

Subject to Court Approval

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

CIVIL ACTION NO. 5:16-cv-00158-

CLS

v.

KEMPER MOVING SYSTEMS,

INC.

a/k/a KEMP MOVING

d/b/a TWO MEN AND A TRUCK

Defendant.

CONSENT DECREE

INTRODUCTION

This matter is before the Court for entry of a Consent Decree agreed upon by the Parties Plaintiff United States of America and Defendant Kemper Moving Systems, Inc. a/k/a Kemp Moving d/b/a Two Men and a Truck (“Kemper Moving”). The United States alleges that Kemper Moving discriminated against a client with Hepatitis C (“Client”) in violation of Title III of the Americans with Disabilities Act of 1990, as amended (“ADA”), 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28

C.F.R. Part 36, by denying the Client an equal opportunity to participate in or benefit from its goods, services, facilities, privileges, advantages, or accommodations. After review and consideration, the Court believes that entry of this Decree is in the interests of justice.

As a result of ongoing settlement discussions, the Parties hereby agree and stipulate to the Court's entry of all aspects of this Consent Decree in resolution of the United States' Complaint against Kemper Moving. The United States believes that it is in the public interest to resolve this lawsuit on mutually agreeable terms without adjudication of the factual or legal contentions asserted in this action.

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

JURISDICTION AND VENUE

1. Jurisdiction. The Parties agree that this Court has jurisdiction over this action pursuant to 42 U.S.C. § 12188, 28 U.S.C. §§ 1331 and 1345. This Court has authority to grant a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, and authority to grant equitable relief, monetary damages, and civil penalties under 42 U.S.C. § 12188(b)(2).
2. Venue. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Kemper Moving is located within this District and all of the events or omissions giving rise to this action occurred in this District.

BACKGROUND

3. Plaintiff. The Plaintiff is the United States of America. The Attorney General of the United States is authorized under Title III of the ADA to investigate complaints and conduct compliance reviews of covered entities, and to bring a civil action in any situation where the Attorney General has reasonable cause to believe that a covered

entity is engaged in a pattern or practice of disability discrimination or that any person or group of persons has been discriminated against on the basis of disability and such discrimination raises an issue of general public importance. 42 U.S.C. § 12188(b).

4. Defendant. Defendant is Kemper Moving Systems, Inc. a/k/a Kemp Moving d/b/a Two Men and a Truck (“Kemper Moving”). Kemper Moving is a for-profit company located at 8215 Stephanie Drive Southwest in Huntsville, Alabama, and primarily provides moving services in and around Huntsville, Alabama. As a private entity that owns and operates a moving service, Kemper Moving is a place of public accommodation within the meaning of Title III of the ADA. 42 U.S.C. § 12181(7); 28 C.F.R. § 36.104.

5. Factual Allegations. In this action, the United States alleges that Kemper Moving discriminated against the Client, on the basis of her disability, when it would not complete the Client's scheduled move on September 15, 2012. During the move, the company's movers discovered that the Client has Hepatitis C and would not complete her scheduled move. The Kemper Moving manager advised the on-site movers to deliver the Client's pre-loaded items to her mother's home and advised them to return to the office without completing the rest of the scheduled move.

6. Legal Contentions. Under Title III of the ADA, no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. 42 U.S.C. § 12182(a). The United States contends that Kemper Moving discriminated on the basis of disability in violation of Title III by the following:

(a) denying, on the basis of disability, the opportunity of an individual or class of individuals to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of Kemper Moving, in violation of 42

U.S.C. § 12182(b)(1)(A)(i), and its implementing regulation, 28 C.F.R. § 36.202(a);

(b) failing to afford an individual or class of individuals, on the basis of disability, with the opportunity to participate in or benefit from the services, facilities, privileges, advantages, or accommodations of Kemper Moving that is equal to that afforded to other individuals, in violation of 42 U.S.C. § 12182(b)(1)(A)(ii), and its implementing regulation, 28 C.F.R. § 36.202(b);

