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Equal Employment Opportunity Commission et al., v. Lithia Motors Inc., et al.

Judge Phillip S. Figa

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Equal Employment Opportunity Commission et al., v. Lithia Motors Inc., et al.

Keywords

EEOC, Lithia Motors Inc., 05-CV-1901-PSF-MJW, Consent Decree, Hostile Work Environment, Retaliation, Race, Automotive, Title VII, Employment Law

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 05-cv-01901-PSF-MJW

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

JAMES WITHERSPOON,

Plaintiff,

Plaintiff-Intervenor,

v.

LITHIA MOTORS, INC.,

d/b/a

LITHIA DODGE OF CHERRY CREEK, and

LITHIA CHERRY CREEK DODGE, INC.

d/b/a

LITHIA DODGE OF CHERRY CREEK,

Defendants.

**Proposed
CONSENT DECREE**

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I GENERAL PROVISIONS

- 1.1** This matter was instituted by Plaintiff, EEOC, an agency of the United States government, alleging that Defendant Lithia Motors, Inc., a corporation organized under the laws of Oregon and Defendant Lithia Cherry Creek Dodge, Inc. (hereafter, “Lithia” or “Defendants”), violated Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended, 42 U.S.C. § 2000e, *et. seq.*, at the facility known as LITHIA DODGE OF CHERRY CREEK, by (1) maintaining a hostile work environment based on race, and (2) retaliating against an employee who complained about alleged discrimination.
- 1.2** In calendar year 2003, four individuals filed charges with the Equal Employment Opportunity Commission in connection with alleged discriminatory treatment at Lithia Dodge of Cherry Creek: James Witherspoon, Charles Mayes, Herman Ortiz, and Roosevelt Williams. Defendants denied all allegations of the charges.
- 1.3** Plaintiff EEOC filed the above captioned complaint on September 30, 2005. Before agreeing to the terms of this Consent Decree, Defendants had not yet answered the complaint but would have denied all allegations of the complaint and asserted a number of affirmative defenses.
- 1.4** The Parties to this Consent Decree (“Parties”) are Plaintiff United States Equal Employment Opportunity Commission (“EEOC”) and Defendants. The Parties, desiring to settle this action by an appropriate Consent Decree (“Decree”), agree for purposes of this Consent Decree to the jurisdiction of this Court over the Parties and the subject matter of this action, and agree to the power of this Court to enter a Consent Decree

enforceable against Defendants.

- 1.5 This Decree, being voluntarily entered into by the Parties, shall not constitute an admission or an adjudication of the merits or the damages of this case and will not be construed as an admission by Defendants that it violated Title VII.
- 1.6 This Decree is final and binding upon the Parties as to the issues resolved, as well as upon their successors and assigns.
- 1.7 The EEOC and Defendants agree that this Consent Decree fairly resolves the issues arising out of the above-referenced charges, as to acts and practices up to the effective date of this Consent Decree alleged by EEOC in this lawsuit and constitutes a complete resolution of all the EEOC's claims against Defendants under Title VII that were made or could have been made against Defendants in this action by the EEOC.
- 1.8 This Decree resolves all claims alleged in this lawsuit by the EEOC, including back pay, compensatory and punitive damages, interest, injunctive relief, attorneys' fees and costs arising out of the issues in this lawsuit.
- 1.9 The Court shall retain jurisdiction of this action for the duration of the Decree for the purpose of entering all orders, judgments and decrees which may be necessary to implement the relief provided herein.
- 1.10 **Scope** - This Consent Decree covers all Lithia Dodge of Cherry Creek locations, including the location, known as Lithia Cherry Creek Dodge.
- 1.11 **Term of Consent Decree** - This Consent Decree shall remain in effect for four years subsequent to the effective date. In the event the terms and obligations outlined in this

Consent Decree are not completed within the four years, the parties shall meet and confer concerning all matters that are alleged to constitute noncompliance. The Commission reserves the right to file an enforcement action under Section VI (“Enforcement of Consent Decree”) of this Decree to ask the Court to extend the Decree for whatever period is necessary to allow Defendants to comply fully with the terms of this Consent Decree.

