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EEOC v. New Prime, Inc.

Judge Douglas Harpool

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EEOC v. New Prime, Inc.

Keywords

eeoc, new prime inc., automotive, sex, female, training, hiring, disparate treatment, consent decree, title vii, employment law

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

| | | |
|--------------------------------|---|-----------------------------------|
| EQUAL EMPLOYMENT |) | |
| OPPORTUNITY COMMISSION, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 6:11-cv-03367-MDH |
| |) | |
| NEW PRIME, INC., |) | |
| |) | |
| Defendant. |) | |

CONSENT DECREE

Plaintiff Equal Employment Opportunity Commission (hereinafter “EEOC”) instituted this action against New Prime, Inc. (hereinafter “Defendant” or “Prime”), alleging violations of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. §§ 2000e, *et seq.* Specifically, the EEOC alleged that Prime’s policy of assigning female applicants for truck driver training positions only to female trainers, with limited exceptions, discriminated against women because of their sex in training and hiring. The EEOC also alleged that Prime failed to preserve personnel and employment records, including “female waiting lists,” in violation of 42 U.S.C. § 2000e-8(c) and 29 C.F.R. § 1602.14 (2007). The EEOC sought monetary and equitable relief for the women harmed by Prime’s actions and injunctive relief to prevent future discriminatory conduct by Prime. Deanna Clouse f/k/a Deanna Roberts (hereinafter “Intervenor”), the charging party, intervened in the EEOC’s suit.

On August 15, 2014, this Court issued an Order finding that Prime engaged in a pattern or practice of discriminating against women driver applicants and drivers from 2003 to the 2013 through its same-sex training policy in violation of Title VII (Doc. 289). Thereafter, the Intervenor accepted Defendant’s offer of judgment, the Court entered judgment on the same, and

the Intervenor has since filed a satisfaction of judgment indicating the Intervenor's claims have been fully resolved (Docs. 296, 300, 309). Based on the Special Master's Report and Recommendation and this Court's Order (Docs. 365, 385), the Parties further submitted a Joint Report (Doc. 434) in which they agreed to the back pay amount for each of the Class Members, as defined below. In lieu of a trial on compensatory damages, the Parties seek entry of this Consent Decree to resolve all remaining monetary relief issues. All issues relating to the EEOC's request for injunctive relief will be presented to the Court for resolution.

Therefore, it is the finding of this Court, based on the pleadings and on the record as a whole and upon agreement of the Parties, that: (i) this Court has jurisdiction over the Parties and the subject matter of this action, (ii) the requirements of Title VII will be carried out by the implementation of this Consent Decree, (iii) this Decree is intended to and does resolve all issues relating to monetary relief in this lawsuit, and (iv) the terms of this Decree constitute a fair and equitable settlement of all issues relating to monetary relief in this lawsuit.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

I. GENERAL PROVISIONS

1. This Consent Decree fully resolves all issues relating to monetary relief available under Title VII and §102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.
2. This Consent Decree does not resolve the EEOC's claim for injunctive relief. The Parties expressly reserve the right to litigate any issues relating to the EEOC's claim for injunctive relief before the Court.
3. Nothing in this Consent Decree shall be construed to limit or reduce Prime's obligation to fully comply with Title VII or the regulations promulgated under Title VII.

4. By entering into this Consent Decree, the Parties do not intend to resolve any charges of discrimination currently pending before the Commission other than Charge Nos. 28E-2009-01541 and 560-2012-01658. This Consent Decree does not resolve any other pending or future charges of discrimination.

5. At any time during the term of this Decree, if the EEOC concludes that Prime has failed to comply with this Consent Decree, the EEOC may seek enforcement of the Consent Decree with the Court under its continuing jurisdiction under Paragraph 30 or in compliance with the terms set forth in Paragraphs 21-27.

II. DEFINITION OF TERMS

For the purposes of this Consent Decree, the following definitions shall apply:

6. A “Class Member” is any individual identified in Exhibit 1.
7. Unless otherwise indicated, the word “days” refers to calendar days.
8. The phrase “monetary relief” shall include all forms of monetary relief available under Title VII and §102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

III. CLASS MEMBERS

9. The Class Members identified on Exhibit 1 are women who applied to Prime’s Student Driver Program or Prime’s Driver Training Program with Prime from 2008 to 2013, who suffered damages as a result of Prime’s discriminatory hiring practices, and were determined to be eligible, participating class members during the course of this litigation.

