

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:17-cv-02362-RBJ

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff, and

EGAN J. WOODWARD,

Plaintiff-Intervenor,

v.

A&E TIRE, INC.,

Defendant.

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**CONSENT DECREE**

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**I. RECITALS**

1. This matter was instituted by Plaintiff, Equal Employment Opportunity Commission, an agency of the United States government, alleging that A&E Tire, Inc. violated Title VII of the Civil Rights Act of 1964, as amended, by allegedly failing to hire Egan Woodward because of his sex. Plaintiff-Intervenor Egan Woodward intervened raising the same claims.
2. The EEOC, A&E Tire, and Egan Woodward are the Parties to this litigation. The Parties, desiring to settle this action by an appropriate Decree, agree to the jurisdiction of this Court over the Parties and the subject matter of this action, and they agree to the power of this Court to enter a Consent Decree enforceable against A&E Tire.
3. As to the issues resolved, this Decree is final and binding upon the Parties to the Decree and their successors and assigns.

**THEREFORE**, upon the consent of the Parties to the Decree, and upon review by the Court of these terms, it is ORDERED, ADJUDGED, and DECREED that the following terms are approved as set forth herein:

**II. JURISDICTION**

4. The Parties stipulate to the jurisdiction of the Court over the Parties to the Decree and subject matter of this action and have waived the entry of findings of fact and conclusions of law.

**III. TERM AND SCOPE**

5. The Term of this Decree and all obligations hereunder shall be three (3) years from the date that the Court signs this Decree. During the term of the Decree, this Court shall retain jurisdiction of this case for purposes of compliance and any disputes that may arise hereunder.

**IV. ISSUES RESOLVED**

6. This Decree resolves all of the claims alleged in the above-captioned lawsuit and constitutes a complete resolution of all of the Commission's claims of unlawful employment practices under Title VII that arise from Charge of Discrimination Number 540-2014-01866, filed by Mr. Woodward, and the Letter of Determination issued to A&E Tire and all of the personal claims of Plaintiff-Intervenor Egan Woodward.

7. The terms of this Decree shall be binding upon the present and future directors, officers, managers, agents, successors, and assigns of A&E Tire.

8. The terms and provisions of this Consent Decree are adequate, fair, reasonable, equitable and just. The rights of the parties are adequately protected by this Consent Decree.

9. This Consent Decree conforms with the Federal Rules of Civil Procedure and is not in derogation of the rights and privileges of any person. The entry of this Consent Decree will

further the objectives of Title VII and will be in the best interest of A&E, the Commission, Egan Woodward, and the Public.

#### **V. NON-ADMISSION**

10. This Decree, being entered into with the consent of the Commission and A&E Tire, Inc., shall not constitute an adjudication or finding on the merits of this case nor shall it be deemed an admission by Defendant of any violation of Title VII of the Civil Rights Act of 1964. A&E Tire denies any liability for any and all claims contained in the complaint filed by the Commission and by Egan Woodward and denies that it has violated Title VII in any manner. A&E Tire is entering into this Consent Decree solely for purposes of avoiding further litigation costs and expenses.

#### **VI. MONETARY RELIEF**

11. In full settlement of all claims alleged in the Commission's complaint and the complaint of Plaintiff Intervenor, A&E Tire shall pay the following amount: \$60,000 to Mr. Woodward.

12. A&E Tire will not condition the receipt of monetary relief upon Mr. Woodward's agreement to: (a) maintain as confidential the facts and/or allegations underlying the complaint and the terms of this Decree; (b) waive his statutory rights to file a charge with any governmental agency; or (c) agree to a non-disparagement and waiver of /or confidentiality agreement.

13. A&E Tire shall be responsible for paying the employer share of payroll taxes for back pay and making withholdings as set forth on Mr. Woodward's IRS W-4 form. The compensatory damages payment shall be reported on IRS Form 1099 and shall not be subject to withholdings.

14. No later than ten (10) days after this Decree is entered, A&E Tire shall send payments to Mr. Woodward.

15. Within three (3) business days after the payments are sent, A&E Tire shall submit to the EEOC confirmation of the payments issued.

16. If the EEOC informs A&E Tire that Mr. Woodward has not received a check within a month of A&E Tire's mailing of the check, A&E Tire shall cancel the original check, reissue another check, and submit a copy of the reissued check to the EEOC within ten (10) days.

