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## EEOC v. Trugreen Landcare

Judge Roger L. Hunt

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## EEOC v. Trugreen Landcare

### Keywords

EEOC, Debrah Bray, Trugreen Landcare, 2:05-cv-01203-RLH-PAL, Consent Decree, Retaliation, Sexual Harassment, Subjective Decision Making, Sex, Female, Service, Employment Law, Title VII

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TRUGREEN LANDCARE

17 **UNITED STATES DISTRICT COURT**  
18 **DISTRICT OF NEVADA**

19 EQUAL EMPLOYMENT  
20 OPPORTUNITY COMMISSION,

21 Plaintiff,

22 v.

23 TRUGREEN LANDCARE,

24 Defendant.  
25  
26  
27  
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Case No. 2:05-CV-01203-RLH-PAL

**ORDER** - **CONSENT DECREE;**

I.

**INTRODUCTION**

1  
2  
3 Plaintiff U.S. Equal Employment Opportunity Commission (the “EEOC” or  
4 “Commission”) and Defendant TruGreen LandCare hereby stipulate and agree to  
5 entry of this Consent Decree to resolve the Commission's complaint, filed under  
6 Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.  
7 (“Title VII”), alleging that Charging Party Debrah Bray (hereafter “Charging  
8 Party”) was subjected to unlawful sex-based harassment. The Commission's  
9 complaint further alleges that Charging Party was subjected to unlawful retaliation  
10 in violation of Title VII.

II.

**PURPOSES AND SCOPE OF THE CONSENT DECREE**

11  
12 A. The parties to this Consent Decree ("Decree") are the EEOC and  
13 TruGreen LandCare. The scope of this Decree encompasses TruGreen  
14 LandCare's branches located in Las Vegas, Nevada. This Decree shall be  
15 binding on and enforceable against TruGreen LandCare, and its successors and  
16 assigns.

17 B. The parties have entered into this Decree for the following purposes:

- 18 1. To provide appropriate monetary and injunctive relief;
- 19 2. To ensure that TruGreen LandCare's employment practices in its Las  
20 Vegas branches comply with federal law;
- 21 3. To ensure a work environment free from sex-based discrimination and  
22 retaliation based on complaints of sex-based discrimination  
23 (“retaliation”) in the Las Vegas branches;
- 24 4. To ensure training for TruGreen LandCare's managers and employees  
25 in the Las Vegas branches with respect to their obligations under Title  
26 VII; and
- 27 5. To provide an appropriate and effective mechanism for handling

1 sex-based discrimination and retaliation complaints in the Las Vegas  
2 branches.

3 This Decree resolves all claims the EEOC has brought or could have  
4 brought against TruGreen LandCare arising out of this Complaint. This Decree  
5 does not constitute an adjudication on the merits of the allegations of the  
6 Complaint and is not, and does not constitute, an admission of wrongdoing on  
7 the part of TruGreen LandCare.

8 **III.**

9 **RELEASE OF CLAIMS**

10 A. This Decree fully and completely resolves all issues, claims and allegations  
11 by the EEOC against TruGreen LandCare that are, or could have been, raised in  
12 the Complaint filed in this action in the United States District Court, District of  
13 Nevada on September 30, 2005, captioned *U.S. Equal Employment Opportunity*  
14 *Commission v. TruGreen LandCare*, Case No. 2:05-CV-01203-RLH-PAL (the  
"Complaint").

15 B. Nothing in this Decree shall be construed to preclude any party from  
16 bringing suit to enforce this Decree in the event that any party hereto fails to  
17 perform the promises and representations contained herein.

18 C. Nothing in this Decree shall be construed to limit or reduce TruGreen  
19 LandCare's obligation to comply fully with Title VII or any other federal  
20 employment statute.

21 D. This Decree in no way affects the EEOC's right to bring, process,  
22 investigate or litigate other charges that may be in existence or may later arise  
23 against TruGreen LandCare in accordance with standard EEOC procedures.

