

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

EVERGREEN MOTORS INC., d/b/a
EVERGREEN KIA,

Defendant.

Case No. 17-cv-07084

Judge John Robert Blakey

CONSENT DECREE

THE LITIGATION

1. Plaintiff U.S. Equal Employment Opportunity Commission (“EEOC”) filed this action alleging that Evergreen Motors, Inc. d/b/a Evergreen Kia (“Evergreen Motors”) engaged in unlawful employment practices, in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended, and the Americans with Disabilities Act of 1990 (“ADA”), as amended, when it subjected Daniel Gombash (“Gombash”) to sex- and disability-based harassment perpetrated by Defendant’s owner, Andrew Francis (“Francis”), and by constructively discharging Gombash as a result of the intolerable working conditions.

2. In the interest of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations, the EEOC and Evergreen Motors have agreed that this action should be fully and finally resolved by entry of this Consent Decree (“Decree”).

3. This Decree fully and finally resolves any and all issues and claims arising out of the Complaint filed by the EEOC and shall be binding on the EEOC; on Evergreen Motors; on Evergreen Motors’ directors, officers, employees, successors, and assigns; and on all persons in active concert or participation with Evergreen Motors.

FINDINGS

4. Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds that:

(a) This Court has jurisdiction over the subject matter of this action and the parties;

(b) The terms of this Decree are adequate, fair, reasonable, equitable, and just;

(c) The rights of the EEOC, Gombash, Evergreen Motors, and the public interest are adequately protected by this Decree;

(d) This Decree conforms to the Federal Rules of Civil Procedure, Title VII, the ADA, and is not in derogation of the rights or privileges of any person; and

(e) Entry of this Decree will further the objectives of Title VII, the ADA, and will be in the best interests of the EEOC, Gombash, Evergreen Motors, and the public.

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

INJUNCTION AGAINST DISCRIMINATION AND RETALIATION

5. Evergreen Motors, its officers, agents, employees, successors, assigns, and all persons acting in concert with it are hereby enjoined from: (1) subjecting any employee to harassment on the basis of sex, including sexual orientation, or disability; and/or (2) engaging in any form of retaliation against any person because such person has opposed any practice prohibited by Title VII or the ADA, including but not limited to the filing of a charge of discrimination, testifying or participating in any manner in any investigation, proceeding, or hearing, or asserting any rights under this Decree.

MONETARY RELIEF

In settlement of claims on behalf of Gombash, Evergreen Motors shall pay the aggregate sum of \$100,000 as follows:

6. Subject to the terms and conditions of this Decree, Evergreen Motors shall pay Gombash compensatory damages in the amount of \$33,333.33. Such payment shall be for damages, and no deductions shall be made from such payment. This payment is for garden-variety emotional distress, is not considered wages, and shall be reflected on an IRS Form 1099.

7. Subject to the terms and conditions of this Decree, Evergreen Motors shall pay Gombash lost wages in the amount of \$33,333.34, less the employee's share of required payroll withholding. This payment for lost wages shall be reflected on an IRS Form W-2.

8. Subject to the terms and conditions of this Decree, Evergreen Motors shall pay Ethan Zelizer, Gombash's private attorney, fees in the amount of \$33,333.33.

9. No later than ten (10) business days after the latter of (1) entry of this Decree or (2) receipt by Evergreen Motors of a copy of a Release Agreement executed by Gombash in the form set forth in Exhibit A to this Decree, Evergreen Motors shall issue and mail to Gombash, by certified or registered mail, checks in the amounts specified under Paragraphs 6 and 7, and shall issue and mail to Zelizer the check in the amount specified in paragraph 8. Contemporaneously, Evergreen Motors shall submit a copy of such checks to the EEOC.

COMPLAINT REPORTING AND INVESTIGATION

10. There shall be an Outside Monitor, who, upon entry of the Decree and for one year thereafter, will have the responsibility to investigate independently and confidentially any and all complaints of sex or disability discrimination, including, but not limited to, harassment based on sex, including sexual orientation, or disability, and retaliation reported to Evergreen Motors, or directly to the Outside Monitor; make recommendations to Evergreen Motors regarding the appropriate disciplinary or corrective action to take to resolve a complaint of sex or

disability discrimination or harassment, or retaliation; and maintain detailed written records of all complaints of sex or disability discrimination or harassment, and retaliation, the investigation of such complaints, and the resolution of such complaints. Within 10 calendar days of entry of the Decree, Evergreen Motors will also identify an employee with experience and/or training in human resources (other than Andrew Francis) who will have the responsibility to investigate complaints of sex or disability discrimination and make recommendations to Evergreen Motors after the term of the Outside Monitor expires. After the term of the Outside Monitor expires, this individual shall have the same responsibilities and authority as the Outside Monitor, and Paragraphs 12-16 below shall also apply to this individual for the duration of the Decree. During the first year of the Decree, this individual will shadow the Outside Monitor as she discharges her duties responding to complaints of sex and disability discrimination. If this individual is no longer able to serve in this capacity during the term of the Decree, Evergreen Motors will identify another person with experience and/or training in human resources to be responsible for these same duties and will so notify its employees and the EEOC.

