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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

U.S. EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff,)

vs.)

CLUB DEMONSTRATION)
SERVICES, INC.,)
)
Defendant.)

Case No. 1:19-cv-00007-HRH

[PROPOSED] CONSENT DECREE

I. Introduction

1. Plaintiff U.S. Equal Employment Opportunity Commission (“EEOC”) filed this lawsuit on May 8, 2019 pursuant to Title I of the Americans with Disabilities Act, as amended, 42 U.S.C. §§ 12111–12117 (“ADA”), and Title I of the Civil Rights Act of 1991, Pub. L. 102-166. The EEOC alleged that Defendant Club Demonstration Services, Inc. (“CDS”) engaged in unlawful employment practices on the basis of disability, did not make reasonable accommodations to the known physical limitations of Terry Baker, an individual the EEOC maintains is an otherwise qualified individual with a disability, and constructively discharged Ms. Baker from her employment on the basis of her disability. The EEOC sought monetary and non-monetary relief for Ms. Baker. (Doc. 1.) CDS answered the lawsuit on July 31, 2019 and amended its answer on August 19, 2021. CDS denied the EEOC’s allegations, including the allegations that it violated the ADA and that Ms. Baker is entitled to relief. (Doc. 17.)

2. The EEOC and CDS (collectively, the “Parties”) want to resolve and settle fully and finally all claims arising out of the EEOC’s Complaint. This Consent Decree is not an adjudication or finding on the merits of this case and shall not be construed as an admission by CDS of a violation of the ADA.

II. Jurisdiction and Venue

3. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 107(a) of the ADA, as amended, 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended, 42 U.S.C. § 2000e-5(f)(1), (3); and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

4. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of Alaska.

III. Settlement Scope

5. This Consent Decree is the final and complete resolution of all allegations of unlawful employment practices described in the EEOC’s Letter of Determination, issued December 20, 2018, and all claims set forth in the Complaint and Amended Answer filed herein, including any and all claims by the EEOC for injunctive relief, equitable relief, back pay damages, pecuniary damages, compensatory damages, punitive damages, and all claims by EEOC and CDS for attorneys’ fees, costs, and expenses.

6. No waiver, modification or amendment of any provision of this Consent Decree shall be effective unless made in writing and approved by the Parties to this Decree, and any substantive change, modification or

amendment of any provision of this Consent Decree shall also require approval by the Court.

IV. Monetary Relief

7. In settlement of this lawsuit, CDS shall pay a total gross amount of \$50,000.00 within thirty-seven (37) days of the date of entry of this Consent Decree. This amount represents:

- a. \$7,329.60 for alleged back pay for Ms. Baker, a payment that will be subject to all normal payroll withholdings and taxes; and
- b. \$42,670.40 for compensatory damages for Ms. Baker, a payment that will be classified as a payment to settle the emotional distress alleged in this lawsuit, which did not allege that a psychiatric injury or disorder or unusually severe emotional distress was caused by CDS's conduct;
- c. None of the monetary relief sought in this lawsuit was for medical expenses or care, and none of the monetary relief set forth in this Consent Decree is for medical expenses or care.

8. The EEOC will provide CDS with IRS W-4 and W-9 Forms completed by Ms. Baker within fourteen (14) days of entry of this Consent Decree.

9. CDS shall provide to the EEOC copies of documents reflecting the payments described in paragraphs 7(a) and 7(b) and delivery thereof to Ms.

Baker within ten (10) days of payment, including but not limited to copies of the checks and a copy of the withholding statement.

10. CDS shall not require that Ms. Baker: (a) maintain as confidential any facts concerning her employment at CDS, allegations raised in her EEOC charge or the EEOC's Complaint, and the terms of this Decree; (b) waive her statutory right to file a complaint with any government agency; (c) agree to a non-disparagement and/or confidentiality agreement; or (d) release any claims beyond the ADA claims at issue in this action and which this Consent Decree resolves in order to receive the payments identified in paragraphs 7(a) and 7(b).

V. Injunctive and Other Relief

A. General Provisions

11. CDS shall notify Daymon Worldwide Inc., Advantage Sales & Marketing LLC and Advantage Sales Solutions Inc. of CDS's obligations under this Consent Decree.