24 **IV.**

25 **JURISDICTION**

26 A. The Court has jurisdiction over the parties and the subject matter of this  
27 lawsuit. The Complaint asserts claims that, if proven, would authorize the Court to

1 grant the equitable relief set forth in this Decree. The terms and provisions of this  
2 Decree are fair, reasonable and just. This Decree conforms with the Federal Rules  
3 of Civil Procedure and Title VII and is not in derogation of the rights or privileges  
4 of any person.

5 B. The Court shall retain jurisdiction of this action during the duration of the  
6 Decree for the purposes of entering all orders, judgments and decrees that may be  
7 necessary to implement the relief provided herein.

8 **V.**

9 **EFFECTIVE DATE AND DURATION OF DECREE**

10 A. The provisions and agreements contained herein are effective immediately  
11 upon the date which this Decree is entered by the Court ("the Effective Date").

12 B. Except as otherwise provided herein, this Decree shall remain in effect for  
13 two (2) years after the Effective Date.

14 **VI.**

15 **MODIFICATION AND SEVERABILITY**

16 A. This Decree constitutes the complete understanding of the parties with  
17 respect to the matters contained herein. No waiver, modification or amendment  
18 of any provision of this Decree will be effective unless made in writing and  
19 signed by an authorized representative of each of the parties.

20 B. If one or more provisions of the Decree are rendered unlawful or  
21 unenforceable, the parties shall make good faith efforts to agree upon appropriate  
22 amendments to this Decree in order to effectuate the purposes of the Decree. In  
23 any event, the remaining provisions will remain in full force and effect unless the  
24 purposes of the Decree cannot, despite the parties' best efforts, be achieved.

25 C. By mutual agreement of the parties, this Decree may be amended or  
26 modified in the interests of justice and fairness in order to effectuate the  
27 provisions of this Decree.

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**VII.**

**COMPLIANCE AND DISPUTE RESOLUTION**

A. The parties expressly agree that if the Commission has reason to believe that TruGreen LandCare has failed to comply with any provision of this Consent Decree, the Commission may bring an action before this Court to enforce the Decree. Prior to initiating such action, the Commission will notify TruGreen LandCare and its legal counsel of record, in writing, of the nature of the dispute. This notice shall specify the particular provision(s) that the Commission believes TruGreen LandCare has breached. Absent a showing that the delay will cause irreparable harm, TruGreen LandCare shall have thirty (30) days after receipt of such written notice to attempt to resolve or cure the breach.

B. The parties agree to cooperate with each other and use their best efforts to resolve any dispute referenced in the EEOC notice.

C. After thirty (30) days have passed with no resolution or agreement to extend the time further, the Commission may petition this Court for resolution of the dispute, seeking all available relief, including an extension of the term of the Decree for such period of time as TruGreen LandCare is shown to be in breach of the Decree.

**VIII.**

**MONETARY RELIEF**

In settlement of this lawsuit, TruGreen LandCare shall pay a total of \$100,000 to resolve this action. The EEOC has designated \$5,000 of the monetary relief as backpay and \$95,000 of the monetary relief as compensatory damages. For the portion of the monetary relief designated as backpay, Debbrah Bray is responsible for payment of the employee's share of FICA and other employment taxes normally deducted from payroll checks and TruGreen shall deduct and withhold such amounts from the backpay amount. TruGreen remains responsible for the employer share of payroll deductions on this backpay amount. Debbrah

1 Bray shall be solely responsible for her portion of taxes payable on the  
2 compensatory damages, if any.

- 3 A. After receipt of a Form W-9 signed by Debbrah Bray, TruGreen  
4 LandCare shall forward, via certified mail, two checks payable to  
5 Debbrah Bray within ten (10) days of the effective date of this Consent  
6 Decree; one check in the amount of \$95,000 and a second check in the  
7 gross amount of \$5,000 less normal payroll withholdings as set forth  
8 herein. For the amount designated as compensatory damages, no  
9 withholding will be made. With respect to the compensatory damages  
10 paid to Debbrah Bray, TruGreen LandCare shall prepare and distribute a  
11 1099 tax reporting form to Debbrah Bray and shall make appropriate  
12 reports to the Internal Revenue Service and other tax authorities.
- 13 B. Within three (3) business days of the issuance of the settlement checks,  
14 TruGreen LandCare shall submit a copy of the settlement checks and  
15 related correspondence to the Regional Attorney, Anna Y. Park, U.S.  
16 Equal Employment Opportunity Commission, 255 East Temple Street, 4<sup>th</sup>  
17 Floor, Los Angeles, CA 90012.