17. By January 31, 2020, A&E Tire shall issue Mr. Woodward a United States Internal Revenue Service Form W-2 for all payments designated as back pay and United States Internal Revenue Service Form 1099 for all payments designated as compensatory damages.

#### **VI. OTHER INDIVIDUAL RELIEF**

18. Within ten (10) calendar days after the date the Court signs this Decree, A&E Tire shall provide a letter of apology to Mr. Woodward on company letterhead in the form attached as Attachment A.

#### **VI. EQUITABLE RELIEF**

##### ***A. NON-DISCRIMINATION***

19. A&E Tire and its officers, agents, successors, management (including supervisory employees), and other persons in active concert or participation with it, or any of them, are permanently enjoined from engaging in any employment practice which discriminates on the basis of sex, including sex stereotyping, gender identity, and transgender status.

20. A&E Tire and its officers, agents, successors, management (including supervisory employees), and all other persons in active concert or participation with it are permanently enjoined from engaging in reprisal or retaliation of any kind against any person because of such person's opposition to any practice made unlawful under Title VII of the Civil Rights Act. A&E Tire shall not retaliate against a person because such person brings an internal complaint of

discrimination with A&E Tire; because such person files or causes to be filed a charge of discrimination with the Commission or any other agency charged with the investigation of employment discrimination complaints or whose statements serve as the basis of a charge; or because such person testifies or participates in the investigation or prosecution of an alleged violation of these statutes. A&E Tire shall not retaliate in any manner against individuals identified as witnesses in this action or who assisted in the investigation giving rise to this action.

***B. EEO Policy Review***

21. Within ninety days (90) days after the date the Court signs this Decree, A&E Tire shall, in consultation with an outside consultant experienced in the area of employment discrimination law, review, and where appropriate, revise its written EEO policies, including policies related to sex discrimination to conform with the law;

22. A&E Tire's strong and clear commitment to preventing unlawful sex discrimination, including discrimination based on sex-stereotyping, gender identity, and transgender status;

23. A clear and strong encouragement of persons who believe that they have been subjected to sex discrimination—including sex-stereotyping, gender identity, and transgender status—to report such concerns;

24. The identification of specific individuals, with telephone numbers and email addresses, to whom applicants and employees can report concerns about sex discrimination, including sex-stereotyping, gender identity, and transgender status;

25. A clear explanation of the steps an applicant or employee can take to report sex discrimination—including sex-stereotyping, gender identity, and transgender status—which much include the options of either an oral or written complaint;

26. An assurance that A&E Tire will investigate allegations of any activity that might be construed as unlawful sex discrimination, and that such investigation will be prompt, fair, and reasonable, and conducted by a neutral investigator specifically trained in receiving, processing, and investigating allegations of sex discrimination;

27. An assurance that appropriate corrective action will be taken by A&E Tire if violations are found;

28. A description of the consequences, up to and including termination, that will be imposed upon violators of A&E Tire's sex discrimination policies;

29. A promise of maximum feasible confidentiality under the law for persons who report sex discrimination or who participate in an investigation into allegations of sex discrimination; and

30. An assurance of non-retaliation for persons who report sex discrimination, and for witnesses who provide testimony or other assistance in the investigation(s) of such alleged discrimination.

31. The written EEO policies shall be distributed to each current employee and distributed to all new employees when hired.

**C. Training**

32. On an annual basis, A&E Tire shall train all of its personnel about federal law prohibitions on sex discrimination, including sex-stereotyping, gender identity, and transgender status. All training under this paragraph shall be at A&E Tire's selection and expense. Training shall be by live presentation at A&E Tire's main facility in Denver and by webinar at its other facilities.

33. The training will be conducted as follows:

a. **Non-Managerial Employees:** Each year for the duration of this Decree, A&E Tire will provide non-managerial employees at least one (1) hour of training on the areas described above. Additionally, the training under this Paragraph must be provided by an outside vendor.

