

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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

vs.

EAGLE PRODUCE, L.L.C., an Arizona
Limited Liability Company,

Defendant.

) Civ. 06-1921 PHX NVW

) **SETTLEMENT AGREEMENT**

The United States Equal Employment Opportunity Commission (the “Commission” or “EEOC”) filed this action against Eagle Produce, L.L.C. (“Defendant”) to enforce Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, and the Equal Pay Act. In the Complaint, the Commission alleged that Defendant discriminated against Mrs. Anita Guerrero in violation of the Equal Pay Act, 29 U.S.C. §§ 206 (d)(1) and 215(a)(2) and Title VII, 42 U.S.C. § 2000e-2(a) by paying her lower wages than those paid to male employees performing substantially equal work. The Commission further alleged that Defendant discriminated against Mrs. Guerrero in violation of Title VII, 42 U.S.C. §2000e-2(a), because of her sex, female.

1 In the interest of resolving this matter, and as a result of having engaged in
2 comprehensive settlement negotiations, the Parties have agreed that this action should be
3 finally resolved by entry of this Settlement Agreement. Each of the parties hereto
4 acknowledge and agree that this is a full and final settlement and release as set forth in
5 paragraph 1 and that the furnishing of any consideration therefore does not constitute and
6 shall not at any time be deemed to constitute or ever be construed as an admission of any
7 wrongdoing by any party and Defendant is entering into this Settlement Agreement solely
8 for economic reasons.

9 The Parties do not object to the jurisdiction of the Court over this action and
10 waive their rights to a hearing and the entry of findings of fact and conclusions of law.

11 It is hereby **ORDERED, ADJUDGED AND DECREED:**

12 1. This Settlement Agreement resolves all claims of the Commission against
13 Defendant, including back pay, liquidated, compensatory and punitive damages, interest,
14 injunctive relief, attorney's fees, and costs arising out of the issues in this lawsuit.

15 2. Defendant and its officers, through its agents, employees, successors, assigns, and
16 all persons in active concert or participation with it, both at the time that this Settlement
17 Agreement becomes effective and for the duration of this Settlement Agreement, shall
18 not (1) discriminate against any individual based on his or her sex, or (2) unlawfully pay
19 any female employee less than a male employee for substantially equal work.

20 3. Defendant shall pay the gross sum of \$9,000 to Mrs. Anita Guerrero by cashier's
21 check or money order no later than ten (10) days from the Court's entry of the Settlement
22 Agreement.

23 4. The gross sum represents settlement of back pay in the amount of \$3,000.00
24 liquidated damages in the amount of \$3,000.00 and \$3,000 in compensatory damages.
25 Defendant will pay all payroll taxes it owes on the back wages for the tax year during
26 which payment is made, and deduct the additional payroll taxes owed by Mrs. Guerrero.
27 Defendant will issue United States Internal Revenue Service Form 1099 to Mrs. Guerrero
28

1 for the liquidated damages and compensatory damages for the tax year during which
2 payment is made.

3 5. Defendant will not condition the receipt of individual relief on Mrs. Guerrero's
4 agreement to (a) maintain as confidential the terms of this Settlement Agreement, (b)
5 waive her statutory right to file a charge with any federal or state anti-discrimination
6 agency, or (c) waive her right to apply for a position with the Defendant.

7 6. The cashier's check or money order shall be made payable to Mrs. Guerrero and
8 mailed to the address provided by the Commission. Within three business days of the
9 issuance of the cashier's check or money order, Defendant shall submit a copy of the
10 check or money order and all related correspondence to Mary Jo O'Neill, Regional
11 Attorney, Equal Employment Opportunity Commission, 3300 North Central Avenue,
12 Suite 690, Phoenix, Arizona 85012.

13 7. Defendant shall expunge from the personnel file of Mrs. Guerrero (a) all
14 references to the charge of discrimination filed against Defendant that formed the basis of
15 this action; (b) all references to Mrs. Guerrero's participation in this action; (c) any
16 derogatory documents which relate to complaints or investigation of complaints of wage
17 and gender discrimination.

18 8. Defendant shall institute and carry out policies and practices that help assure a
19 work environment free from wage discrimination based on sex. To assist Defendant in
20 its efforts to assure such a work environment, Defendant shall take the actions provided
21 in paragraphs 9 - 17 of this Settlement Agreement.

22 9. Defendant shall post for the duration of this Settlement Agreement, in a
23 prominent place frequented by its employees at its facilities, the Notice attached as
24 Exhibit A. The Notice shall be the same type, style and size as set forth in Exhibit A and
25 shall be in English and Spanish.

TRAINING

1
2 10. During the effective period of this Settlement Agreement, Defendant shall
3 provide training on the EPA, specifically wage and gender discrimination, according to
4 the following terms:

5 A. Defendant shall retain and pay for a consultant/lecturer who shall provide
6 training to its employees. The live session shall be in English and Spanish. The session
7 may be videotaped for use in subsequent years. All of Defendant’s managers,
8 supervisors, human resource personnel and foremen, shall attend the live session and
9 subsequent trainings. Defendant may at its election have duplicative videotaped sessions
10 to accommodate staffing needs. Defendant shall be responsible for any additional costs
11 to provide such duplicative sessions.