IV. MONETARY RELIEF

10. Judgment is entered in favor of the Commission and against Prime for all monetary relief in the amount of Two Million Eight Hundred Sixty Two Thousand Nine Hundred Fifty Eight Dollars and Sixty Five Cents (\$2,862,958.65). This amount represents One

Million One Hundred Twenty Seven Thousand Four Hundred Fifty Eight Dollars and Sixty Five Cents (\$1,127,458.65) in backpay with interest and One Million Seven Hundred Thirty Five Thousand Five Hundred Dollars (\$1,735,500.00) in compensatory damages.

11. Within the later of thirty (30) days after the EEOC provides Prime a list of the last known addresses and an IRS Form W-4 for all Class Members or the entry of this Decree, Prime shall pay the judgment separately to each Class Member by check, cashier's check, or money order. Backpay shall be paid in the amounts set forth in the Parties' Joint Report on Backpay (Doc. 434). Total damages to each Class Member shall be paid in the amounts set forth in Exhibit 2 to this Decree.

12. Prime will only deduct the employee's portion of applicable federal, state, and local withholdings, and taxes, from the backpay amount for each Class Member and will provide a statement itemizing the withholdings. Prime will not make any withholdings from the compensatory damages amount. Prime will mail the payments via certified mail to each Class Member's address as provided by the EEOC and will include an itemized statement showing the payments made and the withholdings and taxes deducted.

13. In the event of non-payment, it is acknowledged that the monetary judgment is a debt owed to and collectible by the EEOC or its proxy, notwithstanding that the Class Members are the ultimate beneficiaries of this judgment.

14. By January 31, 2017, Prime shall issue to each Class Member an IRS Form W-2 for the backpay amount and an IRS Form 1099 for the compensatory damages amount.

15. Within five (5) business days of issuing the checks, Prime will furnish a copy of each check, itemized statement, and any accompanying correspondence to the EEOC.

16. In the event that any checks to Class Members are returned or are not cashed or otherwise negotiated within thirty (30) days after mailing, Prime will provide prompt notice to the EEOC of which checks have not been negotiated. Within sixty (60) days of receiving notice from Prime, the EEOC will attempt to resolve the issue and provide Prime with an alternative address or delivery method to provide payment to the affected Class Members. In the event that payments to Class Members have not been negotiated within one hundred eighty (180) days after the Class Member payments were originally mailed, the amount of such non-negotiated Class Member payments will be paid to a non-profit organization identified by the EEOC, in its sole discretion, whose purpose is to advocate against sex discrimination in employment. In no event shall there be any reversion of any part of the Monetary Relief to Prime. Once the non-negotiated Class Member payments are paid to such non-profit organization, Prime shall have no further responsibility or liability for payment of the non-negotiated amounts to the Class Members.

17. Monetary payments will be made on behalf of deceased Class Members to representatives of their estates if the EEOC has provided Prime a court order or an appropriate trust documents that identifies the name, address, and social security number of the appropriate payee.

18. All costs associated with the distribution of the monetary relief to Class Members shall be paid by Prime.

19. The Parties shall bear their own costs and attorneys' fees.

20. All notices, reports, and other materials required to be submitted to the EEOC under this Consent Decree shall be mailed to Andrea G. Baran, Regional Attorney, U.S. Equal Employment Opportunity Commission, 1222 Spruce Street, Room 8.100, St. Louis, Missouri

63103, with electronic copies emailed to andrea.baran@eeoc.gov, dayna.deck@eeoc.gov, and jeff.lee@eeoc.gov.

V. DISPUTE RESOLUTION

21. At the request of either Party, the EEOC and Prime shall confer as necessary with regard to any dispute arising under this Consent Decree. The EEOC and Prime shall use their best efforts to resolve promptly any dispute regarding the interpretation, implementation, or application of this Consent Decree, including Prime's compliance with any of its provisions, according to the procedures set forth below.