1.12 Early Termination - Upon Defendants’ satisfactory performance of all obligations under this Consent Decree for a period of three years, and certification of such satisfactory performance by the outside consultant, referenced in paragraph 3.4 below, Defendants may request in the sixth semi-annual report that the EEOC agree to an early termination of the term of the Consent Decree. The EEOC agrees that it will agree to an early termination after three years if Defendant has satisfactorily performed all obligations under the Consent Decree and that such performance has been certified by the outside consultant.

1.13 Compliance with Federal EEO Laws - Nothing in this Consent Decree shall be construed to limit or reduce Defendants’ obligation to comply with the statutes enforced by the Commission, and which could have been raised or the Charging Parties listed Paragraph IV Monetary Relief in litigation arising out of the above-referenced charges, as to acts and practices up to the effective date of this Consent Decree.

1.14 Complete Consent Decree - This Consent Decree constitutes the complete understanding among the Parties with respect to the matters herein.

- 1.15 Severability** - If one or more provisions of this Consent Decree are rendered unlawful or unenforceable by act of Congress or by decision of the United States Supreme Court, the parties shall attempt to agree upon what amendments to this Consent Decree, if any, are appropriate to effectuate the purposes of this Consent Decree. In any event, the unaffected provisions will remain enforceable.
- 1.16 Waiver of Commission Claims** - Nothing in this Consent Decree shall be construed to preclude the Commission from bringing suit to enforce this Consent Decree in accordance with the enforcement provisions of Section VI (“Enforcement of Consent Decree”) below.
- 1.17 EEOC Authority** - This Consent Decree shall in no way limit the powers of the EEOC in seeking to eliminate unlawful employment practices pursuant to the statutes it is charged with enforcement.
- 1.18 Amendment** - By mutual written consent of the parties, this Consent Decree may be amended in the interest of justice and fairness. Defendants’ consent to amend this Consent Decree can be given only in writing signed by Defendants’ General Counsel.
- 1.19 Implementation** - The Parties agree to take all steps that may be necessary to fully effectuate the terms of this Consent Decree.
- 1.20 Counterparts** - This Agreement may be executed in any number of counterparts, each of which will be considered an original and all of which together will constitute one agreement.

II DEFINITIONS

- 2.4 Complaint of Discrimination, Harassment, or Retaliation** - A complaint of discrimination, harassment, or retaliation, shall be any complaint which comes to the attention of a supervisor or manager and makes allegations of discrimination, harassment, or retaliation. For example, an employee who complains to a supervisor about being called names derogatory of his race, has made a complaint of an allegation of harassment, regardless of whether the employee complains in writing or expressly uses the terms “discrimination” or “harassment.” By contrast, a complaint by an employee that he was unfairly denied overtime may not necessarily constitute a complaint of an allegation of discrimination, unless the employee articulates that he believes he is being treated differently because of his race.
- 2.5 EEO** - The term “EEO” shall refer to the phrase “equal employment opportunity.”
- 2.6 EEO Coordinator** - Defendants’ employee who is responsible for ensuring compliance with this Consent Decree, as described in paragraph 3.3.
- 2.7 Outside Consultant** - The individual who provides services to Defendants and makes recommendations to the EEOC in connection with Defendants’ obligations and responsibilities under this Consent Decree, as described in paragraph 3.4.
- 2.8 Effective Date** -The Effective Date of this Decree is the date that the clerk of the court enters on the docket sheet that the Court gives approval to the Decree.

III AFFIRMATIVE RELIEF

3.1 Notice and Posting of Decree Notice

3.1.1 Posting - Within forty-five (45) days of the Effective Date of this Decree, Defendants shall conspicuously post the Notice attached hereto as Attachment A, in locations where all other employee-related notices are posted. The Notice shall remain posted for the duration of the Consent Decree.

3.1.2 Further Publication of Notice - Whenever Defendants provide the training set forth in this Consent Decree, even if such training is provided on-line, a copy of the Notice shall be provided to the employee.