18 **IX.**

19 **GENERAL INJUNCTIVE RELIEF**

20 **A. Non-Discrimination**

21 1. Discrimination Based on Sex

22 TruGreen LandCare and its successors and assigns hereby agree that they do  
23 not and will not: (a) discriminate or tolerate discrimination against persons on the  
24 basis of sex in the terms and conditions of employment; (b) engage in or be a party  
25 to any action, policy or practice that is intended or is known to them to have the  
26 effect of discriminating against any employee on the basis of sex; and (c) create,  
27 facilitate or permit the existence of a work environment that is hostile to female  
28 employees.





1           3.     ensuring that managerial and human resources employees assigned  
2 to TruGreen LandCare’s Las Vegas Branches are trained in accordance with  
3 Section IX (E) of this Decree;

4           4.     monitoring TruGreen LandCare’s investigation of all complaints of  
5 sex-based discrimination and retaliation at TruGreen LandCare’s Las Vegas  
6 branches to ensure compliance with Title VII;

7           5.     ensuring that TruGreen LandCare properly communicates with  
8 complainants at TruGreen LandCare’s Las Vegas branches regarding the  
9 complaint procedure, status of the complaint investigation, results of the  
10 investigation, and remedial action taken, if any;

11           6.     ensuring that TruGreen LandCare's reports required by this Decree  
12 are accurately compiled and timely submitted;

13           7.     ensuring that TruGreen LandCare's Las Vegas branches hold  
14 employees accountable for sex-based discrimination and retaliation and hold  
15 managers accountable when responding to complaints of sex-based discrimination  
16 and retaliation;

17           8.     ensuring that TruGreen LandCare maintains records during the term  
18 of the Consent Decree for all complaints of sex-based discrimination and  
19 retaliation at TruGreen LandCare’s Las Vegas branches;

20           9.     further ensuring compliance with the terms of this Decree; and

21           10.    preparing a brief annual report on TruGreen LandCare's Las Vegas  
22 branches’ compliance with this Decree.

23           The Compliance Representative shall ensure compliance with the foregoing  
24 provisions for the term of the Decree and shall certify to the EEOC that the  
25 company has complied with each of the foregoing provisions on an annual basis.

26 **D.   Memorandum Concerning Sex-Based Discrimination and Retaliation**

27           TruGreen LandCare shall, within ten (10) business days after the Effective  
28 Date, provide a copy to the Commission of a memorandum on sex-based

1 discrimination and retaliation that shall include:

- 2 1. A clear explanation of prohibited conduct;
- 3 2. Assurance that employees who make complaints of sex-based  
4 discrimination or provide information related to such complaints will be protected  
5 against retaliation;
- 6 3. A clearly described complaint process that provides accessible  
7 avenues of complaint with contact information including name (if applicable),  
8 address, and telephone number of persons both internal (*i.e.*, human resources) and  
9 external to TruGreen LandCare (*i.e.* the EEOC and Nevada Equal Rights  
10 Commission (“NERC”)) to whom employees may report complaints of sex-based  
11 discrimination and retaliation, including a written statement that the employee may  
12 report the alleged discriminatory or retaliatory behavior to designated persons  
13 outside their chain of management;
- 14 4. The current toll-free number where employees may report complaints  
15 of sex-based discrimination and retaliation;
- 16 5. Assurance that the employer will protect the confidentiality of  
17 sex-based discrimination and retaliation complaints to the extent possible;
- 18 6. Assurance that the complaint process provides a prompt, thorough,  
19 and impartial investigation and follow-up with the complainant;
- 20 7. Assurance that the complainant will be informed regarding the  
21 status of the complaint/investigation, results of the investigation, and any  
22 remedial action taken; and
- 23 8. Assurance that TruGreen LandCare will take “immediate and  
24 corrective action” within the meaning of the applicable Title VII case law if it  
25 determines that sex-based discrimination and/or retaliation has occurred; and
- 26 9. Assurance that TruGreen LandCare will hold employees accountable  
27 for sex-based discrimination and/or retaliation and hold managers accountable  
28 when responding to complaints of sex-based discrimination and retaliation;



1 include training on how to properly respond to complaints of sex-based  
2 harassment, how to take preventive and corrective measures against sex-based  
3 harassment, and how to recognize and prevent sex-based harassment and  
4 retaliation.