12. CDS, its officers, agents, managers, supervisors, and human resources staff who make decisions concerning reasonable accommodation of CDS employees and applicants in the State of Alaska, and CDS's successors and assigns are enjoined from engaging in practices which unlawfully discriminate against applicants and/or employees on the basis of disability in

violation of the ADA and shall make reasonable accommodations of applicants and/or employees when required by the ADA.

13. During the duration of this Consent Decree, CDS will provide prior written notice to any potential or actual purchaser of its business, to any potential or actual purchaser of its assets, and to any other potential or actual successor, of the EEOC's lawsuit and the existence and contents of this Consent Decree.

B. Anti-Discrimination Policies and Procedures

During the duration of the term of the Consent Decree:

14. CDS shall implement anti-discrimination policies, procedures and training for all CDS management personnel, supervisors, and human resources employees in the State of Alaska, all CDS management personnel and supervisors who directly manage employees in the State of Alaska, and all human resources employees who are regularly involved in the interactive process concerning reasonable accommodation under the ADA, including but not limited to Human Resources Generalists and Leave and Accommodation Team members that regularly support CDS's State of Alaska operations (collectively, the "Affected Decision-Makers") and for all Sales Advisors, Part-Time Sales Advisors, Product Demonstrator, Part-Time Product Demonstrators, and employees in substantially similar positions that work in the City and Borough of Juneau, Alaska ("collectively, the "Affected Non-

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[Proposed] Consent Decree

Supervisory Employees”). The training required under this paragraph shall be in accordance with the details set forth in paragraph 17 below.

15. Equal Employment Opportunity Policies and Procedures

a. Within thirty (30) days of the entry of this Consent Decree, CDS shall ensure that its written policies and procedures that apply to all Affected Decision-Makers and Affected Non-Supervisory Employees:

- (i) prohibit discrimination based on disability, including the need to make reasonable accommodation;
- (ii) explain to employees their rights under the ADA, including their right to reasonable accommodation;
- (iii) describe the procedure by which an employee can request that CDS make reasonable accommodation under the ADA;
- (iv) establish that an employee has a right to make a complaint concerning alleged disability discrimination, including failure to make reasonable accommodation;
- (v) describe the procedure by which an employee can make an internal complaint based on disability, including failure to make reasonable accommodation;
- and (vi) establish that CDS will not retaliate against employees for engaging in activity protected by the ADA, including requesting accommodation and complaining of alleged disability discrimination.

b. The written procedure for requests for reasonable accommodation required by subparagraph (a)(iii) shall include, at a

minimum, identification of the CDS personnel and/or department responsible for handling such requests, information on how to contact said personnel and department, a general description of the type of information that CDS may request of an employee to support her or his requested accommodation, and assurance that a written decision on the request will be issued to the employee.

c. The written procedure for complaints of discrimination required by subparagraph (a)(iv) shall, at a minimum, (i) identify multiple points of contact through which an employee can make a complaint, at least one of which does not have supervisory authority over the employee; (ii) provide information on how to contact the personnel and/or departments designated as those points of contact; (iii) assure that complaints will be reviewed and decided by a point of contact who was not involved in the alleged discrimination; (iv) assure that CDS will take prompt corrective action if the complaint is substantiated; and (v) assure that CDS will provide the complaining employee, unless anonymous, with a written acknowledgment of their complaint and a written close out communication.

d. The written policies and procedures required by this Section shall be provided to the EEOC for review and comment within forty-five (45) days of entry of this Consent Decree. Within sixty (60)

days of entry of this Consent Decree, the EEOC will advise CDS of its comments, if any. If CDS does not receive any comments within sixty (60) days, it may presume the EEOC has no objections to the policies. CDS and the EEOC will work together in good faith to address the EEOC's comments and any concerns or responses CDS has to the same.

e. Within ninety (90) days of entry of this Consent Decree, or within fourteen (14) days of final resolution of any EEOC comments, whichever is later, CDS shall distribute the policies and procedures required by this Section to all the Affected Decision-Makers and Affected Non-Supervisory Employees and make the policies and procedures readily available to the Affected Non-Supervisory Employees both at and away from their work location.

f. In the event that CDS modifies any policies or procedures affected by this Section during the term of this Consent Decree, CDS shall submit to the EEOC the proposed modifications no later than thirty (30) days prior to implementation. Within fourteen (14) days of receipt, the EEOC will advise CDS of its comments, if any. If CDS does not receive any comments within fourteen (14) days, it may presume the EEOC has no objections. CDS and the EEOC will work together in good faith to address the EEOC's comments and any concerns or responses CDS has to the same.