3.1.3 Orientation on Consent Decree - Prior to posting the Notice required in the preceding Paragraph 3.1.1, Defendants shall conduct orientation meetings advising all supervisors, managers and human resources employees working at the Defendants' facilities or who have human resource responsibility of the Defendants' employees about the terms and conditions of the Decree, with emphasis on the anti-retaliation provisions of the Decree. Defendants shall notify the EEOC of the dates, times and locations at least 10 days prior to each of the orientation meetings, and the EEOC shall have the right to attend and participate in any or all such meetings. In addition, Defendants shall inform its supervisors, managers and human resources employees that any breach of, or failure to comply with, the terms and conditions set forth in this Decree shall subject them to dismissal or other appropriate disciplinary action.

3.2 Injunction

3.2.1 No Discrimination - Defendants shall not discriminate against any employee because of race, color, or national origin. Defendants shall afford all employees the same training and terms and conditions of employment it affords all other employees in similar positions without regard to race, color, or national origin.

3.2.2 No Retaliation - Defendants shall not retaliate against any employee, former employee, charging party, or witness for his or her participation in the EEOC process, the investigation by the EEOC into this matter, participation in this lawsuit, or for asserting any rights under this Decree.

3.3 EEO Coordinator

3.3.1 Barbara Perkins, of Lithia Support Services will serve as EEO Coordinator to oversee Defendants' compliance with and implementation of this Consent Decree. If Defendants decide to change the EEO Coordinator during the term of this Consent Decree, it will provide written notice and a list of the new coordinator's qualifications to the EEOC.

3.3.2 The responsibilities of Defendants' EEO Coordinator will include, but need not be limited to:

- coordinating Defendants' compliance with anti-discrimination laws;
- ensuring Defendants' compliance with this Consent Decree;
- maintaining records to be preserved under Section V ("Reporting and Recordkeeping") of this Decree;

- submitting the reports required under Section V (“Reporting and Recordkeeping”);
- assisting in development and implementation of Defendants’ EEO Training Program, as required under Paragraph 3.5 (“Development of EEO Training Program”) of this Decree;
- assisting in review and revision of Defendants’ policies and procedures, as required under Paragraph 3.6 (“Modification and Implementation of EEO Policies and Procedures”) of this Decree.
- coordinating with the outside consultant described in 3.4 below.

3.4 Outside Consultant

3.4.1 Within 30 days of the effective date of this Consent Decree, Defendants shall select, subject to comment by the EEOC, within 30 days, an outside consultant to assist with reviewing and developing goals and satisfying obligations related to this Consent Decree. The services of the outside consultant shall be paid by Defendants. If Defendants decide to change the outside consultant during the term of this Consent Decree, it will notify the EEOC within 30 days. The EEOC may comment within 30 days of notice.

3.4.2 Within 30 days following the selection of the outside consultant, the outside consultant will review and critique documents, and if necessary conduct witness interviews, relating to the underlying EEOC charges of discrimination, and other

internal complaints, that gave rise to this lawsuit. The EEOC will provide Defendants materials it believes should be of assistance to the review and critique by the outside consultant. Based on this review, the outside consultant shall provide guidance and recommendations to Defendants in order for Defendants to develop effective policies and procedures to detect, prevent, and promptly correct discrimination and harassment that is unlawful under any of the laws enforced by the EEOC. A summary of recommendations by the outside consultant shall be provided to the EEOC ten days following the review and critique that the outside consultant provides to Defendant.

3.4.3 The responsibilities of Defendants' outside consultant will include, but need not be limited to:

- consulting with the EEO Coordinator described in 3.3 above, for compliance with anti-discrimination laws; compliance with minimum standards under the EEOC Guidance: Vicarious Liability for Supervisory Harassment (June 1999); and any other applicable guidance or guidelines of the EEOC; effectiveness of policies and procedures to be reviewed by Defendants under 3.6 of this Consent Decree; effectiveness of training required under 3.5 of this Consent Decree;
- certifying Defendants' compliance with this Consent Decree in each semi-annual report;
- review and consultation on any investigations of discrimination,

harassment, or retaliation, unlawful under any laws enforced by the EEOC.