22. If the EEOC or Prime has good reason to believe that a legitimate dispute exists as to the interpretation, application, or enforcement of any provision of this Consent Decree, the initiating party shall promptly give written notice to the other party, setting forth the facts and arguments supporting its position.

23. Within ten (10) days after receiving such notice, the non-initiating Party shall respond in writing, setting forth the facts and arguments supporting its position.

24. The Parties shall undertake good faith negotiations, which should include meeting by phone or in person and the exchange of relevant documents and/or other information, to attempt to resolve the issue(s) in dispute or alleged noncompliance. The Parties shall use best efforts to resolve the disputed matter(s) within twenty (20) days after the initiating party's receipt of the non-initiating party's response required by Paragraph 23 above.

25. If the Parties fail to resolve any differences or disputes regarding the interpretation, implementation, or application of this Consent Decree pursuant to the procedures set forth in Paragraphs 22-24 above, the EEOC or Prime may file a motion with the Court, including a supporting brief, seeking resolution of the dispute or the issue of non-compliance.

26. The non-moving party will have ten (10) days to respond to any such motion by filing a brief with the Court and serving it on the moving party.

27. Upon receipt of the Parties' briefs, the Court will resolve the dispute. In its discretion, the Court may order a telephonic or in-person hearing or other proceeding, may order production of documents, testimony, or additional briefing, or may order any other action it deems necessary to resolve the dispute.

VI. TERM AND EFFECT OF DECREE

28. This Consent Decree will become effective on the date approved and signed by the United States District Court for the Western District of Missouri.

29. This Consent Decree shall be binding upon the Parties hereto, their successors, and assigns. Prime shall affirmatively notify any purchasers of the obligations of this Consent Decree prior to any sale that may take place.

30. The United States District Court for the Western District of Missouri shall retain jurisdiction over this matter for the duration of the term of this this Consent Decree for purposes of compliance.

IT IS SO ORDERED.