16. Other Affected Policies

a. Within forty five (45) days of the entry of this Consent Decree, CDS shall ensure that any handbook that applies to Affected Non-Supervisory Employees confirms in writing that employees with disabilities may request modifications or exceptions to the policies described therein and that such requests will be considered and addressed in accordance with the company's accommodation policy, and indicates where the accommodation policy is readily available to them as set forth in paragraph 15(e).

b. The portion(s) of the handbook(s) affected by this Section shall be provided to the EEOC for review and comment within forty-five (45) days of entry of this Consent Decree. Within sixty (60) days of entry of this Consent Decree, the EEOC will advise CDS of its comments, if any. If CDS does not receive any comments within sixty (60) days, it may presume the EEOC has no objections to the policies. CDS and the EEOC will work together in good faith to address the EEOC's comments and any concerns or responses.

17. Equal Employment Opportunity Training

a. Within one hundred fifty (150) days of entry of this Consent Decree, CDS shall provide EEO training focused on disability discrimination, including reasonable accommodation, to all the Affected

Non-Supervisory Employees. The training can be through CDS's modular training currently known as "Pathways" and shall include, at a minimum, (i) an overview of the ADA with emphasis on employee rights and responsibilities in requesting a reasonable accommodation and the employee's and employer's obligation to engage in the interactive process; and (ii) an overview of the policies and procedures required by Section 15; and (iii) assurance that the employee has a right to make a complaint concerning alleged disability discrimination, including failure to make reasonable accommodation. In addition, CDS shall provide substantially similar training to new employees within thirty (30) days of having worked forty (40) hours.

b. Within one hundred fifty (150) days of entry of this Consent Decree, CDS shall provide two (2) hours of EEO training to all the Affected Decision-Makers regarding CDS's EEO policies and procedures, including reasonable accommodation, complaint and investigation procedures. The training will inform each participant that he or she is responsible for knowing and complying with CDS's policies and procedures, that they will not be penalized because an employee has been granted an accommodation under the ADA, and that failure to comply shall result in appropriate discipline up to and including termination. The training shall also emphasize that managers and

supervisors are required to report any complaint for investigation and to prevent and correct any discrimination that they observe or after receiving notice of discrimination, and that failure to take such action will result in disciplinary action. The training shall be in person or interactive. Training meeting these requirements shall be provided at least once in calendar year 2022 and at least once in calendar year 2023 prior to August 31, 2023. In addition, CDS shall provide this training to employees newly hired or promoted into Affected Decision-Maker positions during the term of this Consent Decree within sixty (60) days of the employee's hire or promotion.

c. The materials used in the trainings described in this Section shall be developed by a third party with established experience conducting anti-discrimination workplace training. CDS shall identify to the EEOC the third-party developer of the training materials within sixty (60) days of the entry of this Consent Decree.

d. CDS shall provide the EEOC with copies of all training materials within ninety (90) days of the entry of this Consent Decree. The EEOC will advise CDS of its comments, if any, within fourteen (14) days of receiving CDS's materials. The parties will work in good faith to address the EEOC's comments and CDS's response, if any.

e. All costs of training shall be borne by CDS.

f. CDS shall certify to the EEOC in writing that it conducted each training required by this Section, including the date of each training and the employee identification numbers and job titles of each attendee, as set forth in Paragraph 22.

18. Performance and Accountability

a. CDS shall hold each Affected Decision-Maker accountable for completing the training described in Paragraph 17 and ensure that EEO compliance is part of its performance review process for the duration of the term of this Consent Decree. Failure by any such Affected Decision-Maker to complete the training may lead to discipline, including, but not limited to termination.

b. CDS shall notify all Affected Decision-Makers of their obligation to report any complaint based on disability and to prevent and correct any discrimination that they observe in the workplace or after receiving a complaint of discrimination.

19. Anti-Retaliation

a. CDS shall not discriminate against Ms. Baker because she made the charge from which this lawsuit arose or because she participated in the EEOC's investigation and lawsuit. Such prohibition against discrimination includes not making any changes to Ms. Baker's

personnel file other than any changes required to comply with subparagraph (b) below.

b. CDS shall ensure that any information relating to Ms. Baker's prior requests for an accommodation, complaints concerning such requests, complaints of discrimination and complaints of retaliation is segregated from Ms. Baker's personnel file, where it is not available to individuals responding to employment verification or reference requests.

c. If asked for a reference, CDS shall respond that as a matter of policy, it provides only the position(s) held by Ms. Baker and her dates of employment.

