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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 **C-03-4237**

18 **EQUAL EMPLOYMENT OPPORTUNITY**
19 **COMMISSION,**

20 Plaintiff,

21 v.

22 **PRIMA FRUTTA PACKING, INC., J.**
23 **JESUS GONZALEZ LABOR**
24 **CONTRACTOR, and AG WEST LABOR**
25 **CONTRACTOR,**

26 Defendants.

Civil Action No.

COMPLAINT

Civil Rights - Employment
Discrimination

DEMAND FOR JURY TRIAL

PJH

27 **NATURE OF THE ACTION**

28 This action is brought pursuant to Title VII or the Civil Rights Act of 1964 and
Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the
basis of sex, national origin, and retaliation, and to provide appropriate relief to
Charging Parties Priscilla Botello, Diana Cervantes, Maria Garcia, Ana S. (Cecilia)
Gonzalez, Bibiana Lazaro, Maria Mayorga, Hermila Munguia, Leticia Munguia, Rosa
Padilla, Maria Santos, Flora Solorio, Manuel Garcia, Raul Rosas and similarly situated
women and Hispanics, who were adversely affected by such practices. Defendants
Prima Frutta Packing, Inc., J. Jesus Gonzalez Labor Contractor, and Ag West Labor
Contractor, subjected the above Charging Parties and similarly situated women and

1 Hispanic employees to unlawful harassment based on their sex and/or national origin,
2 and subjected Charging Party Diana Cervantes to unlawful retaliation after she
3 complained about and/or rejected the unlawful harassment.

4 JURISDICTION AND VENUE

5 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331,
6 1337, 1343 and 1345. This action is authorized and instituted pursuant to §706(f)(1) and
7 (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-5(f)(1) and
8 (3) ("Title VII") and §102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

9 2. The unlawful employment practices alleged herein were committed in the
10 State of California, thus venue is proper "in any judicial district in the State in which the
11 unlawful employment practice is alleged to have been committed." (§706(f)(3) of Title
12 VII, 42 U.S.C. §2000e-5(f)(3)). Venue is therefore proper in the United States District
13 Court for the Northern District of California.

14 INTRADISTRICT ASSIGNMENT

15 3. This action is appropriate for assignment to San Francisco/Oakland as the
16 administrative charges underlying this case were investigated in the San Francisco
17 District Office of Plaintiff Equal Employment Opportunity Commission, and the records
18 related to that investigation are in San Francisco. Counsel for Defendant Prima Frutta
19 Packing, Inc. is likewise located in San Francisco.

20 PARTIES

21 4. Plaintiff, the Equal Employment Opportunity Commission
22 ("Commission") is the agency of the United States of America charged with the
23 administration, interpretation and enforcement of Title VII, and is expressly authorized
24 to bring this action by §706(f)(1) and (3) of Title VII, §2000-e(f)(1) and (3).

25 5. Defendant Prima Frutta Packing, Inc. ("Prima Frutta") is a California
26 corporation, doing business in the State of California, in the County of San Joaquin, and
27 has continuously had at least 15 employees.

28 6. Defendant J. Jesus Gonzalez Labor Contractor ("J. Jesus Gonzalez") is a

1 licensed California agricultural labor contractor, doing business in the State of
2 California, in the County of San Joaquin, and has continuously had at least 15
3 employees.

4 7. Defendant Ag West Labor Contractor ("Ag West") is a licensed California
5 agricultural labor contractor, doing business in the State of California, in the County of
6 San Joaquin, and has continuously had at least 15 employees.

7 8. At all relevant times, Defendants Prima Frutta, J. Jesus Gonzalez and Ag
8 West, have continuously been employers engaged in an industry affecting commerce,
9 within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. §2000-e(b), (g)
10 and (h).

11 9. At all relevant times, Defendant Prima Frutta was the sole employer of
12 Charging Party Diana Cervantes and similarly situated women and/or Hispanic
13 employees for purposes of Title VII liability.