5 3. Training for the human resources employee(s) assigned to the Las  
6 Vegas branches shall additionally include training on how to properly investigate  
7 complaints of sex-based harassment and retaliation.

8 4. For the remainder of the term of this Decree, all new  
9 managerial/supervisory and human resources employees and all employees  
10 recently promoted from a staff/hourly to a managerial position at the Las Vegas  
11 branches shall be required to attend the managerial/supervisory training, as  
12 appropriate, within sixty (60) days of hire or promotion.

13 5. After the initial training as specified above, all managerial/supervisory  
14 and human resources employees at the Las Vegas branches shall receive the  
15 training at least annually thereafter for the remainder of the term of this Decree.

16 6. All employees required to attend such training shall verify their  
17 annual attendance in writing.

18 7. Within forty-five (45) days after the Effective Date, TruGreen  
19 LandCare shall submit to the EEOC a description of the training to be provided  
20 and an outline of the curriculum developed for the trainees. TruGreen LandCare  
21 shall give the EEOC a minimum of ten (10) business days' advance written notice  
22 of the date, time and location of each training program provided pursuant to this  
23 Decree, and agrees that an EEOC representative may attend any such training  
24 program.

25 **F. Complaint Procedure**

26 During the term of this Decree, TruGreen LandCare agrees that its Las  
27 Vegas branches will maintain and adhere to internal policies which set forth the  
28 procedures to follow in handling complaints of sex-based discrimination and

1 retaliation.

2 1. TruGreen LandCare shall:

3 a. publicize the steps employees should take to bring a complaint  
4 of discrimination or retaliation via inclusion of such information in its  
5 employee handbook, the memorandum referenced in Section IX.D. herein  
6 and through the training referenced in Section IX.E. herein;

7 b. track and collect all complaints filed thereunder;

8 c. investigate and resolve such complaints in a timely and  
9 effective manner; and

10 d. retain records regarding resolution of all such complaints.

11 2. The internal complaint procedure should incorporate the following  
12 elements:

13 a. A statement describing how investigations will be conducted  
14 directed to those conducting the investigation;

15 b. A statement that investigations should be promptly  
16 commenced and thoroughly investigated by a TruGreen LandCare employee  
17 trained to conduct such investigations who is not connected with the complaint;

18 c. A statement that an investigation should include interviews  
19 of the complainant, alleged offender, and third-party witnesses as appropriate,  
20 including if complainant and alleged offender present inconsistent stories;

21 d. A statement that a written record of all investigatory steps,  
22 and any findings and conclusions, and any actions taken should be maintained;

23 e. Provision for the reasonably prompt resolution of such  
24 complaints;

25 f. A statement that the confidentiality of the complaint and  
26 investigation shall be maintained to the extent possible;

27 g. A statement that appropriate communication of the  
28 final conclusions of the investigation provided to the complainant should

1 be made; and

2 h. the contact information for the Compliance Representative to  
3 whom employees may report if they are dissatisfied with the results of an  
4 investigation.

5 3. The Internal Complaint Procedure is not intended to supplant the  
6 right of any employee to file a charge or complaint of discrimination or retaliation  
7 under any available municipal, state, or federal law.

