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EEOC v. Mcdonald's Restaurants of California, Inc.

Judge Anthony W. Ishii

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EEOC v. Mcdonald's Restaurants of California, Inc.

Keywords

Equal Employment Opportunity Commission, Shaheed Khan, Mcdonald's Restaurants of California, Inc., 1:13-cv-02065-AWI-SAB, Consent Decree, Disparate Treatment, Constructive Discharge, Religion, Service, Employment Law, Title VII

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15 **UNITED STATES DISTRICT COURT**
16 **EASTERN DISTRICT OF CALIFORNIA**

17 U.S. EQUAL EMPLOYMENT
18 OPPORTUNITY COMMISSION,

19 Plaintiff,

21 vs.

22 MCDONALD'S RESTAURANTS OF
23 CALIFORNIA, INC.,

24 Defendant.

Case No. 1:13-cv-02065-AWI-SAB

CONSENT DECREE AND ORDER

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I. INTRODUCTION

Plaintiff U.S. Equal Employment Opportunity Commission (“EEOC”) and Defendant McDonald’s Restaurants of California, Inc. (“Defendant”) stipulate and agree to entry of this consent decree and order (“Decree”) to resolve the EEOC’s complaint against Defendant in *U.S. Equal Employment Opportunity Commission v. McDonald’s Restaurants of California, Inc.*, Civil Case No. 1:13-cv-02065-AWI-SAB (the “Action”) filed in the Eastern District of California.

On December 18, 2013, EEOC brought this Action against Defendant pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* (“Title VII”). In the Action, the EEOC alleged that Defendant discriminated against its former employee, Charging Party Shaheed Khan, by denying him reasonable accommodation and by constructive discharge on the basis of religion, Islam, in violation of section 703(a)(1) of Title VII.

II. PURPOSES AND SCOPE

A. This Decree is made and entered into by and between the EEOC and Defendant (collectively the “Parties”).

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

1. To avoid the expense, delay, and uncertainty that would result from continued litigation;
2. To provide appropriate monetary and injunctive relief;
3. To ensure Defendant’s employment practices comply with Title VII, including its prohibition against religious discrimination;
4. To ensure that Defendant’s managers, supervisors, and employees are given effective training of their obligations under Title VII with an emphasis on providing reasonable accommodation(s) to employees because of their religion;
5. To ensure that Defendant provides reasonable

1 this Action. The complaint in this Action asserts claims that, if proven, would
2 authorize the Court to grant the equitable relief set forth in this Decree.

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

4 C. This Decree conforms to the Federal Rules of Civil Procedure and
5 Title VII and does not derogate the rights or privileges of any person.

6 D. The Court shall retain jurisdiction over this Action during the duration
7 of the Decree for the purpose of entering any order, judgment, or decree that may
8 be necessary to implement the relief provided herein.

9 **V. EFFECTIVE DATE AND DURATION**

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

13 B. The obligations of Defendant included in this Decree shall remain in
14 effect for two (2) years after the Effective Date. In the event that the EEOC proves
15 that Defendant has not complied with the Decree, the duration of this Decree may
16 be extended by court order to effectuate the purposes of the Decree.

17 **VI. MODIFICATION AND SEVERABILITY**

18 A. This Decree constitutes the complete understanding of the Parties with
19 respect to the matters contained herein.

20 B. By mutual written agreement of the Parties, this Decree may be
21 amended or modified in the interests of justice and fairness in order to effectuate
22 its provisions.

23 C. No waiver, modification, or amendment of any provision of this
24 Decree will be effective unless made in writing and signed by an authorized
25 representative of each of the Parties.

26 D. If one or more of the provisions of this Decree is rendered unlawful or
27 unenforceable, (1) the Parties shall make good faith efforts to agree upon
28 appropriate amendments in order to effectuate the purposes of the Decree, and (2)

1 the remaining provisions will remain in full force and effect unless, despite the
2 Parties' best efforts, the purposes of this Decree cannot be achieved.

3 **VII. COMPLIANCE AND RESOLUTION**

4 A. The Parties agree that if the EEOC has reason to believe that
5 Defendant has failed to comply with any provision of this Decree, the EEOC may
6 file a motion before this Court to enforce the Decree. Prior to initiating such
7 action, the EEOC will notify Defendant and its legal counsel of record, in writing,
8 of the nature of the dispute. This notice shall specify the particular provision(s)
9 that the EEOC believes Defendant has breached and the factual basis for the
10 alleged breach.

