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United States Equal Employment Opportunity Commission, Plaintiff, v. Foresight International, Inc., Defendant.

Judge Jeffrey Cole

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United States Equal Employment Opportunity Commission, Plaintiff, v. Foresight International, Inc., Defendant.

Keywords

United States Equal Employment Opportunity Commission, Foresight International Inc., 06 C 5139, Consent decree / Settlement, Disparate Treatment, Termination, Deafness, Hearing, Service, Employment Law, ADA

the pleadings, record, and stipulations of the parties, the Court finds the following:

- a. This Court has jurisdiction of the subject matter of this action and of the parties.
- b. The terms of this Decree are adequate, fair, reasonable, equitable, and just. The rights of the EEOC, Foresight, the Charging Party, and the public interest are adequately protected by this Decree.
- c. This Decree conforms to the Federal Rules of Civil Procedure and the ADA and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of the ADA and will be in the best interests of the parties, the Charging Party, and the public.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

INJUNCTION AGAINST EMPLOYMENT DISCRIMINATION

5. Foresight and its officers, agents, management employees (including supervisory employees), successors, and assigns are hereby enjoined from engaging in any form of employment discrimination prohibited by the ADA, including any form of retaliation against any person because such person has opposed any practice prohibited by the ADA, filed a charge of discrimination under the ADA, testified or participated in any manner in any investigation, proceeding, or hearing under the ADA, or asserted any rights under this Decree.

MONETARY RELIEF

6. Subject to the terms and conditions of this Decree, Foresight shall make payments ("Payments") to the Charging Party in the following amounts, with appropriate deductions made from the portions of the Payments designated as backpay:

backpay — \$10,000, damages — \$29,000

The portion of the Payments designated as backpay will be subject to required tax withholdings and deductions, for which Foresight will issue an IRS Form W-2 to the Charging Party. Foresight may not deduct the employer's portion of applicable payroll taxes from the Payments. Foresight will issue an IRS Form 1099 to the Charging Party for the portion of the Payments designated as damages.

7. No later than ten (10) business days after entry of this Decree and receipt by Foresight of a copy of the Release Agreement executed by the Charging Party (in the form set forth in Exhibit A to this Decree), whichever is later, Foresight shall issue and mail to the Charging Party, by certified mail, a check for backpay and a check for damages, in the amounts specified in Paragraph 6 (less required tax withholdings and deductions). Contemporaneously, Foresight shall submit copies of the above-noted checks to the EEOC. If any portion of the Payments is not issued and mailed within ten (10) business days ("unpaid amount"), then, for each business day beyond the tenth business day that such portion remains unpaid, Foresight shall additionally pay to the Charging Party, in the manner set forth above, an amount equal to the greater of \$50 or 0.1% of the unpaid amount.

POSTING OF NOTICE

8. No later than ten (10) business days after approval and entry of this Decree, Foresight shall post copies of the Notice attached as Exhibit B to this Decree at its Lake Zurich, Illinois office, on the bulletin boards usually used by Foresight for posting notices directed to employees. The Notice shall remain posted for eighteen (18) months from the date of entry of this Decree. Foresight shall take all reasonable steps to ensure that the posting is not altered, defaced or covered by any other material. No later than ten (10) business days after entry of this

Decree, Foresight shall certify to the EEOC in writing that the Notice has been properly posted, and shall provide a list of the facilities (including addresses) at which the Notice has been posted. Foresight shall permit a representative of the EEOC to enter Foresight's premises for purposes of verifying compliance with this Paragraph at any time during normal business hours without prior notice.

RECORD KEEPING

9. During the period in which this Decree is effective, Foresight shall maintain and make available for inspection and copying by the EEOC written records of every complaint or report by an employee or applicant of disability discrimination, and records of every request by an employee or applicant for accommodation of a disability. For each such complaint, report, or request, such records shall include: (i) the name of the complaining, reporting, and/or requesting person (including social security number, address, and telephone number); (ii) the date of the complaint, report, or request; (iii) a written description of what was alleged or requested; (iv) the names of any witnesses; (v) with respect to a complaint or report of disability discrimination, a written description of the resolution or outcome of the complaint or report, including a description of what actions, if any, Foresight took; (vi) with respect to requests for reasonable accommodation, whether the requested accommodations were granted, granted with modification, or denied, reason(s) for denial if accommodations were denied, and the status of the employee or applicant who made the request; and (vii) if the complaint, report, or request was made in written form, a copy thereof.

10. Foresight shall require personnel within its employ whom the EEOC requests for purposes of verifying compliance with this Decree to cooperate reasonably with the EEOC and to be interviewed.