8 **X.**

9 **RECORD KEEPING AND REPORTING**

10 **A. Record Keeping**

11 During the term of the Decree, TruGreen LandCare shall establish a  
12 record-keeping procedure that provides for the tracking of complaints of sex-  
13 based discrimination at the company's Las Vegas branches and the monitoring  
14 of such complaints to prevent retaliation. The records to be maintained shall  
15 include:

16 1 All documents generated in connection with any complaint,  
17 investigation into, or resolution of every complaint of sex-based  
18 discrimination or retaliation at the company's Las Vegas branches for the  
19 duration of the Decree;

20 2. All forms acknowledging employees' receipt of TruGreen  
21 LandCare's Memorandum Concerning Sex-Based Discrimination and  
22 Retaliation;

23 3. All documents verifying the occurrence of all training sessions and  
24 names and positions of all attendees for each session as required under this  
25 Decree; and

26 4. Documents tracking and analyzing complaints filed against the same  
27 employee and location, if any.

28 The foregoing documents shall be summarized in the semi-annual reports

1 set forth below.

2 **B. Reporting**

3 In addition to the notices to the EEOC specified above, during the term of  
4 the Decree, TruGreen LandCare shall provide, without assertion of the attorney-  
5 client privilege or attorney work product, the following reports to the EEOC in  
6 writing, by mail or facsimile:

7 1. Within ninety (90) days after the Effective Date, TruGreen LandCare  
8 shall submit to the EEOC an initial report which contains:

- 9 (a) A copy of the Memorandum Concerning Sex-Based  
10 Discrimination and Retaliation for the Las Vegas branches;  
11 (b) A summary of the procedures and record-keeping methods for  
12 tracking sex-based discrimination and retaliation complaints and  
13 monitoring such complaints at the Las Vegas branches;  
14 (c) A statement confirming that the required notices pertaining to this  
15 Decree and the Memorandum Concerning Sex-Based Discrimination  
16 and Retaliation have been posted at the Las Vegas branches; and  
17 (d) Copies of all employee acknowledgment forms indicating receipt  
18 of the Memorandum Concerning Sex-Based Discrimination and  
19 Retaliation.

20 2. TruGreen LandCare shall also provide the following reports  
21 semi-annually throughout the term of this Decree:

- 22 (a) The attendance lists of all attendees for all training sessions  
23 required under this Decree that took place during the previous six  
24 months;  
25 (b) Acknowledgments of receipt of the Memorandum Concerning  
26 Sex-Based Discrimination and Retaliation for all employees hired at  
27 the Las Vegas branches during the previous six months;  
28 (c) A summary of all sex-based discrimination and/or retaliation



1 complaints at the Las Vegas branches during the period of the Decree.  
2 The summary shall include the following information: (i) a  
3 description of the nature of the complaint, including the identities of  
4 the parties; (ii) the date the complaint was received; (iii) the date the  
5 complaint was resolved; (iv) TruGreen LandCare's findings; and (v) a  
6 summary of any corrective action and/or discipline taken in response  
7 to the complaint. The summary shall include the tracking of multiple  
8 complaints by or against a single employee, if any; and

9 (d) TruGreen LandCare shall provide a report to the EEOC detailing  
10 any changes to the complaint procedures set forth in Section IX (F) of  
11 this Decree.

12 (e) The Compliance Representative shall audit each internal  
13 complaint investigation at the Las Vegas branches to ensure that such  
14 complaints were handled in accordance with the terms of the Consent  
15 Decree, especially with respect to multiple complaints received  
16 regarding the same individual, if any. The semi-annual report shall  
17 include information on the results of the audit.

18 (f) An EEOC attorney shall review the semi-annual reports on  
19 behalf of the EEOC.

20 **XI.**

21 **COSTS OF ADMINISTRATION AND IMPLEMENTATION**  
22 **OF CONSENT DECREE**

23 TruGreen LandCare shall bear all costs associated with its administration  
24 and implementation of its obligations under this Consent Decree.

25 **XII.**

26 **COSTS AND ATTORNEYS' FEES**

27 Each party shall bear its own costs of suit and attorneys' fees.  
28

XIII.

MISCELLANEOUS PROVISIONS

A. During the term of this Consent Decree, TruGreen LandCare shall provide any potential successor-in-interest with a copy of this Consent Decree within a reasonable time of thirty (30) days or less prior to the execution of any agreement for acquisition or assumption of control of any or all of TruGreen LandCare's facilities, or any other material change in corporate structure, and shall simultaneously inform the EEOC of same.