b. **Supervisory and Managerial Employees:** Each year for the duration of this Decree, A&E Tire will require all individuals who work in a managerial or supervisory capacity for A&E Tire to receive at least two (2) hours of training on Title VII and other federal anti-discrimination laws. Half of these hours must directly address sex discrimination, including sex-stereotyping, gender identity, and transgender status, as well as retaliation. The training must cover proper methods for receiving, handling, and investigating (where applicable) complaints of discrimination. In each of these training sessions, A&E Tire shall emphasize with managerial and supervisory employees that, due to their positions of power, such employees (a) must be particularly vigilant not to discriminate; (b) must be sensitive of how their actions or words might be perceived by applicants and subordinate employees; and (c) must avoid the temptation to retaliate against an applicant or employee because a complaint is made, or might be made, against them. Additionally, A&E Tire will require employees who are newly hired or recently promoted into a managerial or supervisory position to complete the requisite three (3) hours of training for that year within twenty (20) days of being hired or promoted. The training under this Paragraph must be provided by an outside vendor.

c. An agenda for the training, training materials, and the resumes relating to the presenters will be provided to the EEOC thirty (30) days before each training session. If the same training and training materials are being used as in previous sessions, A&E Tire

may instead certify to the EEOC that it will be using the same training and training materials in the first report submitted to the EEOC each calendar year. A&E Tire agrees that the first such training session will take place within ninety (90) days after the Court's entry of this Decree. A&E Tire agrees that all of its personnel shall both register and attend the training sessions.

d. The Commission, at its discretion, may designate one or more Commission representatives to attend any of the training sessions described above, and the Commission representatives shall have the right to attend, observe, and fully participate in all of the sessions. A&E Tire shall provide the Commission with ten (10) days' notice that a training session will be conducted, or alternatively, A&E Tire may provide a comprehensive schedule of trainings planned for the year or for a number of months if such is more convenient.

***D. Posting to Employees***

34. A&E Tire shall post and cause to remain posted the posters required to be displayed in the workplace by EEOC regulation 29 C.F.R. § 1601.30 in all of its facilities.

35. Within five (5) business days after the Court's entry of this Decree, A&E Tire shall post in each of its facilities, in a conspicuous place frequented by employees, the Notice attached as Attachment C to this Decree. The Notice shall remain posted for the duration of this Decree. If the Notice becomes defaced or illegible, A&E Tire will replace it with a clean copy. A&E Tire shall certify to the Commission, in writing, within ten (10) days of entry of this Decree that the Notice has been properly posted and shall provide recertification in each of the semi-annual reports required under the Reporting provisions of this Decree.



## **VII. RECORDKEEPING AND REPORTING**

36. For the duration of this Decree, A&E Tire shall maintain all records concerning implementation of this Decree, including, but not limited to, all of the following:

- a. Applications;
- b. Interview notes and any documents (including email and texts) discussing applicants and/or hiring decisions;
- c. Records reflecting all oral and written complaints of sex discrimination and all records documenting the investigation of such complaints, including applicable witness statements, documents compiled during the investigation, any conclusions and findings, and any corrective remedial actions taken.

37. A&E Tire shall provide semi-annual reports for each six (6) month period following the entry of this Decree. The reports shall be due thirty (30) days following the respective six-month period, except the final report which shall be submitted to the Commission six (6) weeks prior to the date on which the Decree is to expire.

A. **Requirements:** Each report shall provide the following information:

a. **Complaints of Sex Discrimination**

- i. For purposes of this Paragraph, the term “complaint of sex discrimination” will include any written or verbal complaint which alleges sex discrimination, including sex-stereotyping, gender identity, and transgender status, even if the complainant does not use legal or technical terminology.
- ii. The report shall include:

- a. The name, address, email address, and telephone number of each person making a complaint of sex discrimination to A&E Tire or to any federal, state, or local government agency;
- b. The name, address, email address, and telephone number of each person identified as a potential witness and/or victim to the incident of sex discrimination;
- c. A brief summary of each complaint, including the date of the complaint, the name of the individual(s) who allegedly engaged in the sex discrimination, A&E Tire's investigation and response to the complaint, the name of the person who investigated or responded to the complaint, and what, if any resolution was reached; and
- d. Copies of all documents memorializing or referring to the complaint, investigation, and/or resolution thereof.

**b. Training:**

- i. For each training program required under this Decree, and conducted during the reporting period, A&E Tire shall submit a registry of attendance and/or certificates of completion.
- ii. For each training program conducted by an outside consultant or vendor not affiliated with A&E Tire, A&E Tire will identify the consultant and/or vendor and provide a copy of the program agenda.

- c. Posting of Notice:** A&E Tire shall recertify to the Commission that the Notice required to be posted under this Consent Decree has remained posted during the reporting period or, if removed, was promptly replaced.

