

1 Anna Y. Park
Derek Li
2 EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
3 255 East Temple Street, 4th Floor
Los Angeles CA 90012
4 Telephone: (213) 894-1080
Facsimile: (213) 894-1301

5 Angela Morrison
6 EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
333 S. Las Vegas Blvd., Suite 8112
7 Las Vegas, NV 89101
Telephone: (702) 388-5072
8 Facsimile: (702) 388-5096

9 Attorneys for Plaintiff
10 EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

11 Patrick H. Hicks
Wendy Krincek
12 Deborah Westbrook
LITTLER MENDELSON
13 3960 Howard Hughes Parkway, Suite 300
Las Vegas NV 89169
14 Telephone: (702) 862-8800
Facsimile: (702) 862-8811

15
16 Attorneys for Defendant
TRUGREEN LANDCARE

17 **UNITED STATES DISTRICT COURT**
18 **DISTRICT OF NEVADA**

19 EQUAL EMPLOYMENT
20 OPPORTUNITY COMMISSION,

21 Plaintiff,

22 v.

23 TRUGREEN LANDCARE,

24 Defendant.
25
26
27
28

Case No. 2:05-CV-01203-RLH-PAL

ORDER - **CONSENT DECREE;**

I.

INTRODUCTION

Plaintiff U.S. Equal Employment Opportunity Commission (the “EEOC” or “Commission”) and Defendant TruGreen LandCare hereby stipulate and agree to entry of this Consent Decree to resolve the Commission's complaint, filed under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (“Title VII”), alleging that Charging Party Debrah Bray (hereafter “Charging Party”) was subjected to unlawful sex-based harassment. The Commission's complaint further alleges that Charging Party was subjected to unlawful retaliation in violation of Title VII.

II.

PURPOSES AND SCOPE OF THE CONSENT DECREE

A. The parties to this Consent Decree ("Decree") are the EEOC and TruGreen LandCare. The scope of this Decree encompasses TruGreen LandCare's branches located in Las Vegas, Nevada. This Decree shall be binding on and enforceable against TruGreen LandCare, and its successors and assigns.

- B. The parties have entered into this Decree for the following purposes:
1. To provide appropriate monetary and injunctive relief;
 2. To ensure that TruGreen LandCare's employment practices in its Las Vegas branches comply with federal law;
 3. To ensure a work environment free from sex-based discrimination and retaliation based on complaints of sex-based discrimination (“retaliation”) in the Las Vegas branches;
 4. To ensure training for TruGreen LandCare's managers and employees in the Las Vegas branches with respect to their obligations under Title VII; and
 5. To provide an appropriate and effective mechanism for handling

1 sex-based discrimination and retaliation complaints in the Las Vegas
2 branches.

3 This Decree resolves all claims the EEOC has brought or could have
4 brought against TruGreen LandCare arising out of this Complaint. This Decree
5 does not constitute an adjudication on the merits of the allegations of the
6 Complaint and is not, and does not constitute, an admission of wrongdoing on
7 the part of TruGreen LandCare.

8 **III.**

9 **RELEASE OF CLAIMS**

10 A. This Decree fully and completely resolves all issues, claims and allegations
11 by the EEOC against TruGreen LandCare that are, or could have been, raised in
12 the Complaint filed in this action in the United States District Court, District of
13 Nevada on September 30, 2005, captioned *U.S. Equal Employment Opportunity*
14 *Commission v. TruGreen LandCare*, Case No. 2:05-CV-01203-RLH-PAL (the
"Complaint").

15 B. Nothing in this Decree shall be construed to preclude any party from
16 bringing suit to enforce this Decree in the event that any party hereto fails to
17 perform the promises and representations contained herein.

18 C. Nothing in this Decree shall be construed to limit or reduce TruGreen
19 LandCare's obligation to comply fully with Title VII or any other federal
20 employment statute.

21 D. This Decree in no way affects the EEOC's right to bring, process,
22 investigate or litigate other charges that may be in existence or may later arise
23 against TruGreen LandCare in accordance with standard EEOC procedures.

24 **IV.**

25 **JURISDICTION**

26 A. The Court has jurisdiction over the parties and the subject matter of this
27 lawsuit. The Complaint asserts claims that, if proven, would authorize the Court to

1 grant the equitable relief set forth in this Decree. The terms and provisions of this
2 Decree are fair, reasonable and just. This Decree conforms with the Federal Rules
3 of Civil Procedure and Title VII and is not in derogation of the rights or privileges
4 of any person.