TERMS OF AGREEMENT

7. **Non-Discrimination Policy.** Effective immediately, Kemper Moving will not discriminate against any individual on the basis of disability, including Hepatitis C. Kemper Moving will not exclude any individual, on the basis of disability, including Hepatitis C, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. Kemper Moving shall not deny an individual on the basis of disability, including Hepatitis C, the opportunity to participate in or benefit from its goods, services, facilities, privileges, advantages, or accommodations.
8. **Designation of ADA Compliance Official.** Within thirty (30) calendar days of entry of this Consent Decree, Kemper Moving shall designate or hire an ADA Compliance Official who shall have responsibility to review all disability-related decisions related to the provision of services at Kemper Moving and to ensure that the policies, practices, and procedures set forth in this Consent Decree are adopted and fully implemented.
9. **Changes to Policies and Procedures.** Within forty-five (45) calendar days of entry of this Consent Decree, Kemper Moving shall submit to the United States, for review and approval, draft written policies, practices, and procedures regarding Kemper Moving's obligations under Title III of the ADA, each of which is to be adopted and

implemented at Kemper Moving within five (5) business days following the United States' approval. The policies and procedures shall, at a minimum, include:

- a. Non-Discrimination Policy, adopted pursuant to Paragraph 7 of this Consent Decree. The Non-Discrimination Policy will include the contact information for the ADA Compliance Official and will be posted in the Kemper Moving business office, storefront, in a prominent location on the homepage of the Kemper Moving d/b/a Two Men and a Truck website at (<http://www.twomenandatruckhuntsville.com/>) and printed on all brochures and promotional materials during the term of this Consent Decree; and
 - b. Policies and procedures to ensure that Kemper Moving documents each decision to deny a client or potential client with a disability the full and equal enjoyment of services, facilities, or privileges offered by Kemper Moving.
10. Training. Within sixty (60) calendar days following the entry of this Consent Decree, and annually thereafter during the term of this Consent Decree, Kemper Moving shall distribute to each person working for, on behalf of, or in association with Kemper Moving:
- A. The Non-Discrimination Policy adopted pursuant to Paragraph 7;
 - B. Written notification and instructions for complying with the documentation obligation established in Paragraph 9(b);
 - C. A written directive instructing all persons working for, on behalf of, or in association with Kemper Moving that it is against the policy of Kemper Moving to discriminate against clients (or potential clients) with disabilities, including Hepatitis;
 - D. Individuals who begin working for, on behalf of, or in association with Kemper Moving after the initial 60-day time frame set out herein shall be provided with

the materials referenced herein within thirty (30) days of their start date; and

E. Kemper Moving will maintain records reflecting the date that each employee received the policies referenced herein. Kemper Moving may keep this log in an electronic format. Copies of such log shall be provided to the United States within 21 days of any written request for it.

11. Monetary Relief. Within five (5) calendar days of Kemper Moving's receipt of the completed release, attached hereto as Attachment A, Kemper Moving will pay the sum of ten thousand dollars (\$10,000) in compensatory damages to the individual discussed in the United States' Complaint in this matter, by sending a check or money order made payable to the Complainant to counsel for the United States by overnight delivery.

12. Civil Penalty. Within five (5) days after the date of entry of this Consent Decree, Defendant shall send the United States a check or money order for three thousand five hundred dollars (\$3,500) payable to the order of the United States Treasury as a civil penalty pursuant to 42 U.S.C. § 12188(b)(2)(C) and 28 C. F.R. § 36.504(a)(3). Defendant will deliver the check or money order to counsel for the United States by overnight delivery, prepaid.

13. Consideration. In consideration of, and consistent with all the terms of this Consent Decree, the United States agrees to refrain from undertaking further investigation into or pursuing further legal proceedings regarding all matters contained within this Decree except as provided in Paragraph 15, below.

14. Reporting.

A. Within sixty (60) calendar days after the date of entry of this Consent Decree, on each yearly anniversary of the date of entry of this Consent Decree, and at least three (3) months before the expiration date of this Consent Decree, Kemper

Moving will submit a written report to the United States describing all actions relating to its compliance with this Consent Decree.