38. Within thirty (30) days after the date the Court signs this Decree, A&E Tire shall certify to the Commission that the letter of apology required by Paragraph 18 of this Decree has been provided to Mr. Woodward.

39. Within one hundred twenty (120) days after the date the Court signs this Decree, A&E Tire shall report on the creation and/or revision of any policies or practices required by this Decree, as required in Section B above.

40. A&E Tire shall comply with all recordkeeping obligations under the law prohibiting discrimination.

**VIII. RETENTION OF JURISDICTION AND ENFORCEMENT OF DECREE**

41. This Court shall retain jurisdiction of this case for purposes of compliance with this Decree and entry of such further orders or modifications as may be necessary or appropriate to effectuate equal employment opportunities for employees. This Consent Decree shall expire by its own terms at the end of three (3) years without further action by the parties.

42. There is no private right of action to enforce A&E Tire's obligations under the Decree and only the Commission, its successors, or its assigns, may enforce compliance herewith.

43. During the term of this Decree, the Commission may review compliance with this Decree. If the Commission has reasonable cause to believe that Defendant has violated any of the terms of this Consent Decree, it shall notify A&E Tire, in writing, and A&E have ten (10) business days from the date the written notice was received in which to satisfy the Commission that there has not been a violation or that the violation has been corrected. If at the expiration of such time period, the Commission has not been so satisfied, then it may immediately apply to the Court for appropriate relief, including extension of this Decree for such period as may be necessary to remedy its non-compliance.

**IX. EEOC AUTHORITY**

44. With respect to matters or charges outside the scope of this Decree, this Decree shall in no way limit the powers of the Commission to seek to eliminate employment practices or acts made unlawful by any of the statutes over which the EEOC has enforcement authority that do not arise out of the claims asserted in this lawsuit.

**X. COSTS AND ATTORNEY'S FEES**

45. Except as expressly agreed to by the parties, each party shall be responsible for and shall pay its own costs and attorney's fees.

**XIII. NOTICE**

46. Unless otherwise indicated, any notice, report, or communication required under the provisions of this Decree shall be sent by certified mail, postage prepaid, as follows:

James Driscoll-MacEachron  
EEOC Phoenix District Office  
3300 N. Central Ave., Ste. 690  
Phoenix, AZ

**XIV. SIGNATURES**

47. The Parties to this Decree agree to the entry of this Decree subject to final approval by the Court.

SO ORDERED this 5th day of April, 2019.

BY THE COURT:



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Honorable R. Brooke Jackson  
United States District Judge

BY CONSENT:

Equal Employment Opportunity Commission    A&E Tire

By: \_\_\_\_\_  
Mary Jo O’Neill  
Regional Attorney

By: \_\_\_\_\_  
Owner

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Jim Driscoll-MacEachron  
Supervisory Trial Attorney  
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Gokenbach Law, LLC  
Industry Commercial Building  
3001 Brighton Blvd., Suite 2660  
Denver, CO 80216

Attorneys for Defendant, A&E Tire, Inc.

**ATTACHMENT A**

Dear Mr. Woodward,

We want to extend our sincere apologies for the distress you suffered after not being hired for a position with A&E Tire. We want you to know that it is very important to us that we treat every applicant and every employee fairly and on their own merit.

Signed: \_\_\_\_\_

Owner

**ATTACHMENT B**

**NOTICE TO APPLICANTS AND EMPLOYEES**

The following notice is being posted under a Consent Decree resolving the lawsuit, *EEOC v. A&E Tire, LLC*, filed in the United States District Court for the District of Colorado, Civil Action No. 1:17-cv-02362-RBJ. The United States Equal Employment Opportunity Commission alleged that A&E Tire violated Title VII of the Civil Rights Act by discriminating against a job applicant because of his sex. A&E denied any discrimination against the job applicant.

A&E Tire wishes to emphasize its policy of providing equal employment opportunity in all areas of employment. A&E Tire will ensure that there will be no sex discrimination against any applicant or employee. A&E Tire will also ensure that there shall be no discrimination against any employee or applicant for employment on the grounds of race, color, religion, disability, pregnancy, national origin, or age. Should any applicant or employee have any complaints of discrimination or unlawful retaliation, they may contact the EEOC directly at 1-800-669-4000 or the Colorado Civil Rights Division at 303-894-2997.

This Notice shall remain posted for three years.

By: \_\_\_\_\_  
Date \_\_\_\_\_

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