11. The Outside Monitor shall be Alisa B. Arnoff of Scalambrino & Arnoff, LLP. If Ms. Arnoff is unable to perform the duties of the outside monitor the EEOC shall approve her replacement.

12. Evergreen Motors shall notify the Outside Monitor of all complaints of sex or disability discrimination or harassment, and retaliation reported to

Evergreen Motors and shall transmit to the Outside Monitor all documentation of each such complaint reported to the dealership as soon as practicable and, in any event, no later than two (2) business days after the dealership receives any such complaint.

13. Evergreen Motors shall inform all employees of the appointment and function of the Outside Monitor both in writing and orally within ten (10) calendar days of entry of the Decree, and each individual who makes a complaint (whether oral or written) to Evergreen Motors shall again receive, upon making a complaint, a written notice informing him/her of the existence and function of the Outside Monitor. Both the initial notice and the notice distributed upon receipt of a complaint shall provide the name, telephone number, electronic mail address, and street address at which the Outside Monitor may be reached.

14. Evergreen Motors shall fully cooperate with the Outside Monitor in connection with his/her efforts to investigate complaints of sex or disability discrimination, including harassment, and retaliation, including providing reasonable access to employees, documents, and any other sources of information within seven (7) calendar days of the dealership's receipt of the complaint. The Outside Monitor, as he/she deems it necessary or appropriate, shall have access to all of Evergreen Motors' facilities.

15. In the event the Outside Monitor determines that any employee, including any manager, officer or owner, of Evergreen Motors has engaged in sex or disability discrimination, including harassment, or retaliation, Evergreen Motors

shall take all necessary and appropriate remedial measures, as recommended by the Outside Monitor, unless the dealership can demonstrate to the satisfaction of the Outside Monitor and EEOC that such recommendation would pose an actual and substantial threat to the continued operation or solvency of the business. If Evergreen Motors determines that additional remedial measures beyond those recommended by the Outside Monitor are necessary and appropriate, the dealership may take such additional remedial measures, but must at a minimum take the remedial measures recommended by the Outside Monitor, subject to the provision above.

16. Evergreen Motors shall be responsible for compensating the Outside Monitor at a rate to be agreed upon and shall pay any and all reasonable costs and expenses of the Outside Monitor that he/she deems necessary or appropriate to fulfill his/her work as the Outside Monitor.

ANTI-DISCRIMINATION POLICY

17. Evergreen Motors shall adopt, in writing, a policy against employment discrimination (“Policy”) within 20 calendar days after the approval and entry of this Decree and shall maintain such Policy for the term of this Decree. Evergreen Motors shall provide copies of the Policy to all employees no later than 30 calendar days after entry of this Decree and to all new employees at the time they are hired.

The Policy shall, at a minimum:

(a) specifically prohibit each form of discrimination prohibited by Title VII, including harassment based on sexual orientation;

(b) specifically prohibit each form of discrimination prohibited by the ADA, including harassment;

(c) inform employees that they are entitled to make complaints or reports of unlawful employment discrimination, including harassment, to the Outside Monitor, any manager at Evergreen Motors, and/or to the EEOC; and

(d) inform employees that the Outside Monitor during the duration of the Decree, and Evergreen Motors thereafter, will investigate thoroughly and promptly all such complaints and reports and shall provide that employees who violate the Policy are subject to discipline up to and including discharge.

18. Evergreen Motors shall forward a copy of the Policy to the EEOC and Outside Monitor within 10 calendar days after entry of this Decree. Evergreen Motors shall consider any comments provided by EEOC and the Outside Monitor about the Policy. However, the inclusion of this paragraph in the Decree does not represent the EEOC or the Court's approval of Evergreen Motors' Policy against sex or disability discrimination and retaliation.

19. No later than 30 calendar days after entry of the Decree, Evergreen Motors shall post its Policy: (a) on its website in a conspicuous location accessible to all employees, and (b) in a conspicuous location on a bulletin board or other physical space that is regularly used by Evergreen Motors for posting legal notices concerning employee rights. The policy shall remain posted in this manner for the term of the Decree.