VI. Record-Keeping

20. For the term of this Consent Decree, CDS shall maintain records documenting its compliance, including but not limited to attendance records for all trainings required by this Consent Decree; documentation concerning all requests for disability accommodation made by employees working in the State of Alaska during the term of this Decree, documentation concerning all complaints of disability discrimination, including failure to make reasonable accommodation, made by employees working in the State of Alaska during the term of this Decree; and all records keeping obligations it has under applicable law, including, but not limited to, 29 CFR § 1602.14.

VII. Reporting

21. CDS shall submit four reports reports to the EEOC during the term this Consent Decree. The reports shall be submitted to the EEOC on March 31, 2022, September 30, 2022, March 31, 2023, and August 31, 2023. The reports shall be submitted to the EEOC at: (1) EEOC-CDS_COMPLIANCE@eeoc.gov; and (2) SEFO_CDS@eeoc.gov.

22. Each report shall contain the following information and attachments:

- a. A certification that CDS has:
 - i. Implemented and/or maintained its written EEO policies and procedures and distributed copies of its EEO policy as described in Paragraphs 14–15;
 - ii. Complied with the training provisions enumerated in this Consent Decree in Paragraph 17;
 - iii. Revised, to the extent necessary, its other affected policies as described in Paragraph 16;
 - iv. Posted and maintained the Notice required by Paragraphs 23–25; and
 - v. Complied with all other provisions of this Consent Decree.

b. Copies of the following documents shall be included with each annual report submitted to the EEOC:

i. A copy of CDS's current EEO policies and procedures, as revised and implemented to comply with this Consent Decree.

ii. Attendance lists, including dates, employee identification numbers and job titles of each attendee, for each of the EEO trainings conducted in accordance with this Consent Decree during the reporting period.

iii. A summary of all complaints of disability discrimination, including complaints concerning disability accommodation and the interactive process, received by Affected Decision-Makers, CDS's Leave and Accommodations Team, and/or CDS's Ethics Point hotline from employees working in the State of Alaska during the prior six (6) months, including for each complaint: the complaining employee's identification number; the disability(ies) involved (if known); the date of the complaint; the date of CDS's determination concerning the complaint; the nature of the complaint, including the accommodation(s) requested, if applicable; whether the

complaint was substantiated; and the corrective action taken, if applicable.

c. For the term of this Consent Decree, CDS shall maintain all documents related to the complaints summarized in the reports required by Paragraph 22(b)(iii), including but not limited to documentation of the name of the complaining employee; contact information for the employee; the nature of the complaint, including the accommodation(s) requested, if applicable; the interactive process, if applicable; the identity(ies) of the subject(s) of the complaint; the identity(ies) of the decision-makers involved in the investigation; the reason(s) the complaint was or was not substantiated; and the corrective action taken, if applicable. CDS shall provide copies of these documents to the EEOC upon request. Within fourteen (14) days of receipt of such a request, CDS will advise the EEOC of any concerns it has concerning the scope or burden of the request. CDS and the EEOC will work together in good faith to address CDS's concerns within fourteen (14) days of CDS' objection. CDS will produce the documents within twenty-one (21) days of EEOC's request, or within fourteen (14) days of resolution of any CDS concerns, whichever is later.

VIII. Notice

23. Within fourteen (14) days of the entry of this Consent Decree, CDS will confirm that the posters required to be displayed in the workplace by EEOC Regulations, 29 C.F.R. § 1601.30, are posted at the Costco warehouse locations in the State of Alaska at which it performs services.

24. Within fourteen (14) days of the entry of this Consent Decree, CDS shall post the Notice of the Consent Decree, attached hereto as Exhibit A, in CDS's break room at the Juneau, Alaska Costco warehouse. This Notice shall be posted and maintained for the duration of this Consent Decree.

25. CDS shall use commercially reasonable efforts to ensure that the postings and Notice are not altered, defaced or covered by any other material.

IX. Enforcement

26. If the EEOC has reason to believe that CDS has not complied with the terms of this Consent Decree, the EEOC shall provide written notification of the alleged breach to CDS's legal counsel, Renea Saade of Littler Mendelson. The EEOC shall not petition the Court for enforcement of this Consent Decree for at least thirty (30) days after providing written notification of the alleged breach. The 30-day period following the written notice shall be used by the EEOC and CDS for good faith efforts to resolve the dispute, including but not limited to sharing of information and documentation upon reasonable request.