5 B. The Court shall retain jurisdiction of this action during the duration of the
6 Decree for the purposes of entering all orders, judgments and decrees that may be
7 necessary to implement the relief provided herein.

8 **V.**

9 **EFFECTIVE DATE AND DURATION OF DECREE**

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

12 B. Except as otherwise provided herein, this Decree shall remain in effect for
13 two (2) years after the Effective Date.

14 **VI.**

15 **MODIFICATION AND SEVERABILITY**

16 A. This Decree constitutes the complete understanding of the parties with
17 respect to the matters contained herein. No waiver, modification or amendment
18 of any provision of this Decree will be effective unless made in writing and
19 signed by an authorized representative of each of the parties.

20 B. If one or more provisions of the Decree are rendered unlawful or
21 unenforceable, the parties shall make good faith efforts to agree upon appropriate
22 amendments to this Decree in order to effectuate the purposes of the Decree. In
23 any event, the remaining provisions will remain in full force and effect unless the
24 purposes of the Decree cannot, despite the parties' best efforts, be achieved.

25 C. By mutual agreement of the parties, this Decree may be amended or
26 modified in the interests of justice and fairness in order to effectuate the
27 provisions of this Decree.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VII.

COMPLIANCE AND DISPUTE RESOLUTION

A. The parties expressly agree that if the Commission has reason to believe that TruGreen LandCare has failed to comply with any provision of this Consent Decree, the Commission may bring an action before this Court to enforce the Decree. Prior to initiating such action, the Commission will notify TruGreen LandCare and its legal counsel of record, in writing, of the nature of the dispute. This notice shall specify the particular provision(s) that the Commission believes TruGreen LandCare has breached. Absent a showing that the delay will cause irreparable harm, TruGreen LandCare shall have thirty (30) days after receipt of such written notice to attempt to resolve or cure the breach.

B. The parties agree to cooperate with each other and use their best efforts to resolve any dispute referenced in the EEOC notice.

C. After thirty (30) days have passed with no resolution or agreement to extend the time further, the Commission may petition this Court for resolution of the dispute, seeking all available relief, including an extension of the term of the Decree for such period of time as TruGreen LandCare is shown to be in breach of the Decree.

VIII.

MONETARY RELIEF

In settlement of this lawsuit, TruGreen LandCare shall pay a total of \$100,000 to resolve this action. The EEOC has designated \$5,000 of the monetary relief as backpay and \$95,000 of the monetary relief as compensatory damages. For the portion of the monetary relief designated as backpay, Debbrah Bray is responsible for payment of the employee's share of FICA and other employment taxes normally deducted from payroll checks and TruGreen shall deduct and withhold such amounts from the backpay amount. TruGreen remains responsible for the employer share of payroll deductions on this backpay amount. Debbrah

1 Bray shall be solely responsible for her portion of taxes payable on the
2 compensatory damages, if any.

- 3 A. After receipt of a Form W-9 signed by Debrah Bray, TruGreen
4 LandCare shall forward, via certified mail, two checks payable to
5 Debrah Bray within ten (10) days of the effective date of this Consent
6 Decree; one check in the amount of \$95,000 and a second check in the
7 gross amount of \$5,000 less normal payroll withholdings as set forth
8 herein. For the amount designated as compensatory damages, no
9 withholding will be made. With respect to the compensatory damages
10 paid to Debrah Bray, TruGreen LandCare shall prepare and distribute a
11 1099 tax reporting form to Debrah Bray and shall make appropriate
12 reports to the Internal Revenue Service and other tax authorities.
- 13 B. Within three (3) business days of the issuance of the settlement checks,
14 TruGreen LandCare shall submit a copy of the settlement checks and
15 related correspondence to the Regional Attorney, Anna Y. Park, U.S.
16 Equal Employment Opportunity Commission, 255 East Temple Street, 4th
17 Floor, Los Angeles, CA 90012.