12 B. The seminar training sessions shall be conducted within one month of the
13 beginning of the seasonal period.

14 C. The seminar training sessions shall be no less than two hours, including
15 time permitted for questions and answers. All of Defendant’s employees shall register
16 when they attend a seminar-training session. The registry of attendance shall be retained
17 by Defendant for the duration of this Settlement Agreement.

18 D. The seminars shall include: (1) what constitutes wage and gender
19 discrimination; (2) that the Equal Pay Act is violated by wage discrimination; (3) how to
20 prevent wage discrimination; (4) how to provide a work environment free from wage
21 discrimination; and (5) to whom and by what means employees may complain if they feel
22 they have been subjected to wage discrimination in the workplace. The session shall also
23 review and explain Defendant’s policies set out in this Settlement Agreement.

24 E. During the live training sessions, Defendant’s Plant Manager shall speak
25 to the employees about the legal consequences faced by companies that tolerate wage
26 discrimination; the importance of maintaining an environment free of wage and gender
27
28

1 discrimination; and Defendant's policies in regard to wage and gender discrimination,
2 referred to in paragraph 12 of this Settlement Agreement.

3 **POLICIES AND PROCEDURES**

4 11. Within sixty (60) days of the entry of this Agreement, Defendant shall review and
5 modify, if necessary, written policies concerning wage and gender discrimination to
6 conform with the law, and submit the policy for review to the Regional Attorney of the
7 Phoenix District Office of the EEOC at the address provided in paragraph 6 above.

8 These written policies must be in English and Spanish and include at a minimum:

- 9 A. A strong and clear commitment to a workplace free of wage and gender
10 discrimination;
- 11 B. A clear and complete definition of wage and gender discrimination;
- 12 C. A statement that wage and gender discrimination is prohibited and will not
13 be tolerated;
- 14 D. A clear and strong encouragement of persons who believe they have been
15 subjected to wage and gender discrimination to come forward;
- 16 E. The identification of specific individuals, internal and external to
17 Defendant, with their telephone numbers, to whom employees, who have been
18 subjected to wage and gender discrimination, can report the unlawful conduct,
19 including a written statement that employees may report the unlawful conduct to
20 designated persons outside of their chain of management. The statement shall
21 explain that, should a non-English speaking employee seek to report wage and
22 gender discrimination, Defendant shall make an interpreter available for purposes
23 of taking the report and further communicating with the employee about the
24 reported incidents;
- 25 F. An assurance that Defendant will investigate allegations of wage and
26 gender discrimination promptly, fairly, reasonably and effectively, using
27
28

1 appropriate investigators, and that appropriate corrective action will be taken by
2 Defendant to make victims whole and to eradicate the unlawful conduct;

3 G. A description of the consequences, up to and including termination, which
4 will be imposed upon violators of the policy;

5 H. A promise of maximum feasible confidentiality for persons who believe
6 that they have been subjected to wage and gender discrimination;

7 I. An assurance of non-retaliation for persons who believe they have been
8 subjected to wage and gender discrimination, and for witnesses.

9 12. These policies shall be written in English and Spanish. They shall be distributed
10 to all new employees of Defendant when hired and reissued to each employee within one
11 month of the beginning of the seasonal period.

12 13. Defendant shall promptly and appropriately investigate all complaints by its
13 employees of wage and gender discrimination. The investigation must include a finding
14 of whether the alleged conduct occurred, a credibility assessment, if necessary;
15 interviews of all potential victims and witnesses identified; and concurrent notes of the
16 investigation. Defendant shall take immediate appropriate corrective action to make
17 victims of the unlawful conduct whole, to discipline those who engaged in the unlawful
18 conduct, and to eradicate the unlawful conduct.

19 14. Defendant shall not retain documents related to the investigation of complaints of
20 wage and gender discrimination in any of the complainant's personnel files. All
21 disciplinary actions taken against employees for violation of Defendant's policies
22 regarding wage and gender discrimination shall be retained in the wrongdoer's personnel
23 file. In those cases in which no conclusion could be reached on the allegations, the
24 investigation documents shall be retained in an investigation file.

25 **REPORTING**

26 15. Defendant shall report in writing and in affidavit form to the Regional Attorney
27 of the Commission's Phoenix District Office, at the address provided, beginning six
28

1 months from the date of the entry of this Settlement Agreement, and thereafter every year
2 for the duration of the Settlement Agreement, the following information:

3 A. Any changes, modifications, revocations, or revisions to its policies and
4 procedures which concern or affect the subjects of wage and gender
5 discrimination.

6 B. The registry of persons attending the seminars required in paragraph 10 of
7 this Settlement Agreement and a list of current supervisory, managerial, foremen,
8 and human resource personnel employed by Defendant on the days of the seminar
9 training sessions.