X. Retention of Jurisdiction

27. The United States District Court for the District of Alaska shall retain jurisdiction over this matter for the duration of this Consent Decree for purposes of enforcing the Consent Decree terms.

XI. Duration and Termination

28. This Consent Decree shall be in effect for two (2) years from the date of entry of the Consent Decree, unless the term has been extended by the Court on the basis that a material violation of the Consent Decree has occurred.

RESPECTFULLY SUBMITTED,

DATED September 30, 2021.

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

LITTLER MENDELSON

Gwendolyn Young Reams
Acting General Counsel

By: /s/Renea I. Saade
Renea I. Saade, Alaska Bar No. 0911060

By: /s/Roberta Steele
Roberta Steele
Regional Attorney

Damien A. Lee
Supervisory Trial Attorney

Amos B. Blackman
Senior Trial Attorney

Attorneys for Plaintiff

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2021
a true and correct copy of the foregoing
Proposed Consent Decree, attached Exhibit A,
and the accompanying Proposed Order
were served electronically on the following:

Renea I. Saade
rsaade@littler.com
LITTLER MENDELSON
500 L Street, Suite 201
Anchorage, Alaska 99501

By Hand Mail Fax Email
 Court's ECF filing system

/s/Amos B. Blackman
Amos B. Blackman
Senior Trial Attorney

Exhibit A

Notice to Employees



NOTICE TO EMPLOYEES

This notice has been posted pursuant to the settlement of a disability discrimination lawsuit: *U.S. Equal Employment Opportunity Commission v. Club Demonstration Services, Inc.*, U.S. District Court for Alaska, Case Number 1:19-cv-00007-HRH. The settlement terms are contained in a document filed with the Court and available to the public called a “Consent Decree.” This Official Notice is required by the terms of the settlement. In accordance with the Consent Decree, Club Demonstration Services will implement policies to ensure compliance with laws prohibiting disability discrimination and requiring reasonable accommodation; provide anti-discrimination training, with an emphasis on disability and reasonable accommodation; and report to the EEOC all complaints of disability discrimination it receives from its employees in Alaska for the next two (2) years.

Federal law prohibits an employer from discriminating against any individual based on disability with respect to hiring, promotion, demotion, terms and conditions of employment and/or termination and requires an employer to make reasonable accommodation of an employee’s disability unless the accommodation would impose an undue hardship. Federal law also prohibits an employer from discriminating because of age, race, color, sex, religion, national origin, and an individual’s genetic information. It is also unlawful for an employer to retaliate against any individual because he or she complains of discrimination, cooperates with the investigation of a discrimination complaint, or participates as a witness or potential witness in a discrimination investigation or legal proceeding or otherwise exercises his or her rights under the law.

If you have any complaints of discrimination, failure to make reasonable accommodation, or retaliation you should contact [COMPLAINT CONTACT FOR JUNEAU] or Club Demonstration Services’ EthicsPoint Hotline at [CONTACT INFORMATION].

Employees also have the right to bring complaints of discrimination to the U.S. Equal Employment Opportunity Commission. Alaska is served by the EEOC’s Seattle Field Office, which can be reached online at <https://publicportal.eeoc.gov/>, by phone at 206-220-6884 or 1-800-669-4000, or by mail at 909 1st Avenue, Suite 400, Seattle, WA 98104.

This Official Notice shall remain prominently posted through **September 2023**.
This Official Notice shall not be altered, defaced, covered or obstructed by any other material.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

U.S. EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)

Plaintiff,)

vs.)

CLUB DEMONSTRATION)
SERVICES, INC.,)

Defendant.)

Case No. 1:19-cv-00007-HRH

[PROPOSED] ORDER APPROVING CONSENT DECREE

Having considered the parties' *Consent Decree* at Docket No. 107, the Court HEREBY ORDERS THAT the Consent Decree be, and the same hereby is, APPROVED as the final decree of this Court in full settlement of this action. This lawsuit is hereby dismissed with prejudice and without costs or attorneys' fees. The Court retains jurisdiction of this matter for purposes of enforcing the Consent Decree approved herein.

Dated this _____ day of _____, 2021.

H. RUSSELL HOLLAND
UNITED STATES DISTRICT COURT JUDGE