18 **IX.**

19 **GENERAL INJUNCTIVE RELIEF**

20 **A. Non-Discrimination**

21 1. Discrimination Based on Sex

22 TruGreen LandCare and its successors and assigns hereby agree that they do
23 not and will not: (a) discriminate or tolerate discrimination against persons on the
24 basis of sex in the terms and conditions of employment; (b) engage in or be a party
25 to any action, policy or practice that is intended or is known to them to have the
26 effect of discriminating against any employee on the basis of sex; and (c) create,
27 facilitate or permit the existence of a work environment that is hostile to female
28 employees.

1 3. ensuring that managerial and human resources employees assigned
2 to TruGreen LandCare's Las Vegas Branches are trained in accordance with
3 Section IX (E) of this Decree;

4 4. monitoring TruGreen LandCare's investigation of all complaints of
5 sex-based discrimination and retaliation at TruGreen LandCare's Las Vegas
6 branches to ensure compliance with Title VII;

7 5. ensuring that TruGreen LandCare properly communicates with
8 complainants at TruGreen LandCare's Las Vegas branches regarding the
9 complaint procedure, status of the complaint investigation, results of the
10 investigation, and remedial action taken, if any;

11 6. ensuring that TruGreen LandCare's reports required by this Decree
12 are accurately compiled and timely submitted;

13 7. ensuring that TruGreen LandCare's Las Vegas branches hold
14 employees accountable for sex-based discrimination and retaliation and hold
15 managers accountable when responding to complaints of sex-based discrimination
16 and retaliation;

17 8. ensuring that TruGreen LandCare maintains records during the term
18 of the Consent Decree for all complaints of sex-based discrimination and
19 retaliation at TruGreen LandCare's Las Vegas branches;

20 9. further ensuring compliance with the terms of this Decree; and

21 10. preparing a brief annual report on TruGreen LandCare's Las Vegas
22 branches' compliance with this Decree.

23 The Compliance Representative shall ensure compliance with the foregoing
24 provisions for the term of the Decree and shall certify to the EEOC that the
25 company has complied with each of the foregoing provisions on an annual basis.

26 **D. Memorandum Concerning Sex-Based Discrimination and Retaliation**

27 TruGreen LandCare shall, within ten (10) business days after the Effective
28 Date, provide a copy to the Commission of a memorandum on sex-based

1 discrimination and retaliation that shall include:

- 2 1. A clear explanation of prohibited conduct;
- 3 2. Assurance that employees who make complaints of sex-based
4 discrimination or provide information related to such complaints will be protected
5 against retaliation;
- 6 3. A clearly described complaint process that provides accessible
7 avenues of complaint with contact information including name (if applicable),
8 address, and telephone number of persons both internal (*i.e.*, human resources) and
9 external to TruGreen LandCare (*i.e.* the EEOC and Nevada Equal Rights
10 Commission (“NERC”)) to whom employees may report complaints of sex-based
11 discrimination and retaliation, including a written statement that the employee may
12 report the alleged discriminatory or retaliatory behavior to designated persons
13 outside their chain of management;
- 14 4. The current toll-free number where employees may report complaints
15 of sex-based discrimination and retaliation;
- 16 5. Assurance that the employer will protect the confidentiality of
17 sex-based discrimination and retaliation complaints to the extent possible;
- 18 6. Assurance that the complaint process provides a prompt, thorough,
19 and impartial investigation and follow-up with the complainant;
- 20 7. Assurance that the complainant will be informed regarding the
21 status of the complaint/investigation, results of the investigation, and any
22 remedial action taken; and
- 23 8. Assurance that TruGreen LandCare will take “immediate and
24 corrective action” within the meaning of the applicable Title VII case law if it
25 determines that sex-based discrimination and/or retaliation has occurred; and
- 26 9. Assurance that TruGreen LandCare will hold employees accountable
27 for sex-based discrimination and/or retaliation and hold managers accountable
28 when responding to complaints of sex-based discrimination and retaliation;

1 include training on how to properly respond to complaints of sex-based
2 harassment, how to take preventive and corrective measures against sex-based
3 harassment, and how to recognize and prevent sex-based harassment and
4 retaliation.

5 3. Training for the human resources employee(s) assigned to the Las
6 Vegas branches shall additionally include training on how to properly investigate
7 complaints of sex-based harassment and retaliation.

