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United States Equal Employment Opportunity Commission v. BMW Manufacturing Co., LLC,

Judge Henry M. Herlong Jr.

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United States Equal Employment Opportunity Commission v. BMW
Manufacturing Co., LLC,

Keywords

EEOC, BMW Manufacturing Co., 7:13-CV-01583-HMH, disparate impact, discharge, race, disparate impact, consent decree, Title VII, employment law

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION**

UNITED STATES)
EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
))
Plaintiff,)
))
v.)
))
BMW MANUFACTURING CO., LLC,)
))
Defendant.)
_____)

CIVIL ACTION NO.
7:13-CV-01583-HMH

CONSENT DECREE

The U.S. Equal Employment Opportunity Commission (“Commission” or “EEOC”) instituted this action under Title VII of the Civil Rights Act of 1964 (“Title VII”), against Defendant BMW Manufacturing Co., LLC (“Defendant”). The Commission alleged that Defendant discriminated against black logistics employees through its application of criminal background check guidelines that had a disparate impact which resulted in said employees being discharged. In its Answer, Defendant denied committing any Title VII violations.

The Commission and the Defendant hereby stipulate to jurisdiction of the Court over the parties and agree that the subject matter of this action is properly before the Court.

The parties have advised this Court that they desire to resolve the allegations in the Complaint without the burden, expense, and delay of further litigation.

It is therefore the finding of this Court, made on the pleadings and the record as a whole, that: (1) the Court has jurisdiction over the parties and the subject matter of this action; (2) the purpose and provisions of Title VII will be promoted and effectuated by the entry of this Consent Decree; and (3) this Consent Decree resolves all matters in controversy between the parties as

provided in paragraphs 1 through 37 below.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

I. DEFINITIONS

- A. “Defendant” means BMW Manufacturing Co., LLC and its predecessors, successors, assigns, agents, and entities in active concert.
- B. “Commission” or “EEOC” means the U.S. Equal Employment Opportunity Commission, an agency of the United States Government.
- C. “Facility” means Defendant’s facility located in Spartanburg County, South Carolina.
- D. “Applicant” or “job applicant” is an individual who is applying or being considered for a logistics position at the Facility, regardless of whether the individual is a direct hire of Defendant or the direct hire of a contractor of Defendant at the Facility. The term includes individuals who: (i) are new to Defendant or any of Defendant’s contractors; (ii) formerly worked for Defendant or any of its contractors at the Facility and is reapplying for employment; or (iii) are currently working at the Facility as an employee of Defendant or any of its contractors.
- E. The term “hire” or “hiring” refers to the process of filling or the actual filling of a logistics job opening at the Facility with an Applicant.
- F. “Decline to hire” and “otherwise disqualify” shall include refusing to make a job offer to an Applicant for a logistics position; refusing to allow an Applicant to work at the Facility as a direct employee of Defendant or as a direct employee of a Logistics Labor Provider; refusing to provide an Applicant with security clearance that would allow the Applicant access to the Facility for purposes of employment in a logistics position; or any other action taken by or on behalf of Defendant that results in an Applicant being unable to work at the Facility in a logistics position.
- G. “Criminal history” refers to any information concerning arrests, charges, accusations or dispositions thereof (e.g., convictions, pleas of nolo contendere, pleas of guilty or any other resolution of a criminal charge or accusation).
- H. “Disqualify a job applicant” or “disqualify an Applicant” means to fail or refuse to hire, or otherwise refuse to grant an Applicant access to the Facility for purposes of employment in a logistics position.
- I. “Day” or “days” means calendar days.

- J. “Logistics Labor Provider” shall mean the entity providing logistics labor at the Facility, including but not limited to Management Analysis & Utilization, Inc. (“MAU”), and its successors and assigns.
- K. “Claimant” or “Claimants” shall mean any of the individuals for whom the EEOC seeks relief in this litigation.
- L. “Other Applicants” shall mean individuals other than the Claimants that EEOC contends were denied employment in logistics positions with MAU at the Facility on the basis of their criminal background conviction records by application of the criminal background check guidelines challenged in this lawsuit.
- M. “Hiring authority” or “hiring authorities” refers to personnel of Defendant or of Logistics Labor Provider who participate in recruitment or selection decisions related to screening, interviewing and/or hiring of job applicants, as well as any managerial personnel with a direct or successively higher supervisory role over such hiring authorities.