- assisting in development and implementation of Defendants' EEO Training Program, as required under Paragraph 3.5 ("Development of EEO Training Program") of this Decree;
- assisting in review and revision of Defendants' policies and procedures, as required under Paragraph 3.6 ("Modification and Implementation of EEO Policies and Procedures") of this Decree.

3.5 EEO Training

3.5.1 Development of EEO Training Program - Within one-hundred twenty (120) days of the Effective Date of this Decree, Defendants shall submit to the EEOC a proposed EEO training program for new employees, non-supervisory employees, supervisory employees, personnel coordinators, and human resource employees of Lithia Support Services. Each training program will include the following information: (a) a detailed agenda; (b) curriculum vitae(s) for the individual(s) who will conduct the training; and (c) a plan to ensure that all employees receive the required training.

3.5.2 Amount of Training Required

3.5.2.01 Non-Supervisory Employees - Within 120 days of the Effective Date of the Decree, defendants will provide non-supervisory employees at least two (2) hours of EEO training to all such incumbent employees, and also will provide such training within ten (10) days of hire to new non-supervisory employees, and to all such employees on an

annual bases thereafter during the term of the Decree. This training may be by videotape presentation and may be made by qualified human resource employees of Lithia Support Services.

3.5.2.02 Management/Supervisory Employees - Within 120 days of the Effective Date of the Decree, defendants will provide management/supervisory employees at least eight (8) hours of EEO training to all such incumbent employees, and also will provide such training within fourteen (14) days of hire or promotion to new management/supervisory employees, and to all such employees on an annual bases thereafter during the term of the Decree. This training must be conducted live, and may be presented by qualified human resource employees of Lithia Support Services.

3.5.2.03 Personnel Coordinators - Within 120 days of the Effective Date of the Decree, defendants will provide personnel coordinators at least sixteen (16) hours of EEO training to all such incumbent employees, and also will provide such training within thirty (30) days of hire or promotion into the position, and on an annual basis thereafter during the duration of the Consent Decree. This training must be conducted live, and may be presented by qualified human resource employees of Lithia Support Services.

3.5.2.04 Human Resource Employees - Within 120 days of the Effective Date of the Decree, defendants will provide human resource employees at Lithia Support Services at least sixteen (16) hours of EEO training to all such incumbent employees, and also will provide such training within ninety (90) days of hire or promotion into the position, and

on an annual basis thereafter during the duration of the Consent Decree. This training must be conducted live by qualified individuals not employed by Defendants.

3.5.2.05 Required Subjects of Training - At a minimum, the EEO training programs shall include the following:

- instruction on the requirements of all applicable equal employment opportunity laws including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Equal Pay Act, and the Pregnancy Discrimination Act.
- a review of Defendants' non-discrimination employment policies with particular emphasis on the complaint procedure and prohibitions on retaliation.
- instruction on any policies prohibiting race, color, national origin discrimination, hostile work environment, harassment, and retaliation.
- training for supervisory, management, and human resource employees shall include instruction on the proper procedures for responding to complaints of discrimination or harassment.

3.6 Modification and Implementation of EEO Policies and Procedures

3.6.1 Review of Policies - During the first one-hundred twenty (120) days of this Decree, Defendants shall review Defendants' existing policies and procedures, and, if necessary, develop and implement new and/or revised policies and provisions to ensure equal employment opportunities are afforded to employees without regard to national origin, race, color, sex, religion, age, disability, or

retaliation. Such EEO policies include, without limitation:

(A) policies and procedures to report and investigate complaints and/or incidents of discrimination, harassment, and retaliation;

(B) policies and procedures to monitor the effectiveness of the anti-discrimination, anti-harassment and, anti-retaliation;

(C) policies and procedures to ensure that all complaints are investigated whether or not the complaint is filed only externally with an outside agency or organization;

(D) a management performance review procedure that includes compliance with this Consent Decree.

During the remainder of this Decree, Defendants may develop additional policy revisions to ensure equal employment opportunities.

3.6.2 EEOC Input - For any new or revised policy or procedure, the proposed policy or procedure shall be submitted to the EEOC. Within thirty (30) days of receiving the proposal, the EEOC may comment in writing upon the proposed policy.