8 4. For the remainder of the term of this Decree, all new
9 managerial/supervisory and human resources employees and all employees
10 recently promoted from a staff/hourly to a managerial position at the Las Vegas
11 branches shall be required to attend the managerial/supervisory training, as
12 appropriate, within sixty (60) days of hire or promotion.

13 5. After the initial training as specified above, all managerial/supervisory
14 and human resources employees at the Las Vegas branches shall receive the
15 training at least annually thereafter for the remainder of the term of this Decree.

16 6. All employees required to attend such training shall verify their
17 annual attendance in writing.

18 7. Within forty-five (45) days after the Effective Date, TruGreen
19 LandCare shall submit to the EEOC a description of the training to be provided
20 and an outline of the curriculum developed for the trainees. TruGreen LandCare
21 shall give the EEOC a minimum of ten (10) business days' advance written notice
22 of the date, time and location of each training program provided pursuant to this
23 Decree, and agrees that an EEOC representative may attend any such training
24 program.

24 **F. Complaint Procedure**

25 During the term of this Decree, TruGreen LandCare agrees that its Las
26 Vegas branches will maintain and adhere to internal policies which set forth the
27 procedures to follow in handling complaints of sex-based discrimination and
28

1 retaliation.

2 1. TruGreen LandCare shall:

3 a. publicize the steps employees should take to bring a complaint
4 of discrimination or retaliation via inclusion of such information in its
5 employee handbook, the memorandum referenced in Section IX.D. herein
6 and through the training referenced in Section IX.E. herein;

7 b. track and collect all complaints filed thereunder;

8 c. investigate and resolve such complaints in a timely and
9 effective manner; and

10 d. retain records regarding resolution of all such complaints.

11 2. The internal complaint procedure should incorporate the following
12 elements:

13 a. A statement describing how investigations will be conducted
14 directed to those conducting the investigation;

15 b. A statement that investigations should be promptly
16 commenced and thoroughly investigated by a TruGreen LandCare employee
17 trained to conduct such investigations who is not connected with the complaint;

18 c. A statement that an investigation should include interviews
19 of the complainant, alleged offender, and third-party witnesses as appropriate,
20 including if complainant and alleged offender present inconsistent stories;

21 d. A statement that a written record of all investigatory steps,
22 and any findings and conclusions, and any actions taken should be maintained;

23 e. Provision for the reasonably prompt resolution of such
24 complaints;

25 f. A statement that the confidentiality of the complaint and
26 investigation shall be maintained to the extent possible;

27 g. A statement that appropriate communication of the
28 final conclusions of the investigation provided to the complainant should

1 be made; and

2 h. the contact information for the Compliance Representative to
3 whom employees may report if they are dissatisfied with the results of an
4 investigation.

5 3. The Internal Complaint Procedure is not intended to supplant the
6 right of any employee to file a charge or complaint of discrimination or retaliation
7 under any available municipal, state, or federal law.

8 **X.**

9 **RECORD KEEPING AND REPORTING**

10 **A. Record Keeping**

11 During the term of the Decree, TruGreen LandCare shall establish a
12 record-keeping procedure that provides for the tracking of complaints of sex-
13 based discrimination at the company's Las Vegas branches and the monitoring
14 of such complaints to prevent retaliation. The records to be maintained shall
15 include:

16 1 All documents generated in connection with any complaint,
17 investigation into, or resolution of every complaint of sex-based
18 discrimination or retaliation at the company's Las Vegas branches for the
19 duration of the Decree;

20 2. All forms acknowledging employees' receipt of TruGreen
21 LandCare's Memorandum Concerning Sex-Based Discrimination and
22 Retaliation;

23 3. All documents verifying the occurrence of all training sessions and
24 names and positions of all attendees for each session as required under this
25 Decree; and

26 4. Documents tracking and analyzing complaints filed against the same
27 employee and location, if any.

28 The foregoing documents shall be summarized in the semi-annual reports

1 set forth below.

