA; and
- B. **WHEREAS**, WMATA rescinded Mr. Vaughan’s conditional offer of employment; and
- C. **WHEREAS**, Mr. Vaughan, through the Equal Employment Opportunity Commission (EEOC) and the United States Department of Justice, stated an intention to pursue challenges to this denial of employment through litigation; and
- D. **WHEREAS**, in resolution of the issues between Mr. Vaughan, EEOC, the Department of Justice, and WMATA, the parties have reached an agreement via a “Consent Decree” to pay Mr. Vaughan money, and in exchange, Mr. Vaughan will release and waive the claims he has, or may have, against WMATA, as set forth more fully below.

NOW, THEREFORE, Mr. Vaughan for good and valuable consideration as set forth in the Consent Decree and this Release, the receipt and sufficiency of which are hereby acknowledged, understands and agrees to the following Release:

SECTION 1. INCORPORATION

The preamble and recitals to this Release are incorporated herein and expressly made a part hereof.

SECTION 2. RELEASE AND COVENANT NOT TO SUE BY MR. VAUGHAN

Mr. Vaughan, his heirs, executors, administrators, and assigns, for and in consideration of WMATA’s payment to Vaughan of \$175,000.00 (“Payment”) and its other promises fully incorporated in this Release, the receipt and sufficiency of which are hereby acknowledged, completely release, remise, acquit and forever discharge WMATA, and its past, present and future officers, directors, employees, agents, contractors, representatives, insurers, reinsurers, and attorneys and each of their respective predecessors, successors and assigns, of and from any and all claims, demands, damages, costs,

Exhibit 2

expenses, attorneys' fees, actions, causes of actions, lawsuits, obligations, debts and liabilities, arising from or relating to the facts in the EEOC filing, his application for employment with WMATA, and in the complaint filed in this action as of the Effective Date of this Release (collectively "Claims"). This Release includes, without limitation, Claims under Title VII of the Civil Rights Act of 1964; (42 U.S.C. § 2000 et seq.); Claims under the civil rights acts now codified at 42 U.S.C. §§ 1981, 1983, 1985 and 1986; Claims under the Americans with Disabilities Act; Claims under the Rehabilitation Act of 1973; Claims for intentional infliction of emotional distress, fraudulent or negligent misrepresentation; Claims for attorneys' fees and costs; Claims for employment; and all other Claims under any applicable law or common law related to these facts. It is expressly agreed and understood that this Release is a General Release except that it shall not release any of the following: (i) any rights or obligations under applicable law which cannot be waived or released pursuant to an agreement; and (ii) any rights or claims that arise after the Effective Date of this Release.

However, nothing in this Release prohibits or impedes Mr. Vaughan from reporting alleged violations of law by WMATA or any of the Released Parties to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any federal, state, or local regulatory or law enforcement agency or otherwise communicating directly or indirectly with or providing any information to staff of said agencies, or from receiving monetary relief for reporting alleged violations as a whistleblower.

SECTION 3. TAX CONSEQUENCES

Mr. Vaughan understands and agrees that WMATA makes no representations as to the tax consequences arising from the Payment. Further, should any taxing authority assess any taxes, penalties, or interest against Mr. Vaughn or WMATA as a result of this settlement payment, Mr. Vaughan will be solely responsible for the taxes, penalties or interest, if any, which may be owed to any governmental agency as a result of the settlement payment.

SECTION 4. NO TRANSFER OR ASSIGNMENT OF CLAIMS

Except as otherwise set forth herein, Mr. Vaughan represents and warrants that no other person or entity except himself has, or has had, any interest in the Claims, demands, obligations or causes of action referred to in this Release; that Mr. Vaughan has the sole right and exclusive authority to execute this Release and receive the sums specified in it; and that Mr. Vaughan has not sold, assigned, transferred, conveyed or otherwise disposed of any of the Claims, demands, obligations, or causes of action referred to in this Release.

SECTION 5. NO ADMISSION OF LIABILITY

This Release is entered into solely to avoid the costs, efforts, delays, and uncertainty of litigation, and is intended as a good faith compromise of a potentially disputed claim between and among the parties. Execution of, and performance of, obligations under this Release shall not be construed as an admission of liability or wrongdoing of any nature.

Exhibit 2

SECTION 6. CONSULTATION AND CONSIDERATION

Mr. Vaughan acknowledges that he has had an opportunity to review this Release, and that he has been advised and encouraged to consult with an attorney at his expense prior to signing it.

SECTION 7. COMPLETE RELEASE; AMENDMENT

This document constitutes the entirety of the Release and supersedes all prior discussions or understandings among the parties concerning release of the matters addressed herein. Except as specifically set forth in this Release, there are no representations, warranties or inducements, whether oral, written, expressed, or implied that in any way affect or condition the validity of this Release or alter its provisions. No provisions of this Release may be amended or waived except by written instrument executed by all of the parties.

SECTION 8. CONSTRUCTION OF RELEASE

This Release is the product of arms-length negotiation and shall be construed according to the rules of construction generally applicable to negotiated contracts and not according to any special rules of construction applicable to contracts of adhesion. The language in all parts of this Release shall be construed as a whole according to its meaning, and not strictly for or against any party.

SECTION 9. HEADINGS AND CAPTIONS

Headings and captions used in this Release are for convenience of reference only and shall have no legal effect or meaning in the construction or enforcement of this Release.

SECTION 10. SEVERABILITY

The invalidity or unenforceability of any particular provision in this Release shall not affect the validity or enforceability of any other provision in this Release, unless the elimination of the provision that is invalid or unenforceable causes the Release to fail of its essential purpose.

SECTION 11. COSTS AND ATTORNEYS' FEES

Mr. Vaughan, the United States, and WMATA shall be solely responsible for their own costs and expenses including, but not limited to, attorneys' fees.

SECTION 12. GOVERNING LAW AND ENFORCEMENT ACTIONS

This Release shall be governed by and shall be construed in accordance with the laws of the United States of America and the District of Columbia, as applicable. In the event of any legal action to enforce this Release, the parties knowingly and voluntarily submit to the exclusive venue and personal and subject matter jurisdiction of the U.S. District Court for the District of Columbia.

Exhibit 2

IN WITNESS WHEREOF, and in declaration under penalty of perjury per 28 U.S.C. § 1746, Mr. Vaughan executes this Release as of the dates shown below.

Bennie Vaughan

Date: _____