- B. All reports required pursuant to this Consent Decree shall be delivered to the undersigned counsel via electronic mail at Felicia.Sadler@usdoj.gov, with a copy to Jana.Erickson@usdoj.gov or other person specified by the Department.
- C. Kemper Moving will immediately notify the United States of each allegation or complaint, whether oral or written, alleging that Kemper Moving or any of its agents or employees discriminated on the basis of disability against any individual with a disability in violation of the ADA. Kemper Moving will send these notifications to the United States via electronic mail to Felicia.Sadler@usdoj.gov, with a copy to Jana.Erickson@usdoj.gov or other person specified by the United States within fifteen (15) days of the allegation or complaint and will include, at a minimum, the following: (1) the name, address, and other contact information of the individual making the allegation or complaint; (2) a summary of the facts involved in the allegation or complaint; (3) all documents relating to the allegation, complaint, or underlying conduct that is claimed to be discriminatory; and (4) a description of any actions that Kemper Moving has taken to address the allegation or complaint. Throughout the term of this Consent Decree, Kemper Moving will retain records of all such allegations and complaints, including documents relating in any way to the facts and contentions at issue in the allegations and complaints.

15. Enforcement of the Consent Decree.

- A. Effective Date and Term of the Decree. This Decree shall become effective as of the date that it is entered by the Court and shall remain in effect for two (2) years from the effective date. The Court shall retain jurisdiction for the duration of the Consent Decree to enforce the terms of the Consent Decree. Any time

limits for performance imposed by this Consent Decree, other than the termination of the Consent Decree, may be extended by the mutual written agreement of the United States and Defendant without Court approval. Any party may apply to the Court for such further orders as may be necessary for, or consistent with, the enforcement of this Consent Decree.

- B. Notice of Non-Compliance. The United States may review Kemper Moving'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 Kemper Moving. If the United States believes that Kemper Moving has violated any portion of this Consent Decree, it will notify Kemper Moving and attempt to resolve the violations in good faith. The United States will give Kemper Moving thirty (30) calendar days after notification to cure any violation prior to instituting Court action.
- C. Retention of Jurisdiction. The Court shall retain continuing jurisdiction for the duration of the Consent Decree to enforce the terms of the Consent Decree. 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.
- D. Non-Waiver. Failure by the United States to enforce any provision of this Consent Decree shall not be construed as a waiver of its right to enforce any other provisions of the Consent Decree.
- E. Severability. If any term of this Consent Decree is determined by any court to be unenforceable, the other terms of this Consent Decree shall nonetheless remain in full force and effect.
- F. Binding Nature of Consent Decree. This Consent Decree is binding on Kemper Moving, including all principals, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, assigns, and

legal representatives thereof. In the event that Kemper Moving seeks to sell, transfer, or assign all or part of its interest during the term of this Consent Decree, as a condition of sale, transfer, or assignment, Kemper Moving will obtain the written accession of the successor or assignee to any obligation remaining under this Consent Decree for the remaining term of this Consent Decree.

G. Authority. The signatories represent that they have the authority to bind the respective parties identified below to the terms of this Consent Decree.

H. Entire Agreement. This Consent Decree constitutes the entire agreement between the United States and Kemper Moving on the matters raised herein and no other statement or promise written or oral, made by any party or agents of any party, that is not contained in this written Consent Decree shall be enforceable.

I. Other Violations. This Consent Decree does not purport to remedy any other potential violations of the ADA or any other law. This Consent Decree does not affect Kemper Moving's continuing responsibility to comply with all aspects of the ADA.

J. Subsequent Violations. By consenting to entry of this Consent Decree, the United States and Defendant agree that if Defendant engages in any future violation of the ADA, then that violation is a "subsequent violation" pursuant to 42 U.S.C. § 12188(b)(2)(C) and 28 C.F.R. § 36.504(a)(3).

K. Preservation of Records. For the term of this Consent Decree, Kemper Moving will preserve all records related to this Consent Decree.

SO ORDERED this ___ day of January, 2016.

UNITED STATES DISTRICT
JUDGE

By their signatures below, the Parties respectfully consent to the entry of all aspects of this Consent Decree.

**FOR THE UNITED STATES OF
AMERICA:**

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ATTORNEY TO BE NOTICED

Date: 1/28/16

**FOR KEMPER MOVING
SYSTEMS, INC. A/K/A/ KEMP
MOVING D/B/A TWO MEN
AND A TRUCK:**

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/s/ Felicia L. Sadler

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Date: 1-13-16

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