TRAINING

20. No later than 60 calendar days after entry of this Decree, all Evergreen Motors employees shall participate in a training session regarding the laws pertaining to employment discrimination, including harassment based on disability and sex, including sexual orientation. All supervisors, managers and owners shall additionally be trained on the obligations of employers under Title VII and the ADA. Evergreen Motors shall repeat this training at least once every 12 months for the duration of the Decree, within 60 calendar days of each anniversary following entry of this Decree. A registry of attendance shall be maintained for each training session required under this Paragraph.

21. Evergreen Motors shall obtain the EEOC's approval of its proposed trainer and the training content before the commencement of any training session required under Paragraph 20, above. Evergreen Motors shall submit the name, address, telephone number, resume and training proposal of its proposed trainer (including copies of all materials the trainer proposes to display, distribute, or otherwise present) to the EEOC at least 20 business days prior to the proposed date of each training session. The EEOC shall have 10 business days from the date it receives the information described above to accept or reject the proposed trainer and/or the proposed content. In the event the EEOC does not approve Evergreen Motors' proposed trainer and/or content, Evergreen Motors shall have 5 business days to identify an alternate trainer and/or revise the proposed content. The EEOC shall then have 5 business days from the date it receives the information described

above to accept or reject the alternate trainer and/or content. If the parties cannot agree on a trainer or training content through this process, they may seek the Court's assistance under Paragraph 29, below.

22. No later than 5 business days after each training session described in Paragraph 20 above takes place, Evergreen Motors shall certify to the EEOC in writing that the required training session has taken place and the required personnel have attended. Every certification of training described in this Paragraph shall include: (a) the date, location, and duration of the training; (b) a copy of the registry of attendance, which shall include the name and position of each person trained; (c) a current list by name and position of all persons subject to the training requirement; and (d) copies of any and all pamphlets, brochures, outlines or other written materials provided or displayed to the personnel attending each training session, if not previously provided to EEOC.

POSTING AND DISTRIBUTION OF NOTICE

23. No later than 10 business days after entry of this Decree, Evergreen Motors shall post copies of the Notice attached as Exhibit B to this Decree in a conspicuous location on a bulletin board or other physical space that is regularly used by Evergreen Motors for posting legal notices concerning employee rights. The Notice shall remain posted in this manner for the term of this Decree. Evergreen Motors shall take all reasonable steps to ensure that the posting is not altered, defaced, or covered by any other material. Evergreen Motors shall permit a representative of the EEOC to enter Evergreen Motors' premises (or to access the

pertinent section of Evergreen Motors' website, if it is not accessible to the public) for purposes of verifying compliance with this Paragraph at any time during normal business hours without prior notice.

24. No later than 10 business days after entry of this Decree, Evergreen Motors shall distribute a copy of the Notice attached as Exhibit B to this Decree to all employees via electronic mail.

25. No later than 15 business days after entry of this Decree, Evergreen Motors shall certify to EEOC in writing that the Notice has been properly posted and distributed in accordance with Paragraphs 23 and 24.

RECORD KEEPING

26. During the term of this Decree, Evergreen Motors shall maintain and make available for inspection and copying by the EEOC written records of every complaint or report by any employee of sexual harassment, including harassment based on sexual orientation, disability harassment or retaliation prohibited by this Decree. For each such complaint or report, such records shall include: (a) the name of the employee who made the complaint or report and that employee's address and telephone number; (b) the date of the complaint or report; (c) the name and position of each employee who was made aware of the complaint; (d) a written description of what was alleged in the complaint or report; (e) a written description of the resolution or outcome of the complaint or report, including a description of what actions, if any, Evergreen Motors took, and the name and position of all persons

involved in any actions taken; and (f) if the complaint or report was made in written form, a copy thereof.

27. Evergreen Motors shall require personnel within its employ, upon request by the EEOC, to cooperate reasonably with and to be interviewed by the EEOC for purposes of verifying compliance with this Decree.

REPORTING

28. Evergreen Motors shall furnish to the EEOC the following written reports semi-annually (“Semi-Annual Report”) during the term of this Decree. The first Semi-Annual Report shall be due 6 months after entry of the Decree. Subsequent Semi-Annual Reports shall be due every 6 months thereafter, except that the final Semi-Annual Report shall be due 30 calendar days prior to the expiration of the Decree. Each such Semi-Annual Report shall contain:

(a) copies of all records described in Paragraph 26, above, for the 6-month period preceding the Semi-Annual Report (or the 5-month period preceding the final Semi-Annual Report) or a certification by Evergreen Motors that no complaints or reports of such discrimination were received during that period; and

(b) a certification by Evergreen Motors that the Notice required to be posted pursuant to Paragraph 23 of the Decree remained posted in the manner required during the entire 6-month period preceding the Semi-Annual Report.

DISPUTE RESOLUTION

29. If during the term of this Decree either party to the 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 10 business days to remedy the non-compliance or 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 10 business days, the complaining party may apply to the Court for relief, including modification of this Decree or other relief that the Court determines to be appropriate.