14 10. At all relevant times, Defendants Prima Frutta and J. Jesus Gonzalez were
15 joint employers of Charging Parties Priscilla Botello, Maria Garcia, Ana S. (Cecilia)
16 Gonzalez, Bibiana Lazaro, Maria Mayorga, Maria Santos, Flora Solorio, Manuel Garcia,
17 and similarly situated women and/or Hispanic employees for purposes of Title VII
18 liability.

19 11. At all relevant times, Defendants Prima Frutta and Ag West were joint
20 employers of Charging Parties Hermila Munguia, Leticia Munguia, Rosa Padilla, Raul
21 Rosas, and similarly situated women and/or Hispanic employees for purposes of Title
22 VII liability.

23 **STATEMENT OF CLAIMS**

24 **FIRST CLAIM FOR RELIEF**

25 **Violation of Title VII of Civil Rights Act : Sex Discrimination,**
26 **Harassment Based on Sex**

27 12. More than thirty days prior to the institution of this lawsuit, Charging
28 Parties Priscilla Botello, Diana Cervantes, Maria Garcia, Ana S. (Cecilia) Gonzalez,

1 Bibiana Lazaro, Maria Mayorga, Hermila Munguia, Leticia Munguia, Rosa Padilla,
2 Maria Santos, and Flora Solorio filed charges with Plaintiff Commission alleging
3 violations of Title VII by Defendants. All conditions precedent to the institution of this
4 lawsuit have been fulfilled.

5 13. Since at least May 1, 2000, Defendants have engaged in unlawful practices
6 of sex discrimination in violation §703(a) (1)of Title VII, 42 U.S.C. §2000e-2(a)(1) by
7 subjecting the Charging Parties listed in Paragraph 12 of this Complaint and other
8 women to a hostile, abusive, intimidating and offensive work environment because of
9 their sex.

10 14. The effect of the actions complained of in Paragraph 13 above has been to
11 deprive the Charging Parties listed in Paragraph 12 of this Complaint and other
12 similarly situated women of equal employment opportunities and otherwise adversely
13 affect their status as employees because of sex.

14 15. The unlawful employment practices complained of in Paragraph 13 above
15 were intentional.

16 16. The unlawful employment practices complained of in Paragraph 13 above
17 were done with malice or with reckless indifference to the federally protected rights of
18 the Charging Parties listed in Paragraph 12 of this Complaint and other similarly
19 situated women.

20 SECOND CLAIM FOR RELIEF

21 Violation of Title VII of Civil Rights Act: National Origin Discrimination, 22 Harassment Based on National Origin

23 17. Plaintiff Commission hereby incorporates the allegations of Paragraphs 1
24 through 11 above as though fully set forth herein.

25 18. More than thirty days prior to the institution of this lawsuit, the Charging
26 Parties listed in Paragraph 12 of this Complaint, and Charging Parties Manuel Garcia
27 and Raul Rosas filed charges with Plaintiff Commission alleging violations of Title VII
28 by Defendants. All conditions precedent to the institution of this lawsuit have been
fulfilled.

1 19. Since at least May 1, 2000, Defendants have engaged in unlawful practices
2 of national origin discrimination in violation §703(a)(1) of Title VII, 42 U.S.C. §2000e-
3 2(a)(1) by subjecting the Charging Parties listed in Paragraphs 12 and 18 of this
4 Complaint and other similarly situated Hispanic employees to a hostile, abusive,
5 intimidating and offensive work environment because of their national origin.

6 20. The effect of the actions complained of in Paragraph 19 above has been to
7 deprive Charging Parties and other Hispanics of equal employment opportunities and
8 otherwise adversely affect their status as employees because of national origin.

9 21. The unlawful employment practices complained of in Paragraph 19 above
10 were intentional.

