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EEOC v. American Laser Centers

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EEOC v. American Laser Centers

Keywords

EEOC, Equal Employment Opportunity Commission, American Laser Centers, 1:09-CV-02247-AWI-DLB, Healthcare, Sex, Female, Retaliation, Sexual Harassment, Hostile Work Environment

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14 **UNITED STATES DISTRICT COURT**
15 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

16 U.S. EQUAL EMPLOYMENT
17 OPPORTUNITY COMMISSION,
18 Plaintiff,

19 v.

20 AMERICAN LASER CENTERS LLC
21 Defendants.

22 DAWB YANG,
23 Plaintiff-in-Intervention,

24 v.

25 AMERICAN LASER CENTERS, LLC,
26 et al.
27 Defendants.

Case No.: 1:09-CV-02247-AWI-DLB
CONSENT DECREE

Trial Date: TBD

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I. INTRODUCTION

Plaintiff U.S. Equal Employment Opportunity Commission (the “EEOC” or “Commission”) and defendants American Laser Centers LLC f/k/a ALC Acquisition Company LLC (“ALC”), American Laser Centers of California LLC (“California”), and ALC-Partner, Inc. (“Partner”) (collectively, “Defendants”) hereby stipulate and agree to entry of this Consent Decree (the “Decree”) to resolve the EEOC’s Second Amended Complaint (“SAC”) filed against ALC, California, Partner, and ALC Fresno LLC in the Eastern District of California, Case No. 1:09-CV-02247 AWI DLB (the “Action”) under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* (“Title VII”). The SAC alleges that (1) Charging Party, Dawb Yang (“Yang”), and other similarly situated employees were sexually harassed by the clinic’s then-landlord; and (2) that Yang was retaliated against for engaging in a protected activity in violation of Title VII. Defendants deny these allegations in their entirety. Defendants also deny any allegation, assertion or claim that any combination of defendants are joint employers, integrated employers, alter egos, agents, assigns and/or successors.

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II. PURPOSES AND SCOPE OF THE CONSENT DECREE

A. The EEOC and Defendants (collectively, the “Parties”) agree this Action should be fully and completely resolved by entry of this Consent Decree. This Decree shall be binding on and enforceable against Defendants and their officers, directors, agents, successors, and assigns as stated herein.

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

1. To avoid the expensive and protracted costs incident to litigation;
2. To provide monetary and injunctive relief;

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IV. JURISDICTION

A. The SAC asserts allegations and claims that, if proven, would give the Court jurisdiction and authorize the Court to grant the equitable relief set forth in this Decree.

B. The terms and provisions of this Decree are fair, reasonable and just.

C. This Decree complies with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights or privileges of any person.

D. The entry of this Decree will further the objectives of Title VII and will be in the best interest of the Parties.

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

V. EFFECTIVE DATE AND DURATION OF DECREE

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

B. Except as otherwise provided herein, this Decree shall remain in effect for three (3) years after the Effective Date.

C. Upon the expiration of the Decree, the case will be dismissed with prejudice unless the Court dismisses the case *sua sponte*. This subsection shall not apply if, at the time of expiration of the Decree, the Court has granted a motion by the EEOC to ensure further compliance before the Court requiring continued jurisdiction.

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VI. MODIFICATION AND SEVERABILITY

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

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

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

VII. COMPLIANCE AND DISPUTE RESOLUTION

A. If the Commission has a good faith basis to believe that a defendant has failed to perform the promises and representations it made herein, the Commission may petition the Court to enforce the Decree. Prior to filing any such petition, the Commission agrees to notify the appropriate defendant, through its legal counsel of record, of the nature of the dispute. This notice shall be in writing and sent to defense counsel via overnight delivery. The notice shall specify the particular provision the Commission believes was breached, and explain why the Commission believes the provision was breached. That defendant shall then have ninety (90) days to attempt to resolve or cure the breach. The Commission and said defendant can agree to extend this period upon mutual consent.

1 make that month's payment no later than the next business day. The checks
2 issued pursuant to this Subparagraph will be issued directly to the named
3 Individual Recipient as those names are stated on EEOC's Distribution List..

4 2. The Parties agree that the payment made to each Individual
5 Recipient is solely for her alleged emotional distress and personal injuries
6 and is based on the representation made by each Individual Recipient to the
7 Commission that she suffered such damages as a result of a defendant's
8 alleged conduct as described in the SAC.