2 **B. Reporting**

3 In addition to the notices to the EEOC specified above, during the term of
4 the Decree, TruGreen LandCare shall provide, without assertion of the attorney-
5 client privilege or attorney work product, the following reports to the EEOC in
6 writing, by mail or facsimile:

7 1. Within ninety (90) days after the Effective Date, TruGreen LandCare
8 shall submit to the EEOC an initial report which contains:

- 9 (a) A copy of the Memorandum Concerning Sex-Based
10 Discrimination and Retaliation for the Las Vegas branches;
11 (b) A summary of the procedures and record-keeping methods for
12 tracking sex-based discrimination and retaliation complaints and
13 monitoring such complaints at the Las Vegas branches;
14 (c) A statement confirming that the required notices pertaining to this
15 Decree and the Memorandum Concerning Sex-Based Discrimination
16 and Retaliation have been posted at the Las Vegas branches; and
17 (d) Copies of all employee acknowledgment forms indicating receipt
18 of the Memorandum Concerning Sex-Based Discrimination and
19 Retaliation.

20 2. TruGreen LandCare shall also provide the following reports
21 semi-annually throughout the term of this Decree:

- 22 (a) The attendance lists of all attendees for all training sessions
23 required under this Decree that took place during the previous six
24 months;
25 (b) Acknowledgments of receipt of the Memorandum Concerning
26 Sex-Based Discrimination and Retaliation for all employees hired at
27 the Las Vegas branches during the previous six months;
28 (c) A summary of all sex-based discrimination and/or retaliation

1 complaints at the Las Vegas branches during the period of the Decree.
2 The summary shall include the following information: (i) a
3 description of the nature of the complaint, including the identities of
4 the parties; (ii) the date the complaint was received; (iii) the date the
5 complaint was resolved; (iv) TruGreen LandCare's findings; and (v) a
6 summary of any corrective action and/or discipline taken in response
7 to the complaint. The summary shall include the tracking of multiple
8 complaints by or against a single employee, if any; and

9 (d) TruGreen LandCare shall provide a report to the EEOC detailing
10 any changes to the complaint procedures set forth in Section IX (F) of
11 this Decree.

12 (e) The Compliance Representative shall audit each internal
13 complaint investigation at the Las Vegas branches to ensure that such
14 complaints were handled in accordance with the terms of the Consent
15 Decree, especially with respect to multiple complaints received
16 regarding the same individual, if any. The semi-annual report shall
17 include information on the results of the audit.

18 (f) An EEOC attorney shall review the semi-annual reports on
19 behalf of the EEOC.

20 **XI.**

21 **COSTS OF ADMINISTRATION AND IMPLEMENTATION**
22 **OF CONSENT DECREE**

23 TruGreen LandCare shall bear all costs associated with its administration
24 and implementation of its obligations under this Consent Decree.

25 **XII.**

26 **COSTS AND ATTORNEYS' FEES**

27 Each party shall bear its own costs of suit and attorneys' fees.
28

XIII.

MISCELLANEOUS PROVISIONS

A. During the term of this Consent Decree, TruGreen LandCare shall provide any potential successor-in-interest with a copy of this Consent Decree within a reasonable time of thirty (30) days or less prior to the execution of any agreement for acquisition or assumption of control of any or all of TruGreen LandCare's facilities, or any other material change in corporate structure, and shall simultaneously inform the EEOC of same.

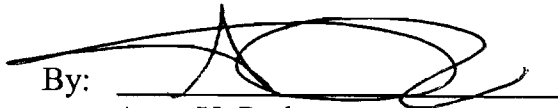
B. During the term of this Consent Decree, TruGreen LandCare and its successors shall assure that each of its managers and supervisors at the Las Vegas branches are aware of any term(s) of this Decree which may be related to his/her job duties.

C. Unless otherwise stated, all notices, reports and correspondence required under this Decree shall be delivered to the attention of the Regional Attorney, Anna Y. Park, U.S. Equal Employment Opportunity Commission, Los Angeles District Office, 255 E. Temple St., 4th Fl., Los Angeles, California 90012.

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

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Dated: 10/11/07

By: 

Anna Y. Park
Attorney for Plaintiff

TRUGREEN LANDCARE

Dated: 9-27-07

By: 

Patrick Hicks
Attorney for Defendant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

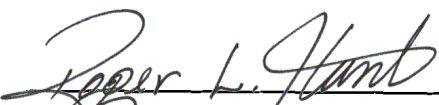
ORDER

GOOD CAUSE APPEARING:

The Court hereby retains jurisdiction and the provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is **HEREBY ORDERED.**

IT SO ORDERED.

Dated: October 2, 2007



The Honorable Roger L. Hunt
Chief United States District Judge

