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7 Attorneys for Plaintiff Equal Employment Opportunity Commission

8  
 9 **UNITED STATES DISTRICT COURT**  
 10 **NORTHERN DISTRICT OF CALIFORNIA**

11 **EQUAL EMPLOYMENT OPPORTUNITY** )  
 12 **COMMISSION,** )

13 Plaintiff, )

14 v. )

15 **PRIMA FRUTTA PACKING, INC., J. JESUS** )  
 16 **GONZALEZ LABOR CONTRACTOR, and** )  
 17 **AG WEST LABOR CONTRACTOR,** )

18 Defendants. )

Civil Action No. C-03-04237 PJH

**CONSENT DECREE BETWEEN THE  
 EQUAL EMPLOYMENT  
 OPPORTUNITY COMMISSION AND  
 PRIMA FRUTTA PACKING, INC.**

**E-Filing**

19 Plaintiff Equal Employment Opportunity Commission ("Commission") filed this action  
 20 under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct  
 21 alleged unlawful employment practices on the basis of discrimination based on sex and national  
 22 origin, and to provide appropriate relief to individuals who the Commission alleged were adversely  
 23 affected by such practices. The Commission alleged that Defendant Prima Frutta Packing, Inc.  
 24 ("Prima Frutta") subjected employees to unlawful harassment based on their gender, their national  
 25 origin or both, in violation of Title VII. Defendant Prima Frutta conducted an investigation and has  
 26 denied all of the above referenced allegations and claims. The parties engaged in private mediation  
 27 proceedings and have reached agreement which they incorporate into this Consent Decree. The  
 28 Commission and Defendant Prima Frutta now seek to resolve this action as to each other and as

1 between Prima Frutta and the Charging Parties without further contested litigation through the  
2 instant Consent Decree. This resolution does not constitute an admission of liability on the part of  
3 Prima Frutta, nor constitute a finding on the allegations stated in the Commission's Complaint.

4 The Court has reviewed this Consent Decree in light of the pleadings, the record herein, and  
5 the applicable law, and now approves this Consent Decree.

6 THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

7 **GENERAL PROVISIONS**

8 1. This Court has jurisdiction over the subject matter and the parties to this action FOR  
9 PURPOSES OF THIS CONSENT DECREE. This Court retains jurisdiction over this Consent  
10 Decree during its term.

11 2. This Consent Decree constitutes a full and final resolution of the Commission's  
12 claims against Prima Frutta in this action.

13 3. This Consent Decree will become effective upon its entry by the Court.

14 4. This Consent Decree is final and binding upon the parties to it, their successors and  
15 assigns.

16 5. The Commission and Prima Frutta will each bear its own costs and attorneys fees in  
17 this action.

18 6. Nothing in this Consent Decree constitutes an admission or determination that any  
19 of the Charging Parties referenced in Paragraph 8 below, who are or were employees of Defendant  
20 J. Jesus Gonzalez Labor Contractor or Defendant Ag West Labor Contractor, were or are also  
21 employees of Prima Frutta, which Prima Frutta denies.

22 **GENERAL INJUNCTIVE RELIEF**

23 7. Prima Frutta and its current officers, agents, employees, and suppliers of goods and  
24 services will comply with all requirements of Title VII with respect to providing a work environment  
25 free from discrimination, including harassment, on the basis of gender and/or national origin at the  
26 Prima Frutta premises. Prima Frutta will require such compliance from all farm labor contractors  
27 providing services to Prima Frutta in the contracts by which such farm labor contractors are hired.

28 8. Prima Frutta and its current officers, agents, employees agree not to retaliate against

1 Priscilla Botello, Diana Cervantes, Maria Garcia, Ana S. (Cecilia) Gonzalez, Bibiana Lazaro, Maria  
2 Mayorga, Hermila Munguia, Leticia Munguia, Rosa Padilla, Maria Santos, Flora Solorio, Manuel  
3 Garcia, and Raul Rosas (“Charging Parties”) for having testified or participated in any manner in the  
4 Commission’s investigation and the proceedings in this case.

5 **SPECIAL INJUNCTIVE RELIEF**

6 **Non-Discrimination Policies**

7 9. By the start of the 2004 cherry season, Prima Frutta will revise its non-discrimination  
8 policy to discuss gender-based and national origin-based discrimination and harassment. Said policy  
9 will contain materials from the Commission describing what gender-based and national origin-based  
10 discrimination and harassment are and why they are illegal. Said policy will also revise Prima  
11 Frutta’s discrimination complaint procedures to assure a fair and effective complaint procedure, with  
12 alternative routes for individuals to complain. Said revisions will be provided to counsel for the  
13 Commission.

14 10. By the start of the 2004 cherry season, Prima Frutta will have translated the non-  
15 discrimination policies referenced in paragraph 9 above into Spanish, and will have distributed a  
16 copy to each employee of Prima Frutta as well as to the supervisory personnel of each of the farm  
17 labor contractors providing labor to Prima Frutta for the 2004 season. The farm labor contractors  
18 will be instructed to distribute copies of the non-discrimination policies to each employee of the farm  
19 labor contractor who will work at Prima Frutta’s premises. In addition, the contracts by which Prima  
20 Frutta hires farm labor contractors shall require each farm labor contractor to comply with the  
21 provisions of Paragraphs 9, 10 and 11 of this Consent Decree.

22 11. At the commencement of each packing season for each product, Prima Frutta will  
23 distribute the non-discrimination policies referenced in paragraph 9 above to all Prima Frutta  
24 employees and to the supervisory personnel of each of the farm labor contractors providing labor to  
25 Prima Frutta for that season. The farm labor contractors will be instructed to distribute copies of the  
26 non-discrimination policies to each employee of the farm labor contractor who will work at Prima  
27 Frutta’s premises.