II. GENERAL PROVISIONS

1. This Decree constitutes full discharge and satisfaction of any claims which have been alleged in the Complaint filed in this Title VII action by the EEOC. The claims asserted by Claimants and EEOC against Defendant in the Complaint are hereby dismissed in their entirety, with prejudice.

2. This Decree shall apply to Defendant’s Facility in Spartanburg County, South Carolina. The provisions contained in paragraphs 9-15 of this Decree shall also apply to job qualifications or site access requirements imposed (contractually or otherwise) by Defendant on Logistics Labor Providers at the Facility.

3. Defendant shall disclose the terms of this Decree to any potential purchaser of all or part of Defendant’s assets prior to sale, and the Decree shall be binding on any such entity.

4. This Decree shall become effective on the date of its entry by the Court and shall remain in effect until its expiration date, which shall be three (3) years after the date of its entry by the Court.

5. This Court shall retain jurisdiction solely to enforce the terms of this Decree and will have all available powers to enforce this Decree, including but not limited to monetary sanctions and injunctive relief. The Court's jurisdiction over this matter continues until the expiration of one (1) year after the expiration of the Decree.

6. All notifications and reports to EEOC from Defendant required under this Decree as set forth herein, shall be verified by oath or under penalty of perjury and sent by electronic mail to: (1) EEOC-CTDO-decree-monitoring@eoc.gov; or (2) if by regular mail to - Lynette A. Barnes, Regional Attorney, Equal Employment Opportunity Commission, 129 West Trade Street, Suite 400, Charlotte, NC 28202. All notifications to Defendant from EEOC required by this Decree will be sent by regular mail to: BMW MC Corporate Counsel, 1400 Highway 101 South, Greer, South Carolina 29651, with a copy sent by regular mail to Charles E. Johnson, Robinson Bradshaw & Hinson, P.A., 101 North Tryon Street, Suite 1900, Charlotte, North Carolina 28202. Notice to Defendant under paragraph 30 of this Decree shall be deemed received by Defendant three (3) business days after mailing.

7. The parties shall bear their own attorneys' fees and costs incurred in connection with this action. By entering into this Decree, BMW expressly denies liability and the resolution of the lawsuit shall not constitute any admission of wrongdoing by BMW. By entering into this Decree, the EEOC is not disavowing the allegations of its Complaint in this action.

III. INJUNCTION

8. Defendant is hereby enjoined from utilizing the criminal background check guidelines at issue in this action in connection with the hiring, discharge or admission to the Facility of logistics workers. The enjoined criminal background check guidelines are attached as Exhibit A.

IV. REVISED PROCEDURE REQUIREMENTS REGARDING CRIMINAL HISTORY

9. Defendant has in place current criminal background check guidelines that Defendant intends to use throughout the term of this Decree.

10. Defendant and Logistics Labor Provider shall not decline to hire any job applicant or otherwise disqualify any individual from employment in a logistics position because of criminal arrests or charges of any type if such arrests or charges did not result in a conviction. Defendant and Logistics Labor Provider may, however, postpone an offer of employment to any individual with a pending charge based on the conduct that is alleged in the underlying charge, pending final resolution of the charge.

11. Prior to declining to hire or otherwise disqualifying any job applicant for a logistics position based on criminal history, Defendant and Logistics Labor Provider shall follow these procedures:

- (a) Defendant and Logistics Labor Provider shall exercise due diligence to evaluate and apply all information relevant to the application of Defendant's current criminal background check guidelines.
- (b) Defendant or Logistics Labor Provider shall provide written notice to the Applicant that contains the following:
 - (i) a statement that the Applicant is being evaluated for hire;
 - (ii) a verbatim description of the specific information regarding criminal history of the Applicant that is the basis of Defendant or Logistics Labor Provider's consideration not to hire the Applicant;
 - (iii) an invitation to the Applicant to communicate with Defendant or Logistics Labor Provider (verbally and/or in writing at the Applicant's election) about the conviction and his/her appropriateness for employment in a logistics position, including explicitly inviting the Applicant to provide information concerning the accuracy of the criminal history information in the possession of Defendant or Logistics Labor Provider, the circumstances of the offense, any employment history and rehabilitative efforts

subsequent to the conviction, any references from other persons concerning his/her suitability for employment, and any other information that the Applicant believes bear on his/her suitability for employment and should be considered by Defendant or Logistics Labor Provider before making its final decision to deny employment; and,

