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EEOC v. Sephora USA, LLC

Judge Naomi Reice Buchwald

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EEOC v. Sephora USA, LLC

Keywords

EEOC, Sephora USA, 03-CV-8821 (NRB)(FM), Consent Decree, Employment Law, Title VII, Retail, Hispanic or Latino, National Origin, Disparate Impact, Retaliation, Terms and Conditions

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
EQUAL EMPLOYMENT OPPORTUNITY :
COMMISSION, :

Plaintiff, :

03-CV-8821 (NRB)(FM)

and LEYDIS RODRIGUEZ, ANGELA :
SAMBOY, SOLANGE BERNAL, :
JULISSA BAUTISTA and MARIELA :
DEL ROSARIO, :

Intervenors, :

v. :

SEPHORA USA, LLC, :

Defendant. :

-----X
LEYDIS RODRIGUEZ, ANGELA :
SAMBOY, SOLANGE BERNAL, :
JULISSA BAUTISTA, and MARIELA :
DEL ROSARIO, :

Plaintiffs, :

v. :

SEPHORA USA, LLC, FRANK :
CIMITILE, DIANA SAINI, MISA :
GJONBALAJ, and RICHARD TRAN, :

Defendants. :
-----X

CONSENT DECREE

This cause of action was instituted on or about November 7, 2003 by the Equal Employment Opportunity Commission ("Commission" or "EEOC"), an agency of the United States Government, alleging that Sephora USA, LLC ("Sephora") violated Title VII of the Civil Rights Act of 1964, as amended, and Title I of the Civil Rights Act of 1991. The EEOC alleged that Sephora, a company that sells cosmetics, skin care and fragrances, engaged in a pattern or

practice of discrimination against Leydis Rodriguez, Angela Samboy, Solange Bernal, Julissa Bautista, and Mariela DelRosario, and a class of Hispanic employees in Sephora's New York Metropolitan Area stores (collectively "the Claimants") based on their national origin by maintaining an English-only rule and otherwise discriminating against them in terms, conditions and privileges of employment. In addition, EEOC alleged that Sephora retaliated against Angela Samboy, Leydis Rodriguez and Solange Bernal in violation of Title VII when it took adverse actions against them for asserting their rights under Title VII by complaining about national origin discrimination.

In addition, Leydis Rodriguez, Angela Samboy, Solange Bernal, Julissa Bautista and Mariela DelRosario (collectively "Plaintiffs-Intervenors") filed a Complaint in Intervention, alleging that they were subjected to national origin discrimination and that Plaintiff-Intervenors Rodriguez, Samboy and Bernal were retaliated against in violation of federal, state, and local law. Plaintiffs-Intervenors' Motion To Intervene was granted on or about March 10, 2004.

Sephora denies that it violated Title VII or any other law or obligation concerning any of the Claimants, including the Plaintiffs-Intervenors. In a decision and order dated September 14, 2005, the Court granted Sephora's motion for partial summary judgment holding that Sephora's written expectations, including the expectation that employees speak English while working on the sales floor during store hours while customers are present, were lawful (the "September 2005 decision"). No other findings of any kind have been made by the Court.

The parties hereto desire to settle this action and, therefore, do hereby stipulate and consent to the entry of this Decree as final and binding between the parties and their successors or assigns. The parties agree that it is in their mutual interest to resolve this matter fully without the costs, uncertainty, expense and delay of litigation.

This Decree resolves all matters related to the Civil Action 03 CV 8821 (NRB), now pending in the United States District Court for the Southern District of New York. The parties agree that this Decree may be entered into without additional Findings of Fact and Conclusions of Law being made and entered by the Court. No waiver, modification or amendment of any provision of this Decree shall be effective unless made in writing, approved by the parties to this Decree and approved or ordered by the Court.

In consideration of the mutual promises of each party to this Decree, the sufficiency of which is hereby acknowledged, it is agreed and IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

Jurisdiction

1. The Court has jurisdiction over the parties and the subject matter of this action. The parties agree that venue is proper and that all administrative prerequisites have been met.

Resolution

2. This Decree is final and binding between the parties signatory hereto and resolves all pending issues and claims alleged in EEOC's Complaint. This Decree in no way affects the EEOC's right to process any future charges that may be filed against Defendant in accordance with standard EEOC procedures, and to commence civil actions on any such charges.

No Admission of Fault

3. The parties agree that this Decree is not an admission that Sephora or any of the Defendants violated Title VII or any other law or obligation concerning any of the Claimants, including the Plaintiffs-Intervenors.

Non-Discrimination and Non-Retaliation

4. Sephora shall not engage in any employment practice that discriminates against Hispanic employees of Sephora stores in the New York Metropolitan Area on the basis of

national origin in violation of Title VII with respect to languages employees speak during breaks, during non-business hours, or when customers are not present.