ADOPTION, POSTING, AND DISTRIBUTION OF POLICY
AGAINST EMPLOYMENT DISCRIMINATION

11. Foresight shall affirm in writing its policy against employment discrimination ("Policy") within thirty (30) calendar days after the approval and entry of this Decree and shall maintain such Policy for the duration of this Decree. Commencing no later than sixty (60) calendar days after the approval and entry of this Decree, Foresight shall distribute a copy of said Policy to each employee of Foresight. Additionally:

(a) The Policy shall, at a minimum, specifically prohibit all forms of discrimination prohibited by the ADA.

(b) The Policy will also, at a minimum, inform employees that they are entitled to make complaints or reports of unlawful employment discrimination to Foresight and to the EEOC.

(c) The Policy shall, at a minimum, inform employees that Foresight will investigate thoroughly and promptly all complaints and reports of unlawful employment discrimination and shall provide that employees who violate the Policy are subject to discipline up to and including discharge.

(d) Copies of the Policy will be provided to new employees at the time that they start work for Foresight.

Foresight shall forward a copy of the Policy to the EEOC within thirty (30) calendar days of the approval and entry of this Decree. The inclusion of this Paragraph in the Decree does not represent the EEOC's or the Court's approval of Foresight's anti-discrimination policy.

TRAINING

12. Within ninety (90) days of the entry of this Decree, all of Foresight's employees, including all supervisors and managers, shall participate in a training session or sessions,

conducted by a trainer paid for by Foresight and approved by the EEOC, regarding the law pertaining to employment discrimination, including Titles I and V of the ADA. A registry of attendance shall be maintained for each training session.

13. Foresight shall obtain the EEOC's approval of its proposed trainer prior to the commencement of the training sessions described in Paragraph 12. The EEOC shall not unreasonably withhold its approval. Foresight shall submit the name, address, telephone number, resume and training proposal of the proposed trainer to the EEOC at least twenty (20) business days prior to the proposed date of each training. The EEOC shall have five (5) business days from the date of receipt of the information described above to accept or reject the proposed trainer. In the event the EEOC does not approve Foresight's designated trainer, Foresight shall have five (5) business days to identify an alternate trainer. The EEOC shall have five (5) business days from the date of receipt of the information described above to accept or reject the alternate trainer. If the parties cannot through this process agree on a trainer, then they may seek the Court's assistance under Paragraph 16.

14. Foresight shall certify to the EEOC in writing no later than five (5) business days after the training session(s) described in Paragraph 12 that the training required by this Decree has taken place and that the required personnel have attended. The certification of training described in this Paragraph shall include: (i) the date, location and duration of the training; (ii) a copy of the registry of attendance, which shall include the name and position of each person trained; and (iii) copies of any and all pamphlets, brochures, outlines or other written materials provided or displayed to the personnel attending the training session(s).

REPORTING

15. Foresight shall furnish to the EEOC the following written reports semi-annually

("Semi-Annual Report") during the period in which this Decree is effective. The first Semi-Annual Report shall be due six (6) months after entry of the Decree. Subsequent Semi-Annual Reports shall be due every six (6) months thereafter, except that final Semi-Annual Report shall be due one month prior to the expiration of the Decree. Each such Semi-Annual Report shall contain:

(a) copies of all records described in Paragraph 9 for each complaint or report of disability discrimination and each request for accommodation of a disability that was received by Foresight during the six (6) month period preceding the Semi-Annual Report, or a certification by Foresight that no such complaints, reports, or requests were received during that period; and

(b) a certification by Foresight that the Notice required to be posted in Paragraph 8, above, remained posted properly in each of Foresight's facilities during the entire six (6) month period preceding the Semi-Annual Report.

DISPUTE RESOLUTION

16. If during the term of this Decree 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 of the alleged non-compliance and shall afford the alleged non-complying party ten (10) business 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 or satisfied the complaining party that it has complied within ten (10) business days, the complaining party may apply to the Court for appropriate relief.

DURATION OF THE DECREE AND RETENTION OF JURISDICTION

17. All provisions of this Decree shall be in effect (and the Court will retain jurisdiction of this matter to enforce this Decree) for a period of eighteen (18) months

immediately following the approval and entry of the Decree, provided, however, that if, at the end of that period, any disputes under Paragraph 16, above, remain unresolved, the term of the Decree shall be automatically extended (and the Court will retain jurisdiction of this matter to enforce the Decree) until such time as all such disputes have been resolved.