- (iv) identification of the name, title and contact information (including telephone number, e-mail and business address) of the official with whom the individual should communicate regarding the above information.
- (v) Timing/delivery of notice - The notice shall be delivered to the Applicant by reasonable means, and shall afford the Applicant a period of not less than twenty-one (21) days, within which he/she may contact Defendant or Logistics Labor Provider before the contemplated adverse hiring decision is made final.
- (c) Defendant or Logistics Labor Provider shall evaluate all relevant information provided by the applicant for the purpose of adhering to the requirements of this Consent Decree.
- (d) Defendant or Logistics Labor Provider shall maintain records of the information provided by the Applicant pursuant to the procedures of Paragraph No. 11(b)(iii) and any other records or documents reviewed or considered by Defendant in making the hiring decision.
- (e) Before becoming final, all decisions to decline to hire or otherwise disqualify an Applicant due to criminal history shall be reviewed by an official designated by Defendant or Logistics Labor Provider to implement and monitor the application of criminal background check guidelines. The official shall have independent authority to reverse the decision. The purpose for the review shall be to assess whether the proposed decision to decline to hire or otherwise disqualify an Applicant is consistent with the requirements of Defendant's current criminal background check guidelines and this Consent Decree.

12. Defendant or Logistics Labor Provider shall retain, for the duration of this Decree and for a period of one (1) year thereafter, any and all documents related to its use of criminal history as a criterion for selection of job applicants and employees for any position. This includes, but is not limited to, any and all background check documents it received; any

documents generated by it or received from job applicants pursuant to the obligations in this Decree; any other documentation related to criminal history of each Applicant; and any other documentation referred to in this Decree and not specifically identified in this paragraph.

Defendant shall create and maintain narrative documents setting forth any and all information it received concerning applicant criminal history that was not reflected in a written document when the information is received by Defendant. The narrative documents shall identify the name of the Applicant, the date the information was received, the identity and contact information of the source, and the specific information received. The narrative documents shall also be retained in accordance with this paragraph.

13. Within thirty (30) days of entry of this Decree, Defendant and Logistics Labor Provider shall provide written notification of the selection procedure changes reflected in Paragraph Nos. 9-12, above, to all hiring officials, and shall modify any and all manuals, policies, or documents of similar character to reflect the change. Defendant shall notify EEOC of compliance with the provisions contained in this paragraph (Paragraph 13) within thirty-five (35) days of entry of this Decree.

14. Within thirty (30) days of entry of this Decree, Defendant or Logistics Labor Provider shall create, and shall maintain throughout the duration of this Decree and for a period of one (1) year thereafter, a database (Excel spreadsheet file format) that identifies the following information concerning Applicants who have been denied employment or otherwise disqualified from employment in logistics positions at the Facility because of a criminal history report during the operation of this Decree:

- (a) full name;
- (b) address (number, street, unit number if applicable, city, state, ZIP);

- (c) last four digits of social security number;
- (d) race;
- (e) name and date of criminal history that was basis for denial of hire or discharge;
- (f) date of denial of hire or discharge;
- (g) name and title of deciding official; and
- (h) whether the applicant provided information to Defendant pursuant to Paragraph No. 11(b)(iii), above (“yes” or “no” entry is sufficient);

15. Defendant shall submit an electronic copy of the database (in Excel format) to EEOC one hundred eighty (180) days following the entry of this Decree and each submission thereafter shall be due within one hundred eighty (180) days of the deadline for the prior submission. The final electronic copy shall be due thirty (30) days prior to the expiration of this Decree. Along with the electronic copy of the database, Defendant shall submit copies of any criminal record reports obtained from the South Carolina Law Enforcement Division associated with any disqualified Applicant identified in the database. Upon EEOC’s request, Defendant shall disclose information from other criminal record reports as permitted by the federal Fair Credit Reporting Act and other applicable law.