5. Sephora shall not engage in retaliation of any kind in violation of Title VII against any employee in any Sephora store in the New York Metropolitan Area because of such person's opposition to discrimination against Hispanic employees with respect to languages employees speak during breaks, during non-business hours, or when customers are not present. Further, Sephora shall not engage in retaliation in violation of Title VII against any employee who has filed a charge, testified, or participated in any manner in any investigation, proceeding or hearing relating to discrimination against Hispanic employees of Sephora stores in the New York Metropolitan Area on the basis of national origin with respect to languages employees speak during breaks, during non-business hours, or when customers are not present.

Training

6. Sephora will provide two (2) hours of in person anti-discrimination training for all managerial and supervisory personnel working at all Sephora stores in the New York Metropolitan Area and for all corporate Sephora personnel responsible for investigating or assisting in investigating claims of national origin discrimination at Sephora stores in the New York Metropolitan Area. Such training is to be conducted by Proskauer Rose LLP, and the training curriculum has been approved by EEOC. Sephora will complete this training within four (4) months of the date of entry of this Decree with respect to all persons actively employed by Sephora at least thirty (30) days prior to the training date.

7. Sephora will provide one (1) hour of in-person or computerized anti-discrimination training for all non-managerial and non-supervisory personnel at all Sephora stores in the New York Metropolitan Area. Such training is to be conducted by Proskauer Rose LLP, and the training curriculum has been approved by EEOC. Sephora will complete this

training within four (4) months of the date of entry of this Decree with respect to all persons actively employed by Sephora at least thirty (30) days prior to the training date.

8. Sephora will repeat the training described in paragraphs 6 and 7 above during the second year of this Decree pursuant to the same timetable as set forth in paragraphs 6 and 7 above. Sephora will forward to EEOC a copy of the attendance sheet for each training session within seven (7) business days after the four (4) month period for completion of training in each year of the Decree.

Monetary Relief

9. In settlement of this dispute, Sephora shall pay the total sum of \$565,000 to the Claimants, inclusive of attorney's fees paid to counsel for Plaintiffs-Intervenors, allocated as set forth in Exhibit A hereto, which shall be filed under seal.

10. In addition to the amount set forth in paragraph 9 above, within ten (10) business days of the entry of this Decree, Sephora shall provide a check to each Non-Intervening Claimant in the amount of Seven Hundred Fifty Dollars (\$750), to be paid to an attorney of each Non-Intervening Claimant's choice, in order for each Non-Intervening Claimant to receive legal advice about signing a release in the form of Exhibit B attached hereto (English and Spanish-language versions attached). The EEOC shall then provide to Sephora the releases executed by the Non-Intervening Claimants. Within fifteen (15) business days after receipt of each release, Sephora shall send to each Claimant a check in the amount set forth in Exhibit A. A copy of each check shall be forwarded to Raechel L. Adams, Esq., Equal Employment Opportunity Commission, 33 Whitehall Street, 5th Floor, New York, NY 10004, immediately upon issuance of the check.

11. In connection with the check issued to each Claimant, Sephora will issue an IRS form 1099 in connection with each compensatory damage amount and an IRS form W-2 in

connection with each backpay damage amount. Each Claimant shall be responsible for any taxes owed by him/her with respect to these payments.

12. Other than as reflected in paragraph 10 above, all parties shall bear their own attorney's fees and costs incurred in this action.

Posting of Notice

13. Within fifteen (15) business days of entry of this Decree, Sephora shall conspicuously post the "Notice of Non-Discrimination" attached hereto as Exhibit C in a location readily accessible to and commonly frequented by Sephora employees in the following store locations: SoHo; Times Square; 150 Broadway; 34th Street; 67th Street & 3rd Avenue; 48th Street & 5th Avenue; and Columbus Circle. The Notice shall remain posted during term of this Decree. Sephora shall certify to the EEOC within twenty (20) business days of the entry of this Decree that the Notice has been properly posted.

Enforcement and Dispute Resolution

14. No party shall contest the validity of this Decree or the jurisdiction of the federal district court to enforce this Decree. The EEOC shall have the right to monitor and review compliance with this Decree, including but not limited to inspection of records and interviewing witnesses and other employees.

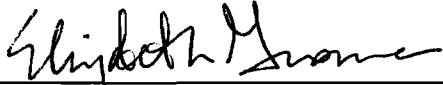
15. The parties shall engage in a good faith effort to resolve any dispute as to compliance prior to seeking review by the Court, and shall be required to give notice to each other ten (10) business days before moving for such review, unless EEOC's providing such notice would result in harm to the public interest.

Duration

16. This Decree will remain in effect for two (2) years from the date of entry.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

SEPHORA USA, INC.