TERM AND SCOPE OF THE DECREE AND RETENTION OF JURISDICTION

30. All provisions of this Decree shall be in effect (and the Court will retain jurisdiction of this matter to enforce this Decree) for a term of three (3) years immediately following the entry of the Decree, unless extended by order of this Court to resolve any disputes under Paragraph 29. The parties shall notify the Court 14 days prior to the Decree's expiration whether there are any outstanding disputes under Paragraph 29.

MISCELLANEOUS PROVISIONS

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

32. The terms of this Decree are and shall be binding on the present and future directors, officers, managers, agents, successors and assigns of Evergreen Motors. Prior to any sale or other transfer of Evergreen Motors' business or sale or other transfer of all or a substantial portion of Evergreen Motors' assets, Evergreen Motors shall provide a copy of this Decree to any potential purchaser, potential transferee, or other potential successor.

33. When this Decree requires a certification by Evergreen Motors of any fact(s), such certification shall be made under oath or penalty of perjury by an officer or management employee of Evergreen Motors. When this Decree requires the submission by Evergreen Motors of reports, certifications, notices, or other materials to the EEOC, they shall be sent by U.S. Mail to Evergreen Motors Consent Decree Compliance, Legal Unit, U.S. Equal Employment Opportunity Commission, 500 W. Madison St., Ste. 2000, Chicago, IL 60661. By advance agreement of the parties, prior to each submission, materials may alternatively be submitted by electronic mail.

SO ORDERED, ADJUDGED, and DECREED on this 26th day of April 2018.

Dated: April 26, 2018

Entered:


John Robert Blakey
United States District Judge

Agreed to in form and content:

For the UNITED STATES EQUAL
EMPLOYMENT OPPORTUNITY
COMMISSION
500 West Madison Street, Suite
2000
Chicago, Illinois 60661
312-869-8000

For Evergreen Motors Inc. d/b/a Evergreen
Kia

Andrew Francis
Owner

GREGORY GOCHANOUR
Regional Attorney

DIANE SMASON
Supervisory Trial Attorney

LAURIE ELKIN
Trial Attorney

MILES SHULTZ
Trial Attorney

EXHIBIT A

RELEASE AGREEMENT

In consideration of \$66,666.67 to be paid to me and \$33,333.33 to be paid to my attorney Ethan Zelizer by Evergreen Motors, Inc., in connection with the resolution of EEOC v. Evergreen Motors, Inc. d/b/a, Evergreen Kia, No. 17-cv-07084 (N.D. Ill.), I waive my right to recover for any claims of employment discrimination and/or retaliation arising under Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990 that I had against Evergreen Motors on or before the date of this release and that were included in the claims in EEOC's complaint in this case.

Signed: _____
Daniel Gombash

Date: _____

EXHIBIT B

NOTICE TO EVERGREEN MOTORS 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. Evergreen Motors, Inc. d/b/a Evergreen Kia, No. 17-cv-07084 (N.D. Ill.), resolving a lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC) against Evergreen Motors.

In this lawsuit, the EEOC alleged that Evergreen Motors violated Title VII of the Civil Rights Act of 1964 (Title VII) by subjecting an employee to sexual harassment and violated the Americans with Disabilities Act (“ADA”) by subjecting the employee to disability harassment. EEOC also alleged that Evergreen Motors’ conduct resulted in the employee’s constructive discharge.

To resolve this lawsuit, the EEOC and Evergreen Motors have entered into a Consent Decree requiring, among other things, that:

1. Evergreen Motors will pay the affected individual \$ 100,000;
2. Evergreen Motors will not engage in sexual or disability harassment;
3. Evergreen Motors will not retaliate against anyone for making a report or complaint about unlawful employment discrimination or harassment, for filing a charge of discrimination, or for participating in any way in a proceeding under Title VII and the ADA; and
4. Evergreen Motors will maintain a policy against discrimination and harassment and provide training to all employees on the policy and the requirements of Title VII and the ADA.

The EEOC is a federal agency that enforces federal laws prohibiting discrimination in employment based on race, color, sex (including sexual harassment and pregnancy), religion, national origin, age, disability, genetic information, and retaliation. Further information about EEOC and these laws is

available on EEOC's web site at www.eeoc.gov. If you believe you have been subjected to unlawful discrimination or retaliation, you may contact EEOC by phone at (312) 869-8000 or by TTY at (312) 869-8001. The EEOC charges no fees.

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

This Notice must remain posted for three (3) 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: Evergreen Motors Consent Decree Compliance; EEOC – Legal Unit; 500 West Madison Street, Suite 2000; Chicago, Illinois 60661.

Dated: April 26, 2018

Entered:

John Robert Blakey
United States District Judge