V. TRAINING TO SUPPORT LAWFUL USE OF CRIMINAL HISTORY

16. Defendant, either through its own human resources or legal personnel or a reasonably qualified third-party consultant, shall provide not fewer than two (2) hours of training to all hiring authorities or other Defendant personnel who make selection recommendations or decisions using criminal history as a criterion, or who communicate with Logistics Labor Provider concerning same. The subject of the training shall be Defendant’s policies, practices

and procedures concerning use of criminal history as a selection criterion and use of such information in a manner consistent with Title VII requirements. The first training session shall be presented within ninety (90) days after the entry of this Decree, and subsequent training sessions for new employees in the aforementioned positions shall be conducted within thirty (30) days of their hiring, promotion or transfer to the aforementioned positions. The training materials shall be submitted to the EEOC for review and comment as to form and content. To the extent training content is modified after the first session, Defendant shall provide notice to EEOC of those changes not less than fourteen (14) days before the first presentation of the modified training. Defendant will furnish the EEOC with certification that it has complied with the requirements of this Paragraph, accompanied by a trainee attendance list, within fourteen (14) days of the first training session required under this paragraph.

17. Defendant may video-record the first training session required under paragraph 16 and present subsequent training to new entries in the affected positions by video presentation, provided that such training sessions are attended and monitored by at least one Defendant official with reasonable knowledge of the subject matter of the training who will be available to answer trainee questions.

VI. MONETARY RELIEF

18. Defendant shall pay a total amount of one million six hundred thousand dollars (\$1,600,000) in monetary relief, which shall constitute all monetary relief payable to fifty-six (56) Claimants in this litigation and Other Applicants as identified by EEOC. Amounts payable to each Claimant shall be determined by the EEOC and provided to Defendant within thirty (30) days of the entry of this Decree. Amounts payable to each Other Applicant shall be determined by the EEOC and provided to Defendant within sixty (60) days of the entry of this Decree.

Defendant shall make payments within thirty (30) days of receipt of payment information and executed releases of Claimants and Other Applicants from EEOC.

19. Payment shall be made by Defendant directly or through an escrow agent designated by Defendant, who shall distribute funds to individuals as directed by EEOC. Defendant or the escrow agent shall also be responsible for the distribution of required tax documentation, if any. If any Claimant or Other Applicant's check is returned undeliverable to Defendant or the escrow agent, Defendant shall notify EEOC within ten (10) business days of receiving the returned check. EEOC shall thereafter have ten (10) business days to provide Defendant with a new address for mailing the check. Defendant shall mail each Claimant's or Other Applicant's checks to the new address provided by EEOC within twenty (20) business days of receipt of the new address from EEOC. If the check is returned undeliverable after the second mailing, Defendant shall have no obligation to attempt further delivery of the check. Defendant shall distribute any funds remaining or unclaimed within three hundred thirty (330) days of entry of this Consent Decree to a South Carolina-based charitable organization or organizations to be designated by EEOC within three hundred (300) days of the entry of this Consent Decree. Within twenty (20) business days of making payment to the charitable organization, Defendant will provide proof of payment to the EEOC, along with a list of Claimants or Other Applicants whose monies remained in the unclaimed fund that was donated to charity. If all monies payable under this Decree are paid out such that no unclaimed funds remain, no later than three hundred thirty (330) days after entry of this Consent Decree, Defendant will notify EEOC that no unclaimed funds remain. Prior to distribution of payment, each Claimant and Other Applicant shall execute a release of claims against Defendant in the form of Exhibit B attached hereto.