3.6.3 EEOC Input Not a Waiver - Under no circumstances shall the EEOC, by commenting or electing not to comment upon Defendants' proposed changes or amendments, be deemed to have waived its right to investigate or litigate any alleged adverse effects of said policy upon equal employment opportunities.

IV MONETARY RELIEF

4.1 Total Monetary Relief. The total amount Defendants will pay under this consent decree is five hundred sixty-two thousand five hundred dollars (\$562,500.00), including payment to three charging parties, individually, and their attorneys:

James Witherspoon - \$320,000.00; 33 1/3% to attorneys fees; 60% of the remainder to compensatory damages and 40% of the remainder to wage loss.

Roosevelt Williams, Jr. - \$100,000.00; 33 1/3% to attorneys fees; 60% of the remainder to compensatory damages and 40% of the remainder to wage loss.

Charles Mayes - \$142,500.00; - 33 1/3% to attorneys fees; 60% of the remainder to compensatory damages and 40% of the remainder to wage loss.

4.2 Payment to Individual Charging Parties and their Attorneys. Charging Parties and their attorneys will receive five hundred sixty-two thousand five hundred dollars (\$562,500.00), and copies of such checks will be mailed to the EEOC within ten days of the Effective Date of the Consent Decree. Defendant will issue appropriate IRS forms and will provide copies to the EEOC in the next Periodic Report, as described in ¶ 5.2.2.

V REPORTING AND RECORD KEEPING

5.1 Document Preservation

5.1.1 For the duration of the Decree, and for a two year period following the termination of the Decree, Defendants agrees to maintain the following records as are

necessary to demonstrate its compliance with this Decree:

- all personnel files including all performance appraisals, discipline and termination records;
- all complaints of discrimination or harassment based upon race, color or national origin and all records of the investigation of those complaints; and
- all complaints of retaliation prohibited by statutes enforced by the EEOC and all records of the investigation of those complaints.

5.2 Reports

5.2.1 Initial Report. Within one-hundred twenty (120) days of the Effective Date of this Decree, Defendants shall provide the EEOC with an affidavit of compliance including a narrative description describing the following.

- Existing policies have been reviewed and revised as necessary to ensure equal employment opportunities, as required in Paragraph 3.6. (“Modification and Implementation of EEO Policies and Procedures”) above.
- All Defendants’ supervisors, managers, and human resource employees with supervisory authority over people employed by Defendants at Lithia Cherry Creek Dodge have attended training on the terms and provisions of this Decree, as required in Paragraph 3.1. 3 (“Orientation on Consent Decree”).

- Proposed EEO training programs are being developed, as required in Paragraph 3.5 (“EEO Training”), above.
- Training provided during the reporting period.
- Verification that the notice remains posted.

5.2.2 Periodic Reports

5.2.2.01 During the term of this Decree, Defendants shall submit eight (8) semi-annual reports to the EEOC, unless the provisions of ¶ 1.12 apply. With each report, Defendants shall submit all data in written or electronic form.

5.2.2.02 The first reporting period will begin on the Effective Date of this Decree, and will end on the last day of the fifth complete calendar month thereafter (*e.g.*, June 16, 2006, through November 30, 2006). Each subsequent reporting period will be six calendar months.

5.2.2.03 Each report shall contain the following information for the relevant reporting period:

- the number of employees employed at Lithia Cherry Creek Dodge at the start and end of the reporting period, categorized by race and national origin to the extent known to Defendants;
- verification of compliance by the outside consultant;
- a summary of all complaints, formal or informal, of race, color, or national origin discrimination, harassment or

retaliation, and copies of the investigative files relating to each complaint; and

- verification of employee attendance for all EEO training conducted during the reporting period.

5.2.3 Other Reports

5.2.3.01 No later than twenty (20) business days prior to holding the orientation meetings required under Paragraph 3.1.2 (“Orientation on Consent Decree”), Defendants shall provide the EEOC with the dates, times and locations of the orientation meetings;

5.2.3.02 No later than twenty (20) days prior to any scheduled training, as required under Paragraph 3.5 (“EEO Training”), above, Defendants shall inform the EEOC of the date, time, and location when the training is scheduled to be conducted.

