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Equal Employment Opportunity Commission v. Scion Dental, Inc.,

Judge David E. Jones

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Equal Employment Opportunity Commission v. Scion Dental, Inc.,

Keywords

EEOC, Scion Dental, Inc., 16-CV-1208, Consent Decree, Disparate Treatment, Termination, Race, African American, Healthcare, Employment Law, Title VII

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

v.

Case No. 16-CV-1208

SCION DENTAL, INC.,

Defendant.

CONSENT DECREE AND ORDER

On September 7, 2016 the Equal Employment Opportunity Commission (“EEOC”) filed this action against defendant Scion Dental, Inc. (“Scion”), alleging that Scion violated Title VII of the Civil Rights Act of 1964, 42 U.S. C. § 2000e *et seq.*, by denying employment to an African-American woman, Nartisha Leija, on the basis of her race and ending her employment at Scion on the basis of her race. The Complaint sought injunctive relief, back pay, front pay, compensatory, and punitive damages for Ms. Leija. Scion filed an Answer denying the allegations asserted by the EEOC and asserted that its actions with respect to Ms. Leija were legitimate and non-discriminatory.

Scion states that it is entering into this Decree to avoid further litigation. The EEOC and Scion have agreed to this Consent Decree to fully and finally resolve all claims the EEOC raised in its Complaint in Civil Action No. 2:16-cv-1208 (E.D. Wis.) This Consent Decree shall be final and binding on the EEOC and on Scion,

Scion's directors, officers, agents, employees, successors, and assigns, and on all persons in active concert or participation with Scion.

This Decree constitutes the complete and exclusive agreement between the EEOC and Scion with respect to the matters referenced herein.

Having carefully examined the terms and provisions of this Consent Decree, and based on the pleadings, record, and stipulation of the parties, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

- A. This Court has jurisdiction over the subject matter of this action and over the parties for the purposes of entering and enforcing this Consent Decree.
- B. The terms of this Consent Decree are adequate, fair, reasonable, equitable, and just.
- C. This Consent Decree conforms with the Federal Rules of Civil Procedure and is not in derogation of the rights or privileges of any person. The entry of this Consent Decree will further the objectives of Title VII and will be in the best interests of Nartisha Leija, for whom EEOC seeks relief, and the public.
- D. This Consent Decree shall fully and finally resolve and adjudicate on the merits with prejudice all claims and facts which were raised by EEOC on behalf of Nartisha Leija in its Complaint in Civil Action No. 2:16-cv-1208 (E.D. Wis.) arising out of the discrimination charges filed by Ms. Leija against Scion, EEOC Charge No. 443-2015-00801 and EEOC Charge No.

443-2015-00867. The parties agree that this Consent Decree does not resolve any other charges or claims.

E. Neither party admits the allegations or defenses of the other party. Any obligations or requirements of Scion contained in this Consent Decree shall apply only to Scion, and not to any affiliate company of Scion.

RELIEF PROVISIONS

1. **Compliance with Title VII.**

This Consent Decree enjoins Scion from engaging in any practice that discriminates on the basis of race in hiring in violation of Title VII. Nothing in this Consent Decree shall be construed to limit Scion's obligations under Title VII or EEOC's authority to process or litigate any charge of discrimination which may be filed against Scion in the future, or Scion's ability to defend against any such claim.

2. **No Retaliation.**

Scion shall not engage in, implement, or permit any action, policy, or practice with the purpose of retaliating against any current or former applicant or employee because she or he opposed any action or practice which is unlawful under Title VII. Scion shall not retaliate against individuals who filed a charge of discrimination alleging any such action or practice; testified or participated in any manner in any investigation (including, but not limited to, any internal investigation undertaken by Scion), proceeding, or hearing relating to any claim of employment discrimination in this case or otherwise; or who was identified as a possible witness

in this action; asserted any rights under this Consent Decree; or sought and/or received any monetary and/or non-monetary relief in accordance with the law.

3. Term of the Decree.

This Consent Decree shall be filed in the United States District Court for the Eastern District of Wisconsin, and shall continue in effect until December 12, 2020 (the "Term of the Decree"). Any application by any party to modify or vacate the Consent Decree during the Term of the Decree shall be made by motion to the Court on no less than 30 days' notice to the other party.

4. Dissemination of Policy Statement.

For the Term of the Decree, Scion agrees to maintain an EEO policy stating that it is an equal opportunity employer and does not discriminate against employees on the basis of race in violation of Title VII. This policy shall include a procedure for reporting complaints of discrimination and shall be posted and made available to all current employees and all new employees during the Term of the Decree. This policy shall be posted on all bulletin boards throughout Scion's facility. Scion agrees to disseminate its EEO Policy to all employees by October 31, 2018, and Scion will certify to the EEOC that it has done so.

5. Training.

Scion has certified to the EEOC that within the last six months it provided training described in this paragraph to all its employees. Such training was conducted by one or more outside trainers chosen by Scion with the consent of the EEOC, and included training in regard to the rights of applicants and employees

under provisions of Title VII concerning unlawful employment practices on the basis of race, the employer's obligations under those provisions, and how to keep Scion free of race discrimination. Annually for the Term of the Decree, Scion shall provide training on its EEO Policy via its Code of Conduct training module to its employees. As part of its December 2019 and December 2020 reporting/certifications, Scion shall send a letter to Carrie Vance, Trial Attorney, EEOC, 310 West Wisconsin Avenue, Suite 500, Milwaukee, Wisconsin 53203, certifying to the EEOC that the training has taken place and that the required personnel have attended.