11 B. The Parties agree to cooperate with each other and to act in good faith
12 to resolve any dispute referenced in the EEOC's notice before the EEOC petitions
13 the Court for resolution of the dispute.

14 C. Absent a showing by either party that the delay will cause irreparable
15 harm, Defendant shall have forty-five days to attempt to resolve or cure the
16 putative breach. If forty-five days pass without resolution, the EEOC may petition
17 this Court for resolution of the dispute, seeking all available relief, including an
18 extension of the term of the Decree for such period of time as Defendant is shown
19 to be in breach of the Decree or any other relief the Court deems appropriate.

20 **VIII. RELIEF SPECIFICALLY TO SHAHEED KHAN**

21 A. Monetary Relief

22 1. In settlement of this Action, Defendant shall pay a total of
23 \$50,000 (the "Settlement Amount") within ten days of the Effective Date of this
24 Decree by mailing a check by certified mail to an address provided by the EEOC.
25 The entire Settlement Amount shall be made payable to Shaheed Khan.

26 2. The EEOC deems that all of the Settlement Amount be
27 designated as non-wage compensation for emotional distress under Title VII and
28 no tax withholding will be made. Defendant shall prepare and distribute a 1099 tax

1 reporting form to Shaheed Khan and shall make appropriate reports to the Internal
2 Revenue Service and other tax authorities, if necessary.

3 3. Within three days of the issuance of the check, Defendant shall
4 submit a copy of the check and related correspondence to Anna Y. Park, EEOC
5 Regional Attorney, 255 East Temple Street, 4th Floor, Los Angeles, California,
6 90012.

7 B. Other Relief Specific to Shaheed Khan

8 1. Defendant shall purge Shaheed Khan's employee records of any
9 negative warnings, disciplines, or other negative references relating to his request
10 for religious accommodation; to disciplinary action after his request for religious
11 accommodation; and to his quitting and/or being terminated from his position with
12 Defendant.

13 2. If prospective employers of Shaheed Khan inquire of Defendant
14 by contacting McDonald's The Work Number at (800) 367-5690 about his
15 employment with Defendant, McDonald's shall limit any response to verify only
16 his employment by Defendant, the period of such employment, and his job title(s).

17 **IX. GENERAL INJUNCTIVE RELIEF**

18 A. Non-Discrimination

19 Defendant, its officers, agents, management, successors, assigns, and
20 directors are enjoined from discriminating in violation of Title VII based on the
21 sincerely held religious beliefs of an employee at any of the Designated
22 Restaurants (as defined Paragraph IX.D., below).

23 B. Non-Retaliation

24 Defendant shall not retaliate against any current or former employee or
25 applicant at any of the Designated Restaurants (as defined in Paragraph IX.D.,
26 below) because he or she opposed any discrimination based on his or her sincerely
27 held religious beliefs or because the employee has made a charge, testified,
28 assisted, or participated in any manner in an investigation, proceeding, or hearing

1 concerning discrimination in violation of Title VII based on the sincerely held
2 religious beliefs of an employee.

3 C. Policies and Procedures

4 1. Defendant shall have an anti-discrimination policy and
5 complaint procedure for the duration of the Decree. Its current anti-discrimination
6 policy and complaint procedure are attached as Exhibit A (“Policy”). If Defendant
7 makes changes to its Policy during the term of the Decree, Defendant will provide
8 a copy of the revised Policy to the EEOC within thirty days of the revision.

9 D. Distribution

10 1. Within ninety days of the Effective Date, Defendant shall
11 distribute its Policy to all management and non-management employees in
12 restaurants in the same patch of restaurants as the restaurant where Shaheed Khan
13 used to work (the “Designated Restaurants”). The “Designated Restaurants” and
14 their current locations are:

- 15 1. Store No. 06008 - 5645 E. Kings Canyon, Fresno, California 93727.
- 16 2. Store No. 19189 - 4190 N. West Avenue, Fresno, California 93705.
- 17 3. Store No. 07579 -368 E. Shaw Avenue, Fresno, California 93710.
- 18 4. Store No. 05487 - 1718 W. Olive, Fresno, California 93728.
- 19 5. Store No. 25557 – 1197 N. Willow, Clovis, California 92612.