5.2.4 Additional Data - The EEOC shall have the right to request additional data from Defendants or the outside consultant, so long as the information sought is necessary and consistent with the monitoring of the Decree. Defendants shall comply with a request for additional data within thirty (30) days of the request.

5.2.5 Access to Information - The EEOC shall have reasonable access to review all records maintained by Defendants relating to the implementation or administration of this Consent Decree. Defendants shall ensure that the outside consultant shall promptly provide responses to the EEOC’s reasonable requests for information relating to implementation or administration of this Consent Decree.

VI ENFORCEMENT OF CONSENT DECREE

- 6.1 No Private Right of Action** - There is no private right of action to enforce Defendants' obligations under the Decree and only the EEOC, Defendants or their successors may enforce compliance with the Decree.
- 6.2 Burden of Proof on Enforcement** - The party bringing an enforcement action shall have the burden to show noncompliance. Any party who responds to an enforcement action by arguing that implementation of the recommendation would cause undue hardship shall have the burden to show the same.
- 6.3 Requirement of Informal Resolution Efforts**
- 6.3.1 Notice of Dispute** - Prior to any party initiating an action to enforce the Decree, the party seeking enforcement will provide written notice to the other party(ies) of the nature of the dispute. This notice shall specify the particular provision(s) believed to have been breached and a statement of the issues in dispute. The notice may also include a reasonable request for documents or information relevant to the dispute.
- 6.3.2 Response to Notice of Dispute** - Within fourteen (14) days after service of the Notice of Dispute, the non-initiating party will provide a written response and provide the requested documents or information.
- 6.3.3 Service** - Service of the Notice of Dispute and any Responses shall be made as provided in Paragraph 7.1 ("Notice") below.
- 6.3.4 Meeting** - After service of the Response(s), the parties will schedule a telephone

or in-person meeting to attempt to resolve the dispute.

6.3.5 Dispute Resolution Period - If the dispute has not been resolved within thirty (30) days after service of the Notice of Dispute, an action to enforce the Decree may be brought in this Court.

VII NOTICE

7.1 Any notice, report or communication required under the provisions of this Consent Decree shall be sent by certified mail, postage prepaid, to the appropriate party as follows.

Equal Employment Opportunity Commission
Joseph H. Mitchell
Associate Regional Attorney
Lynn L. Palma
Senior Trial Attorney
Denver Field Office
Equal Employment Opportunity Commission
303 E. 17th Avenue, Suite 510
Denver , CO 80203

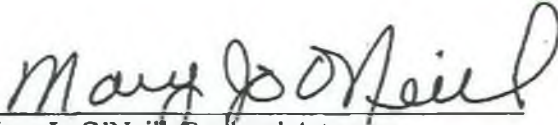
Lithia Motors, Inc.
EEO Coordinator Barbara Perkins
Senior Counsel Joe Davis
Lithia Support Services
360 E. Jackson
Medford, Oregon 97501

While the parties have filed a joint stipulated motion for dismissal of this action concurrently with the submission of this Consent Decree, the court shall retain jurisdiction to enforce any dispute that arises during the term of the Consent Decree.

SO ORDERED, ADJUDGED AND DECREED this ____ day of _____, 2006.

Honorable Phillip S. Figa
United States District Judge

APPROVED AS TO FORM AND CONTENT



Mary Jo O'Neill, Regional Attorney
Phoenix District Office
Equal Employment Opportunity Commission
3300 North Central Avenue, Suite 690
Phoenix, AZ 85012-2504



Joseph H. Mitchell, Associate Regional Attorney

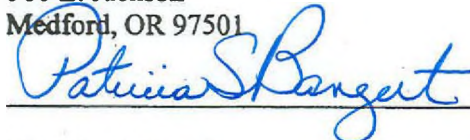


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CONSENT DECREE
EEOC v. Lithia Motors, Inc. et. al CA No. 05-CV-1901-PSF-MJW


APPROVED AS TO FORM: AND CONTENT

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