By: 

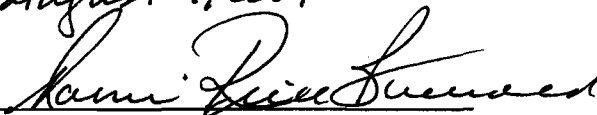
Elizabeth Grossman (EG-2478)
Regional Attorney
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New York District Office
33 Whitehall Street, 5th Floor
New York, New York 10004
(212) 336-3707

By: 

Joseph Baumgarten (JB-7215)
Jody S. Riger (JR-1576)
Proskauer Rose, LLP
1585 Broadway
New York, New York 10036
212-969-3000
Attorneys for Defendants
Sephora USA, LLC, Diana Saini,
Misa Gjonbalaj, and Richard Tran

SO ORDERED:

Date: August 7, 2007



Naomi Reice Buchwald
U.S.D.J.

EXHIBIT A

FILED

UNDER SEAL

EXHIBIT B

NON-INTERVENOR CLAIMANT RELEASE

For and in consideration of the agreement by Sephora USA, Inc. (formerly known as "Sephora USA, LLC") ("Sephora"), to pay me the amount of _____ Dollars (\$ _____) in accordance with the Consent Decree entered in *EEOC, et al. v. Sephora USA, LLC, et al.*, No. 03-CV-8821 (NRB), I hereby forever release and discharge Sephora, all of its past and present parent entities, predecessors, partners, subsidiaries, affiliates, divisions, employee benefit and/or pension plans or funds, successors and assigns and all of its or their past and present directors, officers, trustees, attorneys, administrators, employees, successors or assigns (whether acting as agents for Sephora or in their individual capacities) (hereinafter collectively referred to as the "Releasees"), including but not limited to Frank Cimitile, Diana Saini, Misa Gjonbalaj and Richard Tran, from any and all claims, demands, causes of action, and liabilities of any kind whatsoever (upon any legal or equitable theory, whether contractual, common-law, statutory, federal, state, local, or otherwise), whether known or unknown, which I had, have or may have by reason of any act, omission, transaction or occurrence from the beginning of the world to the date on which this Agreement and General Release is executed, including but not limited to:

- a. any and all claims relating to or arising out of my employment with Sephora, the terms and conditions of such employment, the separation of such employment, my compensation, and any of the events relating directly or indirectly to or surrounding the separation of that employment;
- b. any and all claims of employment discrimination and/or retaliation under any federal, state or local statute or ordinance, including without limitation, any and all claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans With Disabilities Act, Section 1981 of the Civil Rights Act of 1866, the Family and Medical Leave Act, the Employment Retirement Income Security Act, the New York State Human Rights Law and the New York City Human Rights Law;
- c. any and all claims for tortious conduct of any nature (whether committed during my employment or subsequent thereto), wrongful or constructive discharge, breach of employment contract (express or implied), breach of promise, promissory estoppel or equitable estoppel, breach of covenant of good faith and fair dealing, misrepresentation, negligence (including, but not limited to, negligent supervision, training or retention), fraud, defamation, injurious falsehood, prima facie tort, negligent or intentional infliction of emotional distress; and
- d. any claims for compensatory, liquidated or punitive damages, and/or any claims for costs, fees, disbursements or other expenses, including attorneys' fees.

The foregoing includes a waiver of claims that I know about and claims that I may not know about. I am releasing claims to the fullest extent permitted by law.

I acknowledge that I have been given adequate time to consider this Release; that I was given an opportunity to consult with an attorney with the Equal Employment Opportunity Commission and (at Sephora's cost) an attorney of my own choosing prior to signing this Release; and that the payment I received in consideration for signing this Release is in addition to any other payment or benefit to which I may have been entitled.

[name]

STATE OF NEW YORK)

: ss.

COUNTY OF)

On this ___ day of _____ 2007, before me personally came [name] known to me to be the person described in and who executed the foregoing Agreement and General Release, and who duly acknowledged to me that (s)he executed the same.

Notary Public

ACUERDO Y LIBERACIÓN GENERAL

Por y en contraprestación del acuerdo por Sephora USA, Inc. (anteriormente conocida como "Sephora USA, LLC") ("Sephora"), de pagarme el monto de _____ Dólares (\$_____) conforme al Decreto Judicial emitido previo acuerdo de las partes en *EEOC, et al. v. Sephora USA, LLC, et al.*, No. 03-CV-8821 (NRB), por medio del presente documento libero para siempre a Sephora, a todos sus anteriores y actuales predecesores, entidades matrices, socios, subsidiarias, afiliados, divisiones, planes o fondos de previsión y/o jubilación de los trabajadores, sucesores y cesionarios y todos sus anteriores y actuales directores, oficiales, fiduciarios, apoderados, administradores, empleados, sucesores o cesionarios (ya sea actuando como agentes para Sephora o a título individual) (de aquí en adelante designados colectivamente "Los Liberados"), incluyendo pero no limitados a Frank Cimitile, Diana Saini, Misa Gjonbalaj y Richard Tran, de cualquier y todo reclamo, demanda, causa de acción, y obligación de cualquier tipo (sobre cualquier teoría jurídica o de equidad, ya sea contractual, de derecho común, estatutaria, federal, estatal, local, u otra), conocidos o desconocidos, que yo haya tenido, tenga actualmente o podría tener por razón de cualquier acto, omisión, transacción o acontecimiento desde el comienzo del mundo hasta la fecha en la cual se ejecute este Acuerdo y Contrato de Liberación General, incluyendo pero no limitado a:

- a. cualquier y todo reclamo relacionado con o surgido de mi empleo con Sephora, los términos y condiciones de tal empleo, el despido de tal empleo, mi indemnización, y cualquiera de los eventos relacionados directa o indirectamente con o pertinentes al despido de tal empleo;
- b. cualquier y todo reclamo de discriminación en el empleo y/o de represalia bajo cualquier estatuto u ordenanza federal, estatal o local, incluyendo sin limitación, cualquier y todo reclamo bajo el Título VII de la Ley de Derechos Civiles de 1964, la Ley de Derechos Civiles de 1991, la Ley de Americanos Minusválidos, la Sección 1981 de la Ley de Derechos Civiles de 1866, la Ley de Ausencia Familiar y Reposo Médico, la Ley de Jubilación con Seguro de Ingresos, la Ley de Derechos Humanos del Estado de Nueva York y la Ley de Derechos Humanos de la Ciudad de Nueva York;
- c. cualquier y todo reclamo por conducta ilícita de cualquier naturaleza (ya haya ocurrido durante mi empleo o posterior al mismo), despido ilegal o presunto, violación de contrato de empleo (expreso o presumido), violación de promesa, impedimento promisorio, impedimento bajo el régimen de equidad, violación de convenio de buena fe y trato equitativo, representaciones inexactas, erróneas o falsas, negligencia (incluyendo, pero no limitada a, supervisión, entrenamiento o retención negligente), fraude, difamación, mentiras perjudiciales, acto ilícito *prima facie* [a primera vista], angustia emocional causada por negligencia o intencionalmente; y
- d. cualquier reclamo de indemnización de daños y prejuicios compensatoria, liquidada o punitiva, y/o cualquier reclamo por costos, honorarios, pagos u otros gastos, incluyendo honorarios de abogados.

Lo antedicho incluye una renuncia a reclamos de los cuales tengo conocimiento y a reclamos de los cuales pueda no tener conocimiento. Mediante el presente documento renuncio a reclamos de acuerdo con la amplitud máxima que permite la ley.

Reconozco que me ha sido otorgado el tiempo adecuado para considerar la presente Liberación; que me fue dada una oportunidad para consultar con un abogado de la Comisión de Igualdad de Oportunidades en el Empleo y (por cuenta de Sephora) con un abogado de mi escogencia antes de firmar esta Liberación; y que el pago que recibí en contraprestación por firmar esta Liberación es adicional a cualquier otro pago o beneficio al cual puedo haber tenido derecho.

[nombre]

ESTADO DE NUEVA YORK)

: ss.

CONDADO DE)

Hoy, el día ____ de _____ del 2007, compareció personalmente ante mí [nombre], conocido/a por mí como la persona descrita en y quien ejecutó el precedente Acuerdo y Liberación General, y quien debidamente reconoció ante mí que él/ella había ejecutado el mismo.

Notario Público

EXHIBIT C

NOTICE TO SEPHORA EMPLOYEES

1. This Notice is being posted pursuant to a Consent Decree between Sephora and the U.S. Equal Employment Opportunity Commission ("EEOC").
2. Federal law (Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* ("Title VII") and the Civil Rights Act of 1991, 42 U.S.C. § 1981A) prohibits employers from discriminating against applicants and employees in the terms and conditions of their employment based on the employee's race, color, religion, sex, and national origin.
3. Sephora agrees that neither it nor its managers, officers, or agents will discriminate against any individual because of the individual's national origin. Sephora and its managers, officers and agents also agree not to retaliate against any individual who has participated in an EEOC proceeding.
4. Sephora agrees to provide training in the next four months to all Sephora employees regarding their rights and responsibilities with respect to workplace discrimination.
5. If you have a complaint of discrimination or harassment, you may report it directly to the Equal Employment Opportunity Commission. The EEOC maintains offices throughout the United States, including in New York, NY. Its New York District Office is located at:

Equal Employment Opportunity Commission
33 Whitehall Street, 5th Floor
New York, NY 10004
800-669-4000

This Notice will remain posted until _____, 2009.

Signed this _____ day of _____, 2007.

By: _____

Pauline Roothman, Senior Vice President, Human Resources
Sephora USA, Inc.