20 Within thirty days of hire, Defendant shall distribute its Policy to any employees
21 newly hired to work at the Designated Restaurants.

22 2. Defendant shall ensure that all employees who receive a copy
23 of the Policy sign a form acknowledging having received, read, and understood the
24 policy and complaint procedure.

25 E. Training

26 1. Within ninety days of the Effective Date, Defendant shall
27 ensure that all non-management employees of the Designated Restaurants attend a
28 training program of at least one hour in duration regarding their rights and

1 responsibilities under Title VII with an emphasis on its prohibition against
2 religious discrimination and retaliation. The training also should include a review
3 of the employee's right to seek accommodation of his or her religious beliefs and
4 Defendant's policy and procedure for reporting and handling requests for
5 accommodation of the employee's religious beliefs, complaints of harassment,
6 discrimination, and retaliation ("Non-Management Employee Training").
7 Defendant shall hold a live "Non-Management Employee Training." Non-
8 management employees who are not present at the live Non-Management
9 Employee Training shall attend a separate live training or view a recorded version
10 of the live Non-Management Employee Training with a live component where they
11 can ask questions and receive answers from someone who has attended the live
12 training and is knowledgeable of the issues covered in the training.

13 2. Within ninety days of the Effective Date, Defendant shall
14 ensure that its human resources managers and consultants and restaurant managers
15 and supervisors with responsibility for the Designated Restaurants attend a training
16 program of at least one hour in duration on Title VII's prohibition against religious
17 discrimination and retaliation, the Policy, the handling of any request for
18 accommodation of an employee's religious beliefs in compliance with Title VII
19 and its prohibition against retaliation ("HR and Manager Training"). Defendant
20 shall hold a live HR and Manager training. For management employees who are
21 not present at the live HR and Manager Training, Defendant shall ensure that they
22 attend a separate live training or view a recorded version of the live HR and
23 Manager training with a component where they personally can ask questions and
24 receive answers from someone who has attended the live training and is
25 knowledgeable of the issues covered in the training. This HR and Manager
26 Training shall include instruction regarding:

27 a. Defendant's responsibility under Title VII to provide
28 reasonable accommodation(s) to employee's sincerely held religious beliefs;

1 b. Defendant's Policy on the handling of an employee's
2 request for accommodation of his or her sincerely held religious beliefs, on
3 engaging in the interactive process, and on providing reasonable accommodation to
4 its employees because of his or her sincerely held religious beliefs;

5 c. Title VII's prohibition against retaliation against any
6 employee who engages in protected activity under Title VII.

7 3. During the term of this Decree, Defendant shall ensure that any
8 newly hired non-management employee in one of the Designated Restaurants shall
9 receive Non-Management Employee Training as described herein individually
10 either live or through video within thirty days of hire.

11 4. During the term of this Decree, Defendant shall ensure that any
12 newly hired management employee in one of the Designated Restaurants shall
13 receive the HR and Management Training as described herein individually either
14 live or through video within thirty days of hire.

15 5. Defendant shall ensure that all employees in any of the
16 Designated Restaurants who receive Non-Management Employee Training or HR
17 and Manager Training sign a form acknowledging his or her attendance at the
18 training(s).

19 F. Posting of Notice

20 Within ten business days after the Effective Date, and throughout the term of
21 this Decree, Defendant shall post at each of the Designated Restaurants the Notice
22 of the terms of this Decree in a clearly visible location frequented by employees at
23 that facility.

24 G. Record Keeping and Reporting

25 1. Document Preservation: For the duration of the Decree,
26 Defendant shall retain such records as are necessary to demonstrate its compliance
27 with this Decree, including the following:

28 a. its existing policy or revised anti-discrimination policy

1 and complaint procedure, if changes are made;

2 b. the forms signed by employees acknowledging their
3 receipt, reading, and understanding of Defendant's anti-discrimination policy and
4 complaint procedure;

5 c. the training materials used in Non-Management
6 Employee Training and HR and Manager Training;

7 d. the attendance sheets or verifications signed by
8 employees concerning attendance at Non-Management Employee Training and HR
9 and Manager Training; and