VII. OFFERS OF EMPLOYMENT TO CLAIMANTS

20. Defendant shall coordinate with Logistics Labor Provider to provide the opportunity to apply for logistics positions to all Claimants who want to return to work at the Facility as logistics positions become available. Defendant shall offer employment to all persons previously identified by EEOC as Claimants and who have expressed an interest in receiving an offer of employment for a logistics position at the Facility, subject to their eligibility for employment under the general job qualifications established by Logistics Labor Provider and Defendant, including Claimants' possession of the requisite job skills, education (high school diploma or equivalent, or Claimant's agreement to obtain an equivalent within one year of hire), eligibility for hire under Defendant's current criminal background check guidelines, and passing a drug screen. Such eligible persons shall be offered employment before any other applicants who apply after the Claimants. Within ten (10) days of entry of this Decree, Defendant shall provide an application form to the EEOC to be provided to Claimants who are interested in working for Logistics Labor Provider. Within forty (40) days of the entry of this Decree, EEOC shall notify Claimants of their right to apply for logistics positions with Logistics Labor Provider at the Facility and shall provide Claimants a copy of the written application form. Within thirty (30) days of such notice to Claimants, EEOC shall provide to Defendant a listing of those Claimants who have provided completed written applications for logistics positions with Logistics Labor Provider at Defendant's Facility, including the complete written application and any associated documentation.

21. For eligible candidates, Logistics Labor Provider shall make offers to Claimants for logistics jobs at the same rate of pay as the highest paid person performing the same or similar job at the Facility at the time the job offer is made. Additionally, all eligible Claimants shall be reinstated without loss of seniority with the years 2008 through 2015 being credited to each

Claimant toward wages, seniority, benefits and all other privileges of employment.

22. Eligible Claimants identified on EEOC's listing shall be offered logistics positions with Logistics Labor Provider at Defendant's Facility in the order in which they are identified by EEOC until Defendant has offered jobs to each eligible Claimant. Such positions will be at-will, and Logistics Labor Provider will retain control over the conditions of employment in the same manner and to the same extent as it does with respect to all other logistics employees.

23. In connection with the transmissions identified in Paragraph 15 above, Defendant shall report the names of all Claimants on EEOC's listing who were offered employment, the job title for the positions that they were offered, whether the offers were accepted or rejected, and, in the event Defendant or Logistics Labor Provider determines that one or more Claimants whose names appear on the EEOC's listing is not qualified for a position that is/was open, Defendant shall notify EEOC of the names of such persons and the reason(s) they were deemed unqualified.

VIII. OFFERS OF EMPLOYMENT TO OTHER APPLICANTS

24. Within sixty (60) days of the entry of this Decree, EEOC shall notify all Other Applicants of their right to apply for logistics positions with Logistics Labor Provider at the Facility. Within thirty (30) days of mailing of such notices to Other Applicants, EEOC shall provide to Defendant a list of Other Applicants who have expressed interest in a logistics position with Logistics Labor Provider at Defendant's Facility. Defendant or Logistics Labor Provider shall provide the opportunity to apply for logistics positions to the Other Applicants so identified by the EEOC. Pursuant to this process, Defendant or Logistics Labor Provider shall offer employment to up to ninety (90) Other Applicants that EEOC identifies who express an interest in receiving an offer of employment for a logistics position at the Facility, subject to their eligibility for employment under the general job qualifications established by Logistics Labor Provider and

Defendant, including the Other Applicants' possession of the requisite job skills, education (high school diploma or equivalent), eligibility for hire under Defendant's current criminal background check guidelines, and passing a drug screen. Such eligible persons shall be offered employment before any other individuals who apply after the Other Applicants, except for those Claimants identified to Defendant and Logistics Labor Provider pursuant to Paragraph 20.

25. All positions offered to the Other Applicants will be at-will, and Logistics Labor Provider will retain control over the conditions of employment of any Other Applicants who are hired in the same manner and to the same extent as it does with respect to all other logistics employees.

26. In connection with the transmissions identified by Paragraph 15 above, Defendant shall report the names of all Other Applicants on EEOC's list who were offered employment, the job title for the positions that they were offered, whether the offers were accepted or rejected, and, in the event Defendant or Logistics Labor Provider determines that one or more Other Applicants whose names appear on the EEOC's list is not qualified for a position that is/was open, Defendant shall notify EEOC of the names of such persons and the reason(s) they were deemed unqualified.