9 3. No portion of the amount paid to an Individual Recipient is to
10 be considered or intended to compensate the Individual Recipient for loss of
11 wages. Accordingly, no IRS form W-2 will be issued to any Individual
12 Recipient, and no deductions will be made from the Settlement Sum for
13 federal or state income or employment taxes. Rather, an IRS Form 1099
14 will be issued to each Individual Recipient for her full share of the
15 Settlement Sum as provided in the Designation Notice.

16 C. Yang's total share of the Settlement Sum is \$105,000 and shall be
17 paid as follows:

18 1. Defendants shall pay Yang the gross amount of \$20,000, less
19 applicable withholdings for federal and state income and employment taxes.
20 The Parties agree that this payment is intended to compensate Yang for
21 alleged lost wages for which she sought recovery in the Intervening Lawsuit
22 and/or the EEOC Lawsuit, including any interest thereon.

23 2. Defendants shall pay Yang the amount of \$85,000. The Parties
24 intend this amount to compensate Yang for alleged emotional distress and
25 personal injuries for which she sought recovery in the Lawsuit or the
26 Intervening Lawsuit and for any and all attorneys' fees and costs that she
27 may have been able to recover if she prevailed in the Intervening Lawsuit.
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1 This allocation is based on the facts and representations made by Yang that
2 she suffered emotional distress and personal injuries as a result of the
3 alleged conduct of some or all of the defendants.

4 3. Yang's share of the Settlement Sum shall be paid in six
5 installment payments. The first five payments of \$17,000 will be for Yang's
6 alleged damages as described in Paragraph VIII.C.(2). The sixth payment
7 will be for \$20,000, less applicable withholdings for federal and state
8 income and employment taxes, for Yang's alleged damages as described in
9 Paragraph VIII.C.(1). The payments will be mailed to Thomas D. Rutledge,
10 3555 5th Avenue, Suite 201, San Diego, CA 92103 on the fifteenth day of
11 each month, beginning on October 15, 2011, or the fifteenth of the month
12 immediately following the Effective Date of this Consent Decree, whichever
13 is later. If the fifteenth day of the month falls on a weekend or holiday
14 during this period, Defendants will make that month's payment no later than
15 the next business day. The checks issued pursuant to Paragraph VIII.C(2)
16 will be made payable to "Thomas D. Rutledge Trust Account." The check
17 issued pursuant to Paragraph VIII.C.(1) will be made payable to "Dawb
18 Yang."

19 D. The Commission agrees to inform each Individual Recipient that she
20 is solely responsible for all tax obligations, including all reporting and payment
21 obligations, that may arise as a consequence of her receipt of said portion of the
22 Settlement Sum.

23 E. Within seven (7) days of the mailing of each and every disbursement,
24 Defendants shall submit a copy of each check and related correspondence to the
25 Regional Attorney, Anna Y. Park, U.S. Equal Employment Opportunity
26 Commission, 255 East Temple Street, 4th Floor, Los Angeles, CA 90012.
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1 **IX. GENERAL INJUNCTIVE RELIEF**

2 A. **Non-Discrimination**

3 1. **Sexual Harassment**

4 American Laser Centers clinics in the Northern California Region, their
5 officers, agents, management (including all supervisory employees), successors,
6 and assigns, are hereby enjoined from creating, facilitating or permitting the
7 existence of a work environment that is hostile to female employees.

8 2. **Retaliation**

9 American Laser Centers clinics in the Northern California Region, their
10 officers, agents, management (including all supervisory employees), successors,
11 and assigns, are hereby enjoined from engaging in, implementing or permitting any
12 action, policy or practice with the purpose of retaliating against any current or
13 former employee or applicant of Defendants, because he or she has in the past, or
14 during the term of this Decree: (a) opposed any practice made unlawful under
15 Title VII; (b) filed a charge of discrimination alleging such practice; (c) testified or
16 participated in any manner in any investigation (including without limitation, any
17 internal investigation undertaken by Defendants) or proceeding in connection with
18 this case and/or relating to any claim of a Title VII violation; (d) was identified as
19 a possible witness or claimant in this action; (e) asserted any rights under this
20 Decree; or (f) sought and/or received any relief in accordance with this Decree.
21 This provision does not prohibit Defendants from reporting, or instituting a civil
22 action against, any individual(s) who breached, or may have breached, a fiduciary
23 or other duty to Defendants by engaging in conduct described in this paragraph.