10 e. documentation in a centralized tracking system of any
11 complaint of discrimination and any requests for accommodation of an employee's
12 sincerely held religious beliefs made to McDonald's HR consulting hotline by an
13 employee employed at any of the Designated Restaurants, including the date, the
14 name of the employee who filed the request for accommodation, the name of the
15 person who handled the request, a summary of Defendant's response to the
16 request, and the resolution of the request. Human Resources Managers and
17 Consultants with responsibility for the Designated Restaurants shall maintain a list
18 of complaints of discrimination made to them based on an employee's sincerely
19 held religious beliefs and any requests for accommodation of an employee's
20 sincerely held religious beliefs made by an employee employed at any of the
21 Designated Restaurants, including the date, the name of the employee who filed
22 the complaint, the name of the person who handled the complaint, a summary of
23 any investigation, and the resolution of the complaint

24 2. Changes in Policy and Procedure: If Defendant makes any
25 changes to its anti-discrimination policy and procedure during the term of this
26 Consent Decree, Defendant will provide a copy of the revised policy and procedure
27 to the EEOC within thirty days of the revision.

28 3. Initial Reporting: Within ninety days of the Effective Date,

1 Defendant shall provide to the EEOC a written report of the status of its
2 compliance with the Decree since the Effective Date. The Initial Report shall
3 include the following:

- 4 a. confirmation that Defendant has distributed its anti-
5 discrimination policy and complaint procedure in accordance with the Decree;
- 6 b. confirmation that Defendant has provided the training in
7 accordance with the Decree;
- 8 c. confirmation that Defendant has complied with the
9 record keeping requirements of the Decree;
- 10 d. confirmation that Defendant has posted the Notice of the
11 terms of the Decree (attached as Exhibit A);
- 12 e. a copy of the training materials used in Non-Management
13 Employee Training and HR and Manager Training; and
- 14 f. a log of all complaints of discrimination based on an
15 employee's sincerely held religious belief and requests for accommodation of an
16 employee's sincerely held religious beliefs made to McDonald's HR Consulting
17 hotline or to Human Resources Managers or Consultants with responsibility for the
18 Designated Restaurants by an employee employed at any of the Designated
19 Restaurants, including the date, the name of the employee who filed the complaint,
20 the name of the person who handled the complaint, a summary of any
21 investigation, and the resolution of the complaint.

22 4. Annual Reporting: Twelve months after the deadline for Initial
23 Reporting and one month before the termination of the Decree, Defendant shall
24 provide to the EEOC a written report as to Defendant's compliance with the
25 Decree since the last report.

26 5. Request by the EEOC: Within thirty days of a request by the
27 EEOC, Defendant shall provide to the EEOC a log of all complaints of
28 discrimination based on an employee's sincerely held religious belief and requests

1 for religious accommodation of an employee's sincerely held religious beliefs
2 made to McDonald's HR Consulting hotline or to Human Resources Managers or
3 Consultants with responsibility for any of the Designated Restaurants by an
4 employee employed at any of the Designated Restaurants, including the date, the
5 name of the employee who filed the complaint, the name of the person who
6 handled the complaint, a summary of any investigation, and the resolution of the
7 complaint.

8 **X. COSTS OF ADMINISTRATION AND IMPLEMENTATION**

9 Defendant shall bear all costs associated with the administration and
10 implementation of its obligations under this Decree.

11 **XI. ATTORNEYS FEES AND COSTS**

12 Each Party shall bear its own costs of suit and attorneys' fees.

13 **XII. MISCELLANEOUS PROVISIONS**

14 A. During the term of this Consent Decree, Defendant shall provide any
15 potential successor-in-interest with a copy of this Decree within a reasonable time
16 prior to the execution of any agreement for acquisition or assumption of control of
17 any or all of the Designated Restaurants.

18 B. During the term of this Decree, Defendant shall ensure that each of its
19 officers, managers, supervisors and Human Resources staff is aware of any term in
20 this Decree which may be related to his/her job duties.

21 C. All reporting under this Decree shall be directed to: Anna Y. Park,
22 EEOC Regional Attorney, 255 East Temple Street, 4th Floor, Los Angeles, CA,
23 90012.

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

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U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Date: December 19, 2013

By: /s/ Anna Y. Park
Anna Y. Park
Attorney for Plaintiff EEOC

Date: December 19, 2013

By: /s/ Brett Rawitz
McDonald's Restaurants of
California, Inc.

IT IS SO ORDERED.

Dated: December 20, 2013



SENIOR DISTRICT JUDGE

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ORDER

GOOD CAUSE having been shown, the provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is fair and adequate.

IT IS SO ORDERED.