Date: April 25, 2016

/s/ Douglas Harpool

DOUGLAS HARPOOL
UNITED STATES DISTRICT JUDGE

EXHIBIT 1

List of Class Members

Alexandra Arledge

Lorna Bean

Leanne Brown

Marsha Crawford

Lisa Davis

Sandra Davis

Amy Elston

Christine (Mayder) Falk

Keyona Harris

Theodora Heath

Kalisha Le'Sha Hooper

Jacqueline King

Donna Knapp

Aurelyn Labrew

Mary Martin

Deirdre (Pasteur) Moye

Lacolia Mungro

Angela Myles

Alice Nash

Betty (Calahan) Nielsen

Darla Owens

Elizabeth Perez

Elsa Pfundheller

Tracy Poe

Stacey Portis

Naquita Price

Kristina Quintal

Danesa Rauster

Karen Rogers

Laura Sampson

Karen Sanders

Teresa Scott

Deborah Jean Sharpe

Penny Sheneman

Sophia Shephard

Aubrie Siegel

Geraldine Smith

Rachel Stafford

Debra Thompson

Audrey White

Stephanie Wikle

Monica Wooley

Joan Zerbe

Fay Bracy

Stephanie Brown

Sharla Carlisle

Debra Foust

Virgie Hall

Voncile Heath

Lisa Lambert

Doretta Lawson-Pendergrass

Michelle Little

Meredith McWhirter

Angela Moss

Shockia Robinson

Sue Sharabi

Carol Snipe

Kelly Stockwell

Debra Sudderth

Thelisa Sulton

Jennifer Troy

Lynette Underwood

Cheryl Young

EXHIBIT 2

**Economic Damages (Backpay and Out-of-Pocket) and Compensatory Damages
to Be Paid to Class Members**

| <u>No.</u> | <u>Class Member Name</u> | <u>Back Pay</u> | <u>Economic Damages (incl. Out-of-Pocket)</u> | <u>Compensatory Damages</u> | <u>Total to Class Member</u> |
|-------------------|---------------------------------|------------------------|--|------------------------------------|-------------------------------------|
| 1 | Arledge, Alexandra | \$4,533.00 | \$4,533.00 | \$27,547.62 | \$32,080.62 |
| 2 | Bean, Lorna | \$5,006.88 | \$5,006.88 | \$27,547.62 | \$32,554.50 |
| 3 | Brown, Leanne | \$30,819.05 | \$30,819.05 | \$27,547.62 | \$58,367.12 |
| 4 | (Calahan) Nielsen, Betty | \$36,470.00 | \$36,470.00 | \$27,547.62 | \$64,017.62 |
| 5 | Davis, Sandra | \$42,483.24 | \$42,483.24 | \$27,547.62 | \$70,030.86 |
| 6 | Crawford, Marsha | \$9,838.38 | \$9,838.38 | \$27,547.62 | \$37,386.00 |
| 7 | Davis, Lisa | \$34,538.17 | \$34,538.17 | \$27,547.62 | \$62,085.79 |
| 8 | Elston, Amy | \$7,715.08 | \$7,715.08 | \$27,547.62 | \$35,262.70 |
| 9 | Harris, Keyona | \$21,981.41 | \$21,981.41 | \$27,547.62 | \$49,529.03 |
| 10 | Heath, Theodora | \$34,926.00 | \$34,926.00 | \$27,547.62 | \$62,473.62 |
| 11 | Hooper, Kalisha | \$14,797.87 | \$14,797.87 | \$27,547.62 | \$42,345.49 |
| 12 | King, Jacqueline | \$14,884.58 | \$15,934.58 | \$27,547.62 | \$43,482.20 |
| 13 | Knapp, Donna | \$34,580.76 | \$34,580.76 | \$27,547.62 | \$62,128.38 |
| 14 | Labrew, Aurelyn | \$3,630.28 | \$9,625.28 | \$27,547.62 | \$37,172.90 |
| 15 | Martin, Mary | \$18,244.46 | \$18,244.46 | \$27,547.62 | \$45,792.08 |
| 16 | Mayder, Christine | \$26,116.48 | \$26,116.48 | \$27,547.62 | \$53,664.10 |
| 17 | Mungro, Locolia | \$28,978.63 | \$29,986.63 | \$27,547.62 | \$57,534.25 |
| 18 | Myles, Angela | \$20,834.84 | \$20,834.84 | \$27,547.62 | \$48,382.46 |
| 19 | Nash, Alice | \$9,959.00 | \$9,959.00 | \$27,547.62 | \$37,506.62 |
| 20 | Owens, Darla | \$2,946.91 | \$2,946.91 | \$27,547.62 | \$30,494.53 |