24 B. **Notice Posting**

25 Within thirty (30) days after the Effective Date and throughout the term of
26 this Decree, the ALC Fresno Clinic shall post a notice (attached as Exhibit B) of
27 the terms of this Decree in a clearly visible manner in the employee break room.
28

1 C. **Policies Concerning Anti-Harassment/Anti-Retaliation**

2 ALC agrees to implement anti-harassment/anti-retaliation policies. Within
3 thirty (30) days after the Effective Date, these policies shall be posted to the
4 American Laser Centers intranet, to which all employees have access. These
5 policies shall be included in any relevant policy or employee manual distributed to
6 employees. These policies, and any revisions made to them during the duration of
7 this Decree, include:

8 1. A clear explanation of prohibited conduct, including clear
9 objective criteria which expressly prohibit harassment on the basis of race,
10 color, national origin, sex, age, disability, creed/religion, or any other
11 prohibited category;

12 2. An assurance that employees who make complaints of
13 harassment/discrimination or provide information related to such complaints
14 will be protected against retaliation;

15 3. An assurance of human resources' involvement in the
16 complaint process;

17 4. A clearly described complaint process that provides accessible
18 and confidential avenues for complaints with contact information, including
19 the address and telephone numbers, of persons both internal (i.e., human
20 resources) and external to ALC to whom employees may report
21 discrimination and retaliation, including a written statement that the
22 employee may report the discriminatory behavior to designated persons
23 outside their chain of management;

24 5. An assurance that ALC will protect the confidentiality of
25 harassment/discrimination complaints to the extent possible;

26 6. A complaint process that provides a prompt, thorough, and
27 impartial investigation;
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1 7. A procedure for communicating with the complainant in
2 writing regarding the status of the complaint/investigation, results of the
3 investigation, and any remedial action taken; and

4 8. Assurance that ALC will take immediate and appropriate
5 corrective action when it determines that harassment/discrimination and/or
6 retaliation has occurred; and

7 9. Assurance that ALC's disciplinary policies hold employees and
8 managers accountable for failing to take appropriate action; and

9 10. Assurance that ALC's disciplinary policies hold employees and
10 managers accountable for engaging in conduct prohibited under the Decree,
11 ALC shall collect acknowledgments from each employee in the Northern
12 California Region who receives these policies throughout the term of this Decree.

13 D. **Equal Employment Opportunity Training**

14 Within ninety (90) days after the Effective Date, all employees in the
15 Northern California Region shall be required to attend sexual harassment training
16 that comports with all of the requirements below. All employees in the Northern
17 California Region shall be required to attend training once each year for the term
18 of this Decree.

19 1. Each training session shall be scheduled on company time, for a
20 period of no less than two hours every year, and focus on Title VII.

21 2. This training shall include coverage of the subjects of equal
22 employment opportunity rights and responsibilities, gender discrimination, sexual
23 harassment, retaliation, and ALC's policies and procedures for reporting and
24 handling complaints of discrimination, harassment and retaliation ("Staff
25 Training").

26 3. The training for all managerial employees in the Northern
27 California Region shall additionally include training on how to properly handle and
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1 investigate complaints of discrimination and/or harassment in a neutral manner,
2 how to take preventive and corrective measures against harassment and/or
3 retaliation, and how to recognize and prevent harassment and/or retaliation
4 (“Managerial Training”).

5 4. The training of individuals in ALC’s Human Resources
6 Department, along with anyone else responsible for investigating complaints of
7 discrimination and/or retaliation for the Northern California Region also shall
8 receive the Managerial Training.

9 5. For the remainder of the term of this Decree, all new employees
10 in the Northern California Region shall receive training, Staff or Managerial
11 Training as appropriate, within ninety (90) days of hire. All recently-promoted
12 managerial employees in the Northern California Region shall receive the
13 Managerial Training within ninety (90) days of being promoted from a staff
14 position..

15 6. All Northern California Region employees shall verify in
16 writing their participation in each designated training session they attend pursuant
17 to this Decree.

18 7. The training session may be conducted using computer-based
19 training or webinar with a live component that complies with the provision of
20 California’s AB1825. Inclusion of a link or directions on how to contact the Equal
21 Employment Opportunity Compliance Officer, who shall be available to answer
22 questions and to provide guidance and assistance about the training, shall satisfy
23 the live component requirement of such training.