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1           **Training**

2           12.     No later than ninety (90) days from the entry of this Consent Decree, Prima Frutta will  
3 use an outside consultant, paid for by Prima Frutta, to train all employees who are (1) responsible for  
4 supervising or managing other Prima Frutta employees or who are (2) responsible for interacting with  
5 farm labor contractor supervisors, with regard to gender-based and national origin-based  
6 discrimination. This training will be repeated at the beginning of the cherry packing season each year  
7 for the duration of this Consent Decree.

8           13.     No later than ninety (90) days from the entry of this Consent Decree, all members of  
9 Prima Frutta management will undergo training, from an outside consultant paid for by Prima Frutta,  
10 in employee and/or personnel relations.

11           **Record Keeping, Reports and Posting**

12           14.     Within thirty (30) days after completing the training described in paragraph 12, Prima  
13 Frutta will mail to counsel for the Commission a report containing the date(s) of training, list(s) of  
14 all attendees, and copies of all materials distributed at the training. If these documents are not timely  
15 received by counsel for the Commission, then the Commission shall give Prima Frutta written notice  
16 that the documents have not been received and shall give Prima Frutta 15 calendar days to submit  
17 the required documents. The failure of Prima Frutta to provide said documents to counsel for the  
18 Commission shall not be a violation of this Consent Decree unless and until the passage of the 15  
19 day period following the written notice from the Commission to Prima Frutta.

20           15.     Within thirty (30) days after completion of the training described in paragraph 13,  
21 Prima Frutta will mail to counsel for the Commission certification of completion of the training from  
22 the training provider. If these documents are not timely received by counsel for the Commission,  
23 then the Commission shall give Prima Frutta written notice that the documents have not been  
24 received and shall give Prima Frutta 15 calendar days to submit the required documents. The failure  
25 of Prima Frutta to provide said documents to counsel for the Commission shall not be a violation of  
26 this Consent Decree unless and until the passage of the 15 day period following the written notice  
27 form the Commission to Prima Frutta.

28           16.     Once every three months, to be measured beginning at the date of entry of this

1 Consent Decree and continuing for the duration of this Consent Decree, Prima Frutta will notify the  
2 counsel for the Commission whether it has received any complaints of discrimination and/or  
3 harassment based on gender or national origin, what steps were taken in response to that information,  
4 and how the situation was resolved. The first required notification will be due three months after  
5 the entry of this Consent Decree. If these documents are not timely received by counsel for the  
6 Commission, then the Commission shall give Prima Frutta written notice that the documents have  
7 not been received and shall give Prima Frutta 15 calendar days to submit the required documents.  
8 The failure of Prima Frutta to provide said documents to counsel for the Commission shall not be  
9 a violation of this Consent Decree unless and until the passage of the 15 day period following the  
10 written notice form the Commission to Prima Frutta.

11 17. Defendant will post the agreed-upon Notice, a copy of which is attached as Exhibit  
12 A, in a clearly visible location frequented by employees and other workers on Prima Frutta's  
13 worksite, during the term of this Consent Decree. Defendant will monitor the Notice and will replace  
14 the Notice if it is defaced or removed.

15 **MONETARY RELIEF**

16 18. Prima Frutta will pay the sum of Two Hundred and Thirty-five Thousand dollars  
17 (\$235, 000.00), such monies to be allocated among the Charging Parties and similarly situated  
18 employees as determined by the Equal Employment Opportunity Commission, as damages and in  
19 complete satisfaction of the Commission's claims against Prima Frutta as set forth in its Complaint.  
20 These sums will be paid by check directly to each individual in his or her name, and will be sent to  
21 each via certified mail, at addresses to be provided to Prima Frutta by the Commission. A copy of  
22 said checks and their transmittal letters will be sent to Commission counsel Cindy O'Hara at the San  
23 Francisco District Office. The Commission will obtain Title VII releases from each Charging Party  
24 and from any other party to be paid under the terms of this Consent Decree, in the form set forth in  
25 attached Exhibit B. Said checks will be transmitted by Prima Frutta no later than seven (7) business  
26 days after the written request by the Commission and transmittal of the signed releases to Prima  
27 Frutta.

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1 **EXPIRATION OF CONSENT DECREE**

2 19. This Consent Decree constitutes a full and final resolution of all the Commission's  
3 claims against Prima Frutta in this action. This Consent Decree will expire five (5) years after its  
4 entry by the Court, provided that Prima Frutta has substantially complied with the terms of this  
5 Consent Decree. The Commission agrees to give Prima Frutta advance written notice of any alleged  
6 failure to comply with the terms of this Consent Decree and a reasonable opportunity to cure any  
7 alleged breach before seeking court relief for breach of the Consent Decree. Prima Frutta will be  
8 deemed to have complied substantially if the Court has not made any findings or orders during the  
9 term of the Decree that Prima Frutta has failed to comply with any of the terms of this Decree.

10 **E-filing concurrence:** I, Cindy O'Hara, attorney for Plaintiff EEOC, attest that I have  
11 obtained the concurrence of Paul Sheldon, attorney for Defendant Prima Frutta Packing, Inc., for the  
12 lodging of this Consent Decree.

13 On Behalf of Plaintiff Commission:

On Behalf of Defendant Prima Frutta:

14 Dated: April 16, 2004

Dated: April 16, 2004

15 EQUAL EMPLOYMENT OPPORTUNITY  
16 COMMISSION

LAW OFFICES OF PATRICK D. RIDDLE

17 /S/  
18 WILLIAM R. TAMAYO  
Regional Attorney

/S/  
PAUL D. SHELDON  
Attorneys for Prima Frutta

19 /S/  
20 JONATHAN PECK  
Supervisory Trial Attorney

21 /S/  
22 