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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

1 WILLIAM R. TAMAYO (CA Bar No. 084965)
2 JONATHAN T. PECK (VA Bar No. 12303)
3 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
4 350 The Embarcadero, Suite 500
5 San Francisco, CA 94105
6 Telephone No. (415) 625-5646 and Fax No. (415) 625-5657

7 LUCILA G. ROSAS (CA Bar No. 187345)
8 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
9 96 North Third Street, Suite 200
10 San Jose, CA 95112
11 Telephone No. (408) 291-6401 and Fax No. (408) 291-4539

12 Attorneys for Plaintiff

13 B. JAMES FITZPATRICK, ESQ. (CA State Bar No. 129056)
14 CHARLES SWANSTON, ESQ. (CA State Bar No. 181882)
15 FITZPATRICK, SPINI & SWANSTON
16 838 South Main Street, Suite D
17 Salinas, CA 93901
18 Telephone No. (831) 755-1311
19 Facsimile No. (831) 755-1319

20 Attorneys for Defendant

21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA
23 SAN JOSE DIVISION

24 EQUAL EMPLOYMENT OPPORTUNITY)
25 COMMISSION,)

CIVIL ACTION NO.

26 Plaintiff,)

C-02-4614 JF (HRL)

27 ARMIDA URQUIZO,)

CONSENT DECREE

28 Plaintiff/Intervenor,)

v.)

FRESH EXPRESS, INC.,)

Defendant.)

I. INTRODUCTION

On September 24, 2002, Plaintiff, Equal Employment Opportunity Commission ("EEOC"), filed this action pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII")

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Consent Decree
C-02-4614 JF (HRL)

MAY 7 2004

Richard W. Wiekling
Clerk, U.S. District Court
Northern District of California
San Jose

1 and Title I of the Civil Rights Act of 1991. Plaintiff alleged that Defendant subjected ARMIDA
2 URQUIZO to a hostile work environment and to retaliation after she complained of sexual
3 harassment.

4 On November 12, 2002, Ms. Urquizo was granted intervention in the EEOC action.
5 Intervenor has settled her claims in a separate confidential agreement to which the EEOC is not
6 a party.

7 On April 2, 2003, Defendant FRESH EXPRESS, INC. (Defendant) answered the
8 complaint and denied liability on all claims.

9 The EEOC and Defendant want to conclude fully and finally all claims arising out of the
10 above action without the expenditure of further resources and expenses in contested litigation.
11 They enter into this Consent Decree to further the objectives of equal employment opportunity as
12 set forth in Title VII.

13 **II. NON-ADMISSION OF LIABILITY**

14 This Consent Decree is not an adjudication or finding on the merits of this case and shall not
15 be construed as an admission of a violation by Defendant.

16 The Court has reviewed the terms of this Consent Decree in light of the pleadings, the record
17 herein, and the applicable law, and now approves the Consent Decree in its entirety.

18 Therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

19 **III. GENERAL PROVISIONS**

- 20 1. This Court has jurisdiction over the subject matter and the parties to this action.
21 2. This Consent Decree constitutes a full resolution of Plaintiff's complaint in Civil
22 Action No. C-02-4614 JF (HRL) and the underlying charge of discrimination filed with the
23 EEOC.
24 3. This Consent Decree shall become effective upon its entry by the Court.
25 4. Each party shall bear its own costs and attorney fees.

26 **IV. INJUNCTIVE RELIEF**

- 27 1. *Sexual Harassment*: Consistent with Section 703 of Title VII, 42 U.S.C. §2000e-2,
28 Defendant, its officers, agents, management (including supervisory employees), successors and

1 following policies and procedures:

2 (a) **Policy Addressing Sexual Harassment:** Defendant agrees that it will
3 continue to administer its sexual harassment policy which: (i) includes definitions of
4 sexual harassment with examples to supplement the definitions of sexual harassment and
5 provides for substantial and progressive discipline for incidents of sexual harassment; (ii)
6 includes strong non-retaliation language with examples to supplement the definition of
7 retaliation, and provides for substantial and progressive discipline for incidents of
8 retaliation; (iii) provides that complaints of sexual harassment and/or retaliation will be
9 accepted by Defendant both in writing and orally; (iv) provides a timetable for
10 commencing an investigation after a complaint is made or received and for remedial
11 action to be taken upon conclusion of an investigation; and (v) indicates that, promptly
12 upon the conclusion of its investigation of a complaint, Defendant will communicate to
13 the complaining party the results of the investigation and the remedial actions taken or
14 proposed, if any.

15 Defendant's policy will be written in both Spanish and English. Defendant will
16 provide a copy of the sexual harassment policy to the EEOC within forty-five (45) days
17 of the signing of the Consent Decree.