6. Posting.

Within 10 business days of the entry of this Consent Decree and Order, Scion shall post full-sized copies of the Notice attached as Exhibit A to this Decree on all bulletin boards in Scion's facilities used for communicating human resources matters to employees. The notice shall remain posted for the Term of the Decree. Scion shall send a photograph of the posting to Carrie Vance, Trial Attorney, EEOC, 310 West Wisconsin Avenue, Suite 500, Milwaukee, Wisconsin 53203, as well as a copy of the Notice as signed by the Court, and a letter stating the dates and locations of the postings. Scion shall ensure that the postings are not altered, defaced, or covered by other material. If the posted copies are removed or become defaced or otherwise illegible, Scion shall re-post readable copies in the same manner as previously specified within 2 business days upon becoming aware that the posting is not readable.

7. Reporting on Hiring.

Scion shall furnish hiring reports to the EEOC every six months for the Term of the Decree beginning December 12, 2018. For the purpose of this reporting requirement, Scion shall ensure it has a procedure to allow applicants to self-identify their race in the application. The reports shall include applicant information for every hiring action made by Scion during the previous six-month period. For each hiring action, Scion shall indicate the name, race (if provided by the applicant), and last known telephone number and address of each applicant. Upon request by the EEOC, Scion shall also inform the EEOC whether a particular applicant(s) was a temporary employee of Scion at the time of application. Scion shall also provide the name and race (if provided by the applicant) of the applicants selected for hire. Scion shall send the reports to Carrie Vance, Trial Attorney, EEOC, 310 West Wisconsin Avenue, Suite 500, Milwaukee, Wisconsin 53203.

8. Certification to EEOC.

By December 12 of each year for the Term of the Decree, Scion shall certify compliance with paragraphs 4 through 7 of this Decree by a letter to Carrie Vance, Trial Attorney, EEOC, 310 West Wisconsin Avenue, Suite 500, Milwaukee, Wisconsin 53203 that it has complied with them.

9. Reporting on Employee Complaints.

Scion shall report in writing to the EEOC's Milwaukee Area Office, on June 12 and December 12 of each year for the Term of the Decree, all formal and informal complaints of race discrimination, with details including the specific facts of the

complaint, the persons involved, and the actions taken by Scion to respond to the complaint.

10. Record Retention.

For the Term of the Decree, Scion shall maintain all records pertaining to the complaints and matters described in Paragraph 9 hereof. Scion shall make such records available for inspection by the EEOC pursuant to Paragraph 11 hereof.

11. Right of Entry for Inspection.

The EEOC shall have the right, after 10 business days of advanced written notice to Scion, to enter upon Scion's offices and inspect any relevant documents or records for the purpose of determining Scion's compliance with the Consent Decree and Order.

12. Monetary Relief.

Scion shall, within 20 days of the later to occur of: a) receipt by Scion of the Release Agreement attached hereto as Exhibit B executed by Ms. Leija; and b) the entry of this Consent Decree and Order by the Court, pay the aggregate sum of \$98,000 to Ms. Leija. Of this aggregate sum, \$16,438 shall be considered back pay and Scion shall withhold the employee's share of appropriate payroll deductions. Scion shall pay the employer's share of all applicable withholdings on the back pay amount, which shall not reduce the payment to Ms. Leija. The remaining \$81,562 of the aggregate sum shall constitute compensatory damages to Ms. Leija, as to which no withholdings shall be made. Scion shall mail the payments to Ms. Leija at an address provided by the EEOC, and shall simultaneously provide a copy of the

payment checks to Carrie Vance, Trial Attorney, EEOC, 310 West Wisconsin Avenue, Suite 500, Milwaukee, Wisconsin 53203. To assist in facilitating the payments, the EEOC shall provide Scion with IRS W-4 and IRS W-9 forms completed by Ms. Leija.

DISPUTE RESOLUTION

13. In the event that either party to this Decree believes that the other party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party in writing of the alleged non-compliance and shall afford the alleged non-complying party 30 days to remedy the non-compliance or to satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance within 30 days, the complaining party may apply to the Court for appropriate relief.

MISCELLANEOUS PROVISIONS

14. Each party to this Consent Decree shall bear its own costs, attorneys' fees, and expenses.

15. This Court shall retain jurisdiction over this action in order to enforce the terms of this Consent Decree.

16. In the event this Consent Decree is not approved or does not become final, the EEOC and Scion agree that it will not be admissible in evidence in any subsequent proceeding in this lawsuit.

17. Scion shall provide notice and a copy of this Consent Decree and Order to any successors or any other corporation or other entity that acquired or acquires Scion,

and any other corporation or other entity into which Scion may merge. To remain consistent with the Parties' intent that this Consent Decree apply only to Scion, any successors or acquiring entities of Scion shall ensure that the former Scion entity (all departments performing dental benefits administration functions) shall abide by the terms of the Consent Decree. Scion shall provide notice to the EEOC 30 days prior to any acquisition or merger.

Dated at Milwaukee, Wisconsin, this 13th day of July, 2018.

BY THE COURT:

s/ David E. Jones

DAVID E. JONES
United States Magistrate Judge