IX. RECORD RETENTION REQUIREMENTS

27. For the duration of this Decree and for a period of not less than one (1) year afterward Defendant and Logistics Labor Provider shall retain the following documents and information:

(a) Any and all background check records, applications, resumes, cover letters, interview notes, candidate ratings, payroll data, personnel data, voluntary demographic forms that have been completed by applicants and logistics employees, color copies of employee security badges containing photographs, and any and all other documents related to recruitment, pre-screening and/or hiring that were otherwise received or generated by or on behalf of Defendant or any of its contractors in connection with applications for logistics positions at the Facility;

(b) Any and all data, reports or documents required to be created or compiled in accordance with this Consent Decree;

(c) All complaints or reports of discrimination related to use of criminal history in hiring for logistics positions at the Facility and any related documentation; and

(d) All training materials and listings of attendees required by this Decree;

28. Defendant and Logistics Labor Provider will retain, and provide to EEOC as soon as practicable upon demand, any and all documents or data made or kept under the Decree that is not otherwise designated to be submitted to EEOC via periodic reporting provisions established herein. Notwithstanding the expiration of the other provisions of this Decree, for one (1) full year after the expiration of this Decree the EEOC shall retain the right to obtain from Defendant and Logistics Labor Provider, as soon as practicable upon demand, all documents or data made or kept under the Decree.

29. Defendant and Logistics Labor Provider shall comply with all applicable record-keeping requirements of Title VII and the Commission's regulations, including but not limited to, 29 C.F.R. Parts 1602 and 1607.

X. DISPUTE RESOLUTION AND COMPLIANCE

30. If at any time during the term of this Consent Decree, either party believes that the other is in violation of the Consent Decree, the party shall give notice of the alleged violation to the opposing party. The party against whom a violation is asserted shall have fifteen (15) days to either correct the alleged violation and so inform the other party, or deny the alleged violation, in writing. If the violation is denied in writing, thereafter the parties shall then have a period of ten (10) days or such additional period as may be agreed upon by them, in which to engage in negotiation regarding such allegations before either party exercises any remedy provided by law.

31. After exhausting the procedures in paragraph 30 above, upon motion of the either party, this Court may schedule a hearing for the purpose of reviewing compliance with this Consent Decree. Either party may seek remedies for the alleged non-compliance and seek an order for the opposing party to show cause why it should not be found in contempt. If such motion is filed, each party shall bear its own costs, expenses and attorney's fees incurred in connection with such motion.

32. Nothing in this Decree shall be construed to limit or impair in any manner any other Commission legal authority to conduct investigations of Defendant as provided by law.

XI. RETENTION OF MANAGEMENT DISCRETION

33. Subject to the terms of this Consent Decree, Defendant and Logistics Labor Provider shall at all times retain managerial discretion to select, hire, assign, transfer, train, promote, compensate, discipline, or terminate any of its employees, including but not limited to any applicant, in accordance with applicable law.

34. Subject to the terms of this Consent Decree, Defendant and Logistics Labor Provider shall at all times retain the unilateral right to make any and all compensation and promotion decisions affecting its employees in accordance with applicable law.

35. Subject to the terms of this Consent Decree, Defendant and Logistics Labor Provider shall at all times retain the unilateral right to take disciplinary action against any employee up to and including termination of employment, in accordance with applicable law.

36. Subject to the terms of this Consent Decree, nothing in this Consent Decree shall require that a quota or certain number of employees be hired or promoted in any position or job classification at Defendant's Facility, as such decisions shall remain solely within the managerial discretion of Defendant and Logistics Labor Provider, and in accordance with applicable law.

XII. RESOLUTION OF PENDING CHARGES

37. This Decree resolves all claims and issues alleged by EEOC in any other proceeding against Defendant or its Logistics Labor Provider alleging that application of criminal background check guidelines by Defendant or its Logistics Labor Provider violates Title VII. The parties acknowledge and agree that a material part of the consideration for this Decree is the immediate closure with prejudice of the charges filed by EEOC in EEOC Charge Nos. 430-2010-02868 and 430-2010-02871, and the EEOC's agreement that it shall take no other action with respect to those charges or the allegations asserted in those charges.

IT IS SO ORDERED.