B. During the term of this Consent Decree, TruGreen LandCare and its successors shall assure that each of its managers and supervisors at the Las Vegas branches are aware of any term(s) of this Decree which may be related to his/her job duties.

C. Unless otherwise stated, all notices, reports and correspondence required under this Decree shall be delivered to the attention of the Regional Attorney, Anna Y. Park, U.S. Equal Employment Opportunity Commission, Los Angeles District Office, 255 E. Temple St., 4<sup>th</sup> Fl., Los Angeles, California 90012.

D. The parties agree to entry of this Decree and judgment subject to final approval by the Court.

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

Dated: 10/11/07

By: 

Anna Y. Park  
Attorney for Plaintiff

TRUGREEN LANDCARE

Dated: 9-27-07

By: 

Patrick Hicks  
Attorney for Defendant

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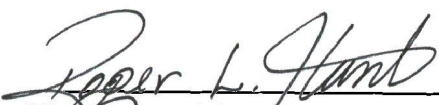
**ORDER**

**GOOD CAUSE APPEARING:**

The Court hereby retains jurisdiction and the provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is **HEREBY ORDERED.**

**IT SO ORDERED.**

Dated: October 2, 2007

  
\_\_\_\_\_  
The Honorable Roger L. Hunt  
Chief United States District Judge

1 **EXHIBIT "A"**

2 **NOTICE TO ALL EMPLOYEES**

3  
4 This Notice is being posted pursuant to a Consent Decree entered by the federal court in  
5 *Equal Employment Opportunity Commission v. TruGreen LandCare*, Case No. 2:05-CV-01203,  
settling a lawsuit filed by the Equal Employment Opportunity Commission ("EEOC").

6 In its suit, the EEOC alleged that TruGreen LandCare ("TruGreen") subjected Charging  
7 Party to harassment and retaliation because of her sex, Female, in violation of Title VII of the  
Civil Rights Act of 1964 ("Title VII"). TruGreen denies the allegations.

8 To resolve this lawsuit the parties have entered into a Consent Decree which includes  
9 monetary relief and injunctive relief, requiring that, among other things, TruGreen:

- 10 1) provide periodic reports to the EEOC covering TruGreen's obligations under the  
11 Consent Decree for training, all sex-based discrimination and/or retaliation complaints  
12 the Las Vegas Branches of TruGreen receive, and any changes to TruGreen's Complaint  
13 Procedures; and  
14 2) provide training to its employees covering sex-based harassment, retaliation, and  
procedures for reporting and handling complaints of sex-based harassment and  
retaliation.

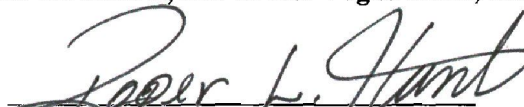
15 The EEOC enforces the federal laws against discrimination in employment on the basis  
16 of disability, race, color, religion, national origin, sex, pregnancy, and age. If you believe you  
17 have been discriminated against, you may contact the EEOC at 333 S. Las Vegas Blvd., Suite  
18 8112, Las Vegas, NV 89101, (702)388-5099; or the Nevada Equal Rights Commission; 1515 E.  
Tropicana Ave., Las Vegas, NV 89119, (702)486-7161. The EEOC charges no fees and has  
employees who speak languages other than English.

19 No action may be taken against you by any management official of TruGreen for: (1)  
20 opposing discriminatory practices made unlawful by federal law, (2) filing a charge or assisting  
21 or participating in the filing of a charge of discrimination, or (3) assisting or participating in an  
22 investigation brought under Title VII. Should any such retaliatory actions be taken against you,  
you should contact the EEOC or NERC at the address listed above.

23 **THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

24 **This Notice must remain posted for two (2) years from the date below and must not be**  
25 **altered, defaced or covered by any other material. Any questions about this Notice or**  
26 **compliance with its terms may be directed to: EEOC, 333 S. Las Vegas Blvd., Suite 8112,**  
**Las Vegas, NV or call (702)388-5099.**

27 Date: October 2, 2007

28   
U.S. District Judge