11 22. The unlawful employment practices complained of in Paragraph 19 above
12 were done with malice or with reckless indifference to the federally protected rights of
13 the Charging Parties listed in Paragraphs 12 and 18 of this Complaint and other
14 similarly situated Hispanic employees.

15 **THIRD CLAIM FOR RELIEF**

16 **Violation of Title VII of Civil Rights Act: Intersectional Discrimination,
17 Harassment Based on both Sex and National Origin**

18 23. Plaintiff Commission hereby incorporates the allegations of Paragraphs 1
19 through 12 above as though fully set forth herein.

20 24. Since at least May 1, 2000, Defendants have engaged in unlawful practices
21 of intersectional discrimination based on both sex and national origin in violation
22 §703(a)(1) of Title VII, 42 U.S.C. §2000e-2(a)(1) by subjecting the Charging Parties listed
23 in Paragraph 12 of this Complaint and other similarly situated Hispanic women to a
24 hostile, abusive, intimidating and offensive work environment because of their sex and
25 national origin.

26 25. The effect of the actions complained of in Paragraph 24 above has been to
27 deprive the Charging Parties listed in Paragraph 12 of this Complaint and other
28 similarly situated Hispanic women of equal employment opportunities and otherwise
adversely affect their status as employees because of their sex and national origin.

1 engaging in discrimination against their employees including harassment based on sex,
2 national origin, and/or a combination thereof, and retaliation.

3 B. Order Defendants to institute and carry out policies, practices, and
4 programs which prohibit harassment based on sex and/or national origin and
5 retaliation, and which eradicate the effects of their unlawful employment practices.

6 C. Order Defendants to make whole Charging Parties and other similarly
7 situated women and Hispanic employees harmed, by providing appropriate back pay
8 and benefits with prejudgment interest, and other affirmative relief necessary to
9 eradicate the effects of their unlawful employment practices, including but not limited
10 to reinstatement and/or front pay and other appropriate relief to be determined at trial.

11 D. Order Defendants to make whole Charging Parties and other similarly
12 situated women and Hispanic employees harmed by providing compensation for past
13 and future pecuniary losses resulting from the unlawful employment practices
14 complained of above, including but not limited to such out-of-pocket expenses as
15 medical care necessitated by Defendants' unlawful conduct, in amounts to be
16 determined at trial.

17 E. Order Defendants to make whole Charging Parties and other similarly
18 situated women and Hispanic employees harmed by providing compensation for past
19 and future nonpecuniary losses resulting from the unlawful practices complained of
20 above including, but not limited to emotional pain and suffering, inconvenience, loss of
21 enjoyment of life and humiliation, in amounts to be determined at trial.

22 F. Order Defendants to pay Charging Parties and other similarly situated
23 women and Hispanic employees harmed by providing punitive damages for the
24 malicious and reckless conduct described above, in amounts to be determined at trial.

25 G. Grant such further relief as the Court may deem just and proper in the
26 public interest.

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1 H. Award the Commission its costs of this action.

2 **DEMAND FOR JURY TRIAL**

3 Pursuant to the provisions of Federal Rule of Civil Procedure 38(b), Plaintiff
4 hereby demands a jury trial.


5 Eric S. Dreiband
6 General Counsel

7 James L. Lee
8 Deputy General Counsel

9 Gwendolyn Young Reams
10 Associate General Counsel

11 **Equal Employment Opportunity
12 Commission**
13 1801 L Street, N.W.
14 Washington, DC 20507

15 Date: Sept. 11, 2003

16 
17 WILLIAM R. TAMAYO
18 Regional Attorney


19 Date: Sept. 12, 2003

20 
21 JONATHAN T. PECK
22 Supervisory Trial Attorney

23 Date: Sept. 11, 2003

24 
25 CINDY O'HARA
26 Senior Trial Attorney

27 Date: Sept. 11, 2003

28 
LUCILA G. ROSAS
Trial Attorney

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