18 (b) **Complaint Procedures:** Defendant's complaint procedure is designed to
19 encourage employees to come forward with complaints about violations of its harassment
20 policy. Defendant provides its employees with convenient, confidential and reliable
21 mechanisms for reporting incidents of sexual harassment and retaliation. Defendant shall
22 designate at least two employees with the responsibility for investigating such issues as
23 contact persons. The names of the contact persons, their work locations, and telephone
24 numbers shall be listed on the harassment policy and also shall be routinely and
25 continuously posted in a prominent place at all of Defendant's business locations.

26 Defendant's complaint procedure will also be written in both Spanish and
27 English. Defendant will provide a copy of the complaint procedures to the EEOC within
28 forty-five (45) days of the signing of the Consent Decree.

1 **(c) Supervisor Accountability:**

2 (i) Defendant agrees that it shall impose substantial discipline – up to and
3 including termination, suspension without pay or demotion – upon any supervisor or
4 manager who engages in harassment on the basis of sex or permits any such conduct to
5 occur in his or her work area or among employees under his or her supervision, or who
6 retaliates against any person who complains or participates in any investigation or
7 proceeding concerning any such harassment. Defendant shall communicate this policy to
8 all supervisors and managers at the time the person is hired or promoted to
9 supervisor/manager and subsequently, on an annual basis.

10 (ii) Defendant agrees that it shall advise all managers and supervisors of their duty
11 to actively monitor their work areas to ensure employee compliance with the company’s
12 harassment policy, and to report any incidents and/or complaints of sexual harassment
13 and/or retaliation of which they become aware to the department charged with handling
14 such complaints.

15 **(d) Sexual Harassment Training:**

16 (i) Prior to the execution of this Consent Decree, Defendant has provided all of its
17 employees with one hour of mandatory sexual harassment training. Defendant reaffirms
18 its commitment to provide on an annual basis at least one hour of mandatory sexual
19 harassment training, the cost of which shall be borne by Defendant. The training has and
20 will be conducted in the appropriate language (i.e., Spanish or English) depending on the
21 primary language of the employees being trained.

22 (ii) The training described in the preceding paragraph shall be provided by a
23 person knowledgeable in sexual harassment who has and shall educate the employees
24 about the problems of sexual harassment in the workplace. The training has and will
25 include examples of the types of remarks and behavior that will not be tolerated in
26 Defendant’s business locations. The training has and will further inform each participant
27 that he or she is responsible for knowing and complying with the contents of Defendant’s
28 harassment policy.

1 (iii) Supervisors and/or managers who are responsible for enforcing Defendant's
2 harassment policy have and shall also receive training on appropriate techniques for
3 investigating harassment and remedying it. The training on investigative techniques is
4 included as a component of the mandatory sexual harassment training.

5 (iv) Upon execution of the Consent Decree, Defendant shall provide to the EEOC,
6 a copy of the course syllabus being used for the training. Following future training
7 session, Defendant shall continue to provide the participants with a questionnaire
8 through which they will be asked to critique the training and to provide suggestions to
9 improve future trainings.

10 (v) Defendant will continue to retain records of the training programs, listing the
11 dates on which it held the training and identifying the persons who attended and those
12 who did not attend. Defendant will provide a copy of these records, the training materials
13 and the completed post-training questionnaires to the Commission within thirty (30) days
14 upon receiving such a request.

15 (vi) Defendant will continue to administer the training sessions for all its employees on
16 an annual basis until the expiration of the Consent Decree. Upon request, Defendant shall send
17 to the EEOC documentation confirming that such training is taking place.

18 VI. REPORTING

19 1. Defendant will conspicuously post the notice, a copy of which is attached as Exhibit 1,
20 at its business locations. Such notices shall be posted for six (6) months following entry of the
21 Consent Decree. Defendant will monitor the notices and replace within ten (10) days any notice
22 which is defaced or removed.

23
24 2. Defendant shall submit a final report to the EEOC thirty (30) days before the Consent
25 Decree expires containing a statement verifying its compliance with the terms of the Consent
26 Decree.

27 VII. RETENTION OF JURISDICTION AND 28 EXPIRATION OF CONSENT DECREE

1 1. This Consent Decree shall terminate three years from the date of entry by the court,
2 unless EEOC petitions this court for an extension of the Decree because of noncompliance by
3 Defendant. If EEOC determines that Defendant has not complied with the Consent Decree,
4 EEOC will provide written notification of the alleged breach to Defendant and will not petition
5 the Court for enforcement sooner than thirty (30) days after providing written notification. The
6 thirty-day period following written notice shall be used by the parties for good faith efforts to
7 resolve the issue. If EEOC petitions the court and the court finds Defendant to be in substantial
8 violation of the terms of the Decree, the court may extend this Consent Decree///

9 2. This Court shall retain jurisdiction over this action for the purposes of enforcing the
10 provisions of this Consent Decree.