| | | | | | |
|----|--------------------------|-------------|-------------|-------------|-------------|
| 21 | Stafford, Rachel (Parks) | \$15,136.78 | \$15,136.78 | \$27,547.62 | \$42,684.40 |
| 22 | Moye (Pasteur), Deidre | \$42,851.94 | \$42,851.94 | \$27,547.62 | \$70,399.56 |
| 23 | Perez, Elizabeth | \$2,136.00 | \$2,136.00 | \$27,547.62 | \$29,683.62 |
| 24 | Pfundheller, Elsa | \$5,568.53 | \$5,568.53 | \$27,547.62 | \$33,116.15 |
| 25 | Poe, Tracey | \$23,156.67 | \$25,656.67 | \$27,547.62 | \$53,204.29 |
| 26 | Portis, Stacey | \$928.00 | \$928.00 | \$27,547.62 | \$28,475.62 |
| 27 | Price, Naquita | \$5,971.66 | \$5,971.66 | \$27,547.62 | \$33,519.28 |
| 28 | Quintal, Kristina | \$35,098.34 | \$35,098.34 | \$27,547.62 | \$62,645.96 |
| 29 | Rauster, Danessa | \$9,322.00 | \$9,322.00 | \$27,547.62 | \$36,869.62 |
| 30 | Rogers, Karen | \$20,347.00 | \$24,242.00 | \$27,547.62 | \$51,789.62 |
| 31 | Sampson, Laura | \$7,913.56 | \$7,913.56 | \$27,547.62 | \$35,461.18 |
| 32 | Sanders, Karen | \$5,658.11 | \$5,658.11 | \$27,547.62 | \$33,205.73 |
| 33 | Scott, Teresa | \$24,682.01 | \$28,677.01 | \$27,547.62 | \$56,224.63 |
| 34 | Sharpe, Deborah | \$2,170.92 | \$2,170.92 | \$27,547.62 | \$29,718.54 |
| 35 | Sheneman, Penny | \$828.44 | \$6,828.44 | \$27,547.62 | \$34,376.06 |
| 36 | Shephard, Sophia | \$21,648.14 | \$21,648.14 | \$27,547.62 | \$49,195.76 |
| 37 | Siegel, Aubrie | \$24,954.92 | \$24,954.92 | \$27,547.62 | \$52,502.54 |
| 38 | Smith, Geraldine | \$7,006.38 | \$7,006.38 | \$27,547.62 | \$34,554.00 |
| 39 | Thompson, Debra | \$462.60 | \$462.60 | \$27,547.62 | \$28,010.22 |
| 40 | White, Audrey | \$30,518.77 | \$34,018.77 | \$27,547.62 | \$61,566.39 |
| 42 | Wikle, Stephanie | \$10,421.58 | \$10,421.58 | \$27,547.62 | \$37,969.20 |
| 43 | Wooley, Monica | \$19,231.90 | \$19,231.90 | \$27,547.62 | \$46,779.52 |
| 44 | Zerbe, Joan | \$0.00 | \$3,000.00 | \$27,547.62 | \$30,547.62 |
| 46 | Bracy, Fay | \$33,726.00 | \$33,726.00 | \$27,547.62 | \$61,273.62 |
| 47 | Brown, Stephanie | \$12,025.59 | \$12,025.59 | \$27,547.62 | \$39,573.21 |
| 48 | Carlisle, Sharla | \$1,313.37 | \$1,313.37 | \$27,547.62 | \$28,860.99 |

| | | | | | |
|----|------------------------|-------------|-----------------------|--------------------|-------------|
| 49 | Hall, Virgie | \$11,050.84 | \$11,050.84 | \$27,547.62 | \$38,598.46 |
| 52 | Lawson, Doretta | \$64,410.00 | \$64,410.00 | \$27,547.62 | \$91,957.62 |
| 53 | Lambert, Lisa | \$23,053.59 | \$26,453.59 | \$27,547.62 | \$54,001.21 |
| 54 | Little, Michelle | \$19,906.61 | \$21,406.61 | \$27,547.62 | \$48,954.23 |
| 55 | McWhirter, Meredith | \$19,087.00 | \$19,137.00 | \$27,547.62 | \$46,684.62 |
| 56 | Young, Cheryl | \$22,142.00 | \$22,142.00 | \$27,547.62 | \$49,689.62 |
| 57 | Moss, Angela | \$4,293.38 | \$4,293.38 | \$27,547.62 | \$31,841.00 |
| 59 | Foust (Pfaffly), Debra | \$380.63 | \$380.63 | \$27,547.62 | \$27,928.25 |
| 60 | Robinson, Shockia | \$9,591.09 | \$9,591.09 | \$27,547.62 | \$37,138.71 |
| 61 | Sharabi, Sue | \$5,169.98 | \$9,369.98 | \$27,547.62 | \$36,917.60 |
| 62 | Snipe, Carol | \$11,724.91 | \$11,724.91 | \$27,547.62 | \$39,272.53 |
| 63 | Stockwell, Kelly | \$37,565.00 | \$37,565.00 | \$27,547.61 | \$65,112.61 |
| 64 | Sudderth, Debra | \$11,974.59 | \$11,974.59 | \$27,547.61 | \$39,522.20 |
| 65 | Sulton, Thelisa | \$26,656.84 | \$26,776.84 | \$27,547.61 | \$54,324.45 |
| 66 | Troy, Jennifer | \$23,253.51 | \$23,253.51 | \$27,547.61 | \$50,801.12 |
| 67 | Underwood, Lynette | \$18,484.00 | \$18,534.00 | \$27,547.61 | \$46,081.61 |
| 68 | Heath, Voncile | \$11,887.42 | \$12,087.42 | \$27,547.61 | \$39,635.03 |
| | Total | | \$1,127,458.65 | \$1,735,500 | |