September 8, 2015
Date

s/ Henry M. Herlong, Jr.
Henry M. Herlong, Jr.
Senior United States District Judge

The parties jointly request that the Court approve and enter this Consent Decree.

s/Rachael S. Steenbergh
Rachael S. Steenbergh (Fed. Id. #10867)
Rachael.Steenbergh@eeoc.gov
Ylda M. Kopka
Ylda.Kopka@eeoc.gov
U.S. Equal Employment Opportunity
Commission
Charlotte District Office
129 W. Trade Street, Suite 400
Charlotte, NC 28202
Telephone: 704.954.6472
Fax: 704.854.6412

Attorneys for Plaintiff U.S. Equal Opportunity
Employment Commission

s/ Benjamin A. Johnson
BENJAMIN A. JOHNSON (Fed. Id. #2186)
ROBINSON BRADSHAW & HINSON P.A.
140 East Main Street, Suite 420
Rock Hill, SC 29730
Telephone: 803.325.2900
Fax: 803.325.2929
Email: bjohnson@rbh.com
CHARLES E. JOHNSON (NC Bar #9190)
(Admitted *Pro Hac Vice*)
Email: cejohnson@rbh.com
BRIAN L. CHURCH (Fed. Id. #11074)
Email: bchurch@rbh.com
ROBINSON BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
Telephone: 704.377.2536
Fax: 704.378.4000

Attorneys for Defendant
BMW Manufacturing Co., LLC

EXHIBIT A

CONFIDENTIAL CLIENT INFORMATION DO NOT SPECIFY GUIDELINES TO CANDIDATES OR OTHER CLIENTS:

If an applicant is outside of guidelines, the candidate can be informed that he/she is outside of guidelines, but you cannot specify why or give any information about what the guidelines are.

Guidelines for rejecting applicants with prior criminal convictions:

1) Conditions for Employment Rejections:

- Murder
- Assault & Battery
- Rape
- Child Abuse
- Spousal Abuse (Domestic Violence)
- Manufacturing of drugs
- Distribution of drugs
- Weapons Violation
- Felony Theft

Note: Any convictions of violent nature are conditions for employment rejection.
There is no statute of limitations for any of the crimes indicated above.

2) Language on application:

Have you had any previous convictions excluding minor traffic violations?

No Yes If yes, please explain

(A positive response to this question will not automatically disqualify you from employment with BMW Manufacturing Co.)

3) If an applicant admits convictions on the applications that are not detected through the standard background check, these convictions will be evaluated using the guidelines above.

4) For any pending convictions, the offer date will be postponed until disposition of the charges has been finalized.

MAU comment: Note that we cannot ask candidate in the interview if he/she has an arrest charge when interviewing; candidates only have to list convictions on the application. This information might be discovered if an applicant volunteers it in an interview or it appears on a SLED.

EXHIBIT B

Release

In consideration for \$_____ to be paid to me by BMW Manufacturing Co., LLC (“BMW MC”), in connection with the resolution of EEOC v. BMW Manufacturing Co., LLC, 7:13-CV-01583-HMH (D.S.C.) (the “Litigation”), I waive my right to recover for any claims of race discrimination arising under Title VII of the Civil Rights Act of 1964, as amended, that I had against BMW MC and any contractor of BMW MC who provides logistics workers at BMW MC’s Spartanburg County, South Carolina facility, including Management Analysis & Utilization, Inc., and any of their parents, affiliates, subsidiaries, divisions, predecessors, successors, partners, assigns, and agents that accrued prior to the date of this release and that were or could have been included in the claims alleged in EEOC’s complaint in the Litigation.

Date: _____

Signature: _____

Release

In consideration for \$_____ to be paid to me by BMW Manufacturing Co., LLC (“BMW MC”), in connection with the resolution of EEOC v. BMW Manufacturing Co., LLC, EEOC Charge No. 430-2010-02868 and EEOC v. Tier One Solutions, a Division of Management Analysis & Utilization, Inc., EEOC Charge No. 430-2010-02871 (the “Charges”), I waive my right to recover for any claims of race discrimination based on the application of BMW MC’s criminal background check guidelines arising under Title VII of the Civil Rights Act of 1964, as amended, that I had against BMW MC and any contractor of BMW MC who provides logistics workers at BMW MC’s Spartanburg County, South Carolina facility, including Management Analysis & Utilization, Inc., and any of their parents, affiliates, subsidiaries, divisions, predecessors, successors, partners, assigns, and agents that accrued prior to the date of this release.

Date: _____

Signature: _____