24 Within forty-five (45) days after the Effective Date, ALC shall submit to the
25 Commission a copy of both the Staff and Managerial training programs.
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1 E. **Designation of Equal Employment Opportunity Compliance Officer**
2 **and a Trainer/Consultant to Effect Terms of the Decree**

3 Within thirty (30) days after the Effective Date, ALC shall designate
4 Rhythm Manani as an in-house Equal Employment Opportunity Compliance
5 Officer (“CO”) who will monitor the Northern California Region’s compliance
6 with Title VII and the provisions of this Decree. Specifically, for the Northern
7 California Region, the CO’s responsibilities shall include:

8 1. Ensuring the development of procedures for training employees in the
9 Northern California Region on sexual harassment and retaliation in compliance
10 with Title VII;

11 2. Ensuring ALC maintains an effective anti-harassment policy and
12 reporting procedure that complies with this Decree;

13 3. Ensuring ALC trains managerial and staff employees in the Northern
14 California Region on their rights and responsibilities under Title VII, including but
15 not limited to training on ALC’s gender discrimination/harassment and retaliation
16 policies;

17 4. Ensuring ALC monitors and adequately investigates all complaints of
18 sexual discrimination/harassment and retaliation made by employees in the
19 Northern California Region;

20 5. Ensuring ALC properly communicates with such complainants
21 regarding the complaint procedure, status of the complaint/investigation, results of
22 the investigation, and any remedial action taken; and

23 6. Ensuring ALC creates appropriate and consistent disciplinary policies
24 to hold employees and managers in the Northern California Region accountable for
25 failing to take appropriate action and/or for engaging in conduct prohibited under
26 this Decree.

1 **X. REPORTING**

2 ALC shall provide the following reports to the Commission in writing, by
3 mail, e-mail, or facsimile:

4 A. Within ninety (90) days after the Effective Date, ALC shall submit to
5 the Commission an initial report that contains:

6 1. A statement confirming Exhibit B to this Decree has been
7 posted in the ALC Fresno Clinic; and

8 2. Confirmation that ALC has gathered from all employees in the
9 Northern California Region their acknowledgment forms regarding receipt of
10 ALC's anti-harassment/anti-retaliation policies.

11 B. ALC also shall provide the following reports annually throughout the
12 term of this Decree:

13 1. A list of all employees in the Northern California Region who
14 attended any training session required under this Decree that took place during the
15 previous year;

16 2. Acknowledgments of receipt of ALC's anti-harassment/anti-
17 retaliation policies for all employees in the Northern California Region who were
18 hired during the previous year; and

19 3. A list of all sexual harassment and retaliation complaints made
20 by an employee of ALC in the Northern California Region since the submission of
21 the immediately preceding report hereunder. For each such complaint, the list
22 shall include the name of the complainant, the nature of the harassment, the name
23 of the alleged perpetrator of the harassment, when the alleged harassment occurred,
24 a brief summary of how each complaint was resolved, and the identify of the
25 person(s) who investigated or resolved each complaint. If no results have been
26 reached as of the time of the report, the result shall be included in the next report.
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1 C. ALC shall provide a report to the EEOC detailing any changes of the
2 procedures for addressing harassment/ discrimination complaints and the
3 monitoring of such complaints within thirty (30) days before implementing such
4 changes.

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6 **XI. COSTS OF ADMINISTRATION AND IMPLEMENTATION**
7 **OF CONSENT DECREE AND ATTORNEY'S FEES**

8 ALC shall bear all costs associated with its administration and
9 implementation of its obligations under this Consent Decree, including but not
10 limited to the distribution of the settlement money.

11 Each party shall bear its own court costs of suit and attorneys' fees.

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13 **XII. MISCELLANEOUS PROVISIONS**

14 A. During the term of this Consent Decree, ALC shall ensure that each
15 Clinic Manager of the Fresno Clinic and each Regional Manager of the Fresno
16 Clinic is aware of any term(s) of this Decree that may be related to his/her job
17 duties.

18 B. Unless otherwise stated, all notices, reports and correspondence
19 required under this Decree shall be delivered to the attention of the Regional
20 Attorney, Anna Y. Park, U.S. Equal Employment Opportunity Commission, Los
21 Angeles District Office, 255 E. Temple St., 4th Floor, Los Angeles, CA 90012.

22 C. This Decree may be signed in counterparts. A facsimile or .pdf
23 signature shall have the same force and effect of an original signature or copy
24 thereof.

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

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All parties, through the undersigned, respectfully apply for and consent to the entry of this Consent Decree Order.

DATED: _____

**U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION**

By: _____

Anna Y. Park
Peter F. Laura
Attorneys for Plaintiff
U.S. Equal Employment Opportunity
Commission

DATED: _____

By: _____

Name:
Title:
AMERICAN LASER CENTERS LLC

DATED: _____

By: _____

Name:
Title:
**AMERICAN LASER CENTERS OF
CALIFORNIA LLC**

DATED: _____

By: _____

Name:
Title:
ALC-PARTNER, INC.

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ORDER

The provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions is **ORDERED**.

IT IS SO ORDERED.

Dated: October 11, 2011

STATES DISTRICT JUDGE



CHIEF UNITED