MISCELLANEOUS PROVISIONS

18. Each party to this Decree shall bear its own expenses, attorney's fees, and costs.

19. The terms of this Decree are and shall be binding on the present and future directors, officers, managers, agents, successors, and assigns of Foresight. Foresight shall provide prior written notice to any potential purchaser of Foresight's business, or a potential purchaser of all or a substantial portion of Foresight's assets, and to any other potential successor, of: (i) this action by the EEOC against Foresight; (ii) the allegations raised in the Complaint filed in this action; and (iii) the existence and contents of this Decree.

20. When this Decree requires a certification by Foresight of any fact(s), such certification shall be made under oath or penalty of perjury by an officer or management employee of Foresight.

21. When this Decree requires the submission by Foresight of reports, certifications, notices, or other materials to the EEOC, they shall be mailed to: Foresight Consent Decree Compliance, Justin Mulaire, Equal Employment Opportunity Commission, 500 West Madison Street, Suite 2800, Chicago, Illinois, 60661. When this Decree requires submission by the EEOC of materials to Foresight, they shall be mailed to: Samuel Erkonen, Howe & Hutton, Ltd., 20 N. Wacker Dr., Chicago, IL 60606-9833.

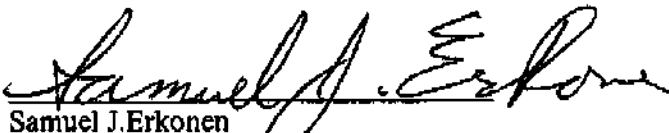
ENTERED AND APPROVED FOR:

For the UNITED STATES EQUAL
EMPLOYMENT OPPORTUNITY
COMMISSION

JAMES LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

For FORESIGHT INTERNATIONAL, INC.,


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UNITED STATES EQUAL EMPLOYMENT
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500 West Madison Street, Suite 2800
Chicago, Illinois 60661
312-352-7722


JOHN C. HENDRICKSON
Regional Attorney


JUSTIN MULHARE
Trial Attorney

DATE: 3/27/07


ENTER: Jeffrey Cole

The Honorable Jeffrey Cole
United States Magistrate Judge

EXHIBIT A

RELEASE AGREEMENT

In consideration of \$39,000 to be paid to me by Foresight International, Inc., in connection with the resolution of EEOC v. Foresight International, Inc., No. 06 C 5139 (N.D.Ill.), I waive my right to recover for any claims of employment discrimination arising under the Americans with Disabilities Act of 1990 that I had against Foresight International, Inc., on or before the date of this release and that were included in the claims in EEOC's complaint in EEOC v. Foresight International, Inc.

Signature: _____
Brent Shiver

Date: _____

EXHIBIT B

NOTICE TO FORESIGHT INTERNATIONAL EMPLOYEES

This Notice is being posted pursuant to a Consent Decree entered by the federal court in the Northern District of Illinois in EEOC v. Foresight International, Inc., No. 06 C 5139 (N.D.Ill.), resolving a lawsuit filed by the United States Equal Employment Opportunity Commission ("EEOC") against Foresight International, Inc. ("Foresight").

In its suit, the EEOC alleged that Foresight violated the Americans with Disabilities Act of 1990 ("ADA") by discharging an employee because of that employee's disability.

To resolve the case, Foresight and the EEOC have entered into a Consent Decree which provides, among other things, that:

- 1) Foresight will make a total of \$39,000 in monetary payments to the individual who was affected by the alleged violations of the ADA.
- 2) Foresight will not discriminate against any employee or applicant on the basis of disability or because that employee or applicant requests an accommodation of a disability.
- 3) Foresight will not retaliate against any person because he or she makes or files a complaint of discrimination, opposes any discriminatory practice prohibited by the ADA, participates in any ADA proceeding, or asserts any rights under the Consent Decree; and
- 4) Foresight will maintain and distribute to all employees a policy prohibiting discrimination and will train all of its employees, including managers and supervisors, regarding prohibited discrimination and Foresight's policy.

The EEOC is the federal agency that enforces the nation's laws prohibiting discrimination in employment based on race, color, sex (including sexual harassment and pregnancy), religion, national origin, age, disability, and retaliation. Further information about the EEOC and these laws is available on the EEOC's web site at www.eeoc.gov. If you believe you have been subjected to unlawful discrimination, you may contact the EEOC by phone at 312-353-8195, or by TTY at 312-353-2421. The EEOC charges no fees.

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

This Notice must remain posted for three years from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to: Foresight Consent Decree, EEOC, 500 West Madison Street, Suite 2800, Chicago, IL 60661.

3/27/07
Date

Magistrate Judge Jeffrey Cole
United States District Court