10 C. Confirmation that (1) the Notice required in paragraph 9 of this Settlement
11 Agreement was posted and the locations where it was posted; (2) the policies
12 required in paragraph 12 were distributed to each current and new employee of
13 Defendant, in all required languages, and posted.

14
15 **COSTS AND DURATION**

16 16. Each Party shall bear its costs and attorney's fees incurred as a result of this action
17 through the filing of this Settlement Agreement.

18 17. The duration of this Settlement Agreement shall be twelve (12) months from its
19 entry. This Court shall retain jurisdiction over this action, to enforce the Agreement, for
20 the duration of the Settlement Agreement. The Commission may petition this Court for
21 compliance with this Agreement at any time during which this Court maintains
22 jurisdiction over this action. If the Commission determines that the Defendant has not
23 complied with the Agreement, the Commission will provide written notification of the
24 alleged breach to the Defendant and will not petition the Court for enforcement sooner
25 than thirty (30) days after providing written notification. If the Commission petitions the
26 Court and the Court finds the Defendant to be in violation of the terms of the Settlement
27
28

1 Agreement, the Court may extend this Agreement or order other appropriate relief as may
2 be necessary to remedy Defendant's non-compliance.

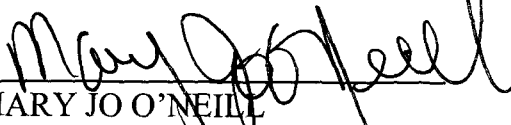
3
4 18. The Parties agree to entry of this Settlement Agreement subject to final approval
5 by the Court.


6
7 Dated this ____ day of _____, 2008

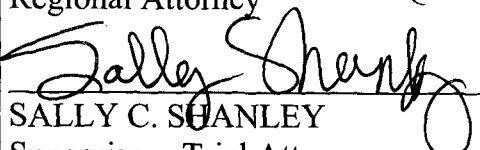
8
9 _____
10 NEIL V. WAKE

11 United States District Judge


12 APPROVED AND CONSENTED TO:

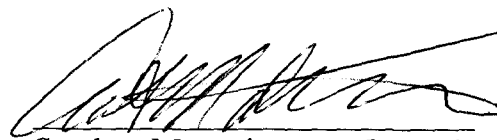
13 
14 MARY JO O'NEILL
15 Regional Attorney


16 F. MICHAEL CARROLL
17 Attorney

18 
19 SALLY C. SHANLEY
20 Supervisory Trial Attorney

BURCH & CRACCHIOLO, P.A.
702 East Osborn Road, #200
Phoenix, AZ 85011
Attorneys for Defendant

21 
22 LUCILA C. ROSAS
23 Trial Attorney
24 EQUAL EMPLOYMENT OPPORTUNITY
25 COMMISSION
26 Phoenix District Office
27 3300 North Central Avenue, Suite 690
28 Phoenix, Arizona 85012
(602) 640-5032
Attorneys for Plaintiff


Stephen Martori ALTHUR J. MARTELLI
Eagle Produce, LLC

NOTICE TO ALL EAGLE PRODUCE, L.L.C.EMPLOYEES

It is unlawful under federal law, Title VII of the Civil Rights Act, the Equal Pay Act, and state law to discriminate against an employee on the basis of sex, including sexual harassment, in the recruitment, hiring, firing, compensation, assignment, or other terms, and conditions or privileges of employment. It is also unlawful to retaliate against any person because the person protested discriminatory practices or contacted the EEOC or the Arizona Civil Rights Division (ACRD).

Eagle Produce, L.L.C. shall not discriminate against any employee on the basis of sex and shall not retaliate against any employee.

If you believe you have been discriminated against by Eagle Produce, L.L.C., you have the right to seek assistance from:

- (1) EEOC,
3300 North Central Avenue, Suite 690
Phoenix, Arizona 85012
(602) 640-5000; (602) 640-5072 TTY
www.eeoc.gov
- (2) Arizona Civil Rights Division (ACRD)
1275 W. Washington,
Phoenix, AZ 85007
(602) 542-5263; TDD: (602) 542-5002
Toll Free: (877) 49-5742; TDD (877) 624-8090

You have the right to file a charge with the EEOC or ACRD if you believe you are being discriminated against.

No Retaliation Clause. No action may be taken against you by any supervisory or management official of Eagle Produce, L.L.C. for (1) opposing discriminatory practices made unlawful by federal or state law; (2) filing a charge or assisting or participating in the filing of a charge of discrimination; or (3) assisting or participating in an investigation or proceeding brought under Title VII. Should any such retaliatory actions be taken against you, you should immediately contact one of the agencies at the addresses or telephone numbers listed above.

Exhibit A

RELEASE

In consideration for \$ 9,000.00 paid to me by Eagle Produce in connection with the resolution of EEOC v. EAGLE PRODUCE, INC CV 06-1921-NVW., I waive my right to recover for any claims of discrimination arising under Title VII of the Civil Rights Act of 1964 or the Equal Pay Act that I had against Eagle Produce prior to the date of this release and that were included in the claims alleged in EEOC's complaint in United States District Court

Date: 9-30-08

Signature: 