11 On behalf of Plaintiff:

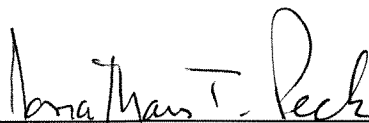
On behalf of Defendant:

12
13  3/31/04

 5/1/04

14 WILLIAM R. TAMAYO Date
15 Regional Attorney
EEOC

JAMES FITZPATRICK Date
Attorney at Law
FITZPATRICK, SWANSTON & SPINI

16
17  4/1/04

18 JONATHAN T. PECK Date
19 Supervisory Trial Attorney
EEOC

20
21
22 IT IS SO ORDERED:

23
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25 DATED:

5-10-04



Honorable Jeremy Fogel
UNITED STATES MAGISTRATE JUDGE

DISTRICT

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NOTICE TO EMPLOYEES

This notice is being posted as part of a consent decree entered into between the U.S. Equal Employment Opportunity Commission (EEOC) and Fresh Express, Inc.

Federal law requires that there be no discrimination against any employee or applicant for employment because of the individual's race, color, religion, sex, national origin, age (40 and over), or disability with respect to hiring, promotion, firing, compensation, sexual harassment or other terms and conditions or privileges of employment.

Federal law also prohibits retaliation against any employee who files a charge of discrimination or who cooperates with the EEOC's investigation of a charge. The EEOC is committed to protecting employees who file charges or who are witnesses during an investigation including, if necessary, further court proceedings.

It is the policy of Fresh Express, Inc. that it will not retaliate or tolerate retaliation in any way against any employee who has filed a charge or provided testimony in the course of an investigation.

It is also the policy of Fresh Express, Inc. that discrimination will not be tolerated. This policy includes the fair treatment of all employees and the maintenance of a work environment free of discrimination, including sexual harassment. If any employee is found in violation of this policy, he/she will be subjected to disciplinary action, up to and including dismissal.

If you wish to report an instance(s) of discrimination, please contact Elaine Hunt, Director of Human Resources. You may also contact the U.S. Equal Employment Opportunity Commission (EEOC) at 408-291-7352 and/or the Department of Fair Employment and Housing (DFEH) at (800) 884-1684.

This Notice will remain posted for six months from the date of posting and will not be defaced.

Date: 5-4-04

Elaine Marie Hunt
Company Official

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AVISO A EMPLEADOS

Este Aviso es anunciado como parte del remedio acordado conforme al acuerdo entre la Comisión de Igualdad de Oportunidades de Empleo (EEOC) y Fresh Express, Inc.

La ley federal requiere que no aiga discriminación contra cualquier empleado o solicitante para empleo a causa de su raza, color, religión, sexo, origen nacional, edad (40 años o mayores), e incapacidades con respecto a contratación, promoción, despido, compensación, u otros términos, condiciones o privilegios de empleo.

La ley federal también prohíbe represalias contra cualquier empleado que presente una denuncia de discriminación o quienes cooperan con la EEOC en una investigación de una denuncia. La EEOC esta comprometida a proteger empleados que presenten una denuncia, quienes se quejan sobre discriminación o quienes son testigos durante una investigación incluyendo, si es necesario, durante un juicio.

Es la póliza de Fresh Express, Inc., que no tomará represalias ni tolerará represalias de cualquier forma contra ningún empleado que se aiga quejado, presentado una denuncia, o proporcionado testimonio durante el transcurso de una investigación.

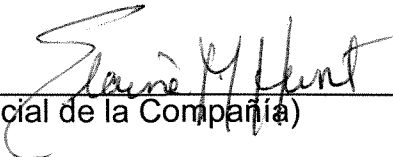
También es la poliza de Fresh Express, Inc., de prohibir discriminación en el empleo. Esta poliza incluye el tratamiento justo de todos los empleados y de mantener un ambiente en el trabajo libre de discriminación, incluyendo acoso sexual. Si se determina que algún empleado/a ha violado esta poliza, él/ella sera sujeto a una acción disciplinaria, incluyendo terminación.

Si desea reportar un incidente de discriminación, por favor comuníquese con Elaine Hunt, Director, Human Resources. También se puede comunicar con la EEOC al (408) 291-7352 o la agencia estatal DFEH al (800) 884-1684.

Este aviso se mantendra anunciado por seis meses de la fecha del anuncio y no será estropeado.

5-4-04

Fecha



(Oficial de la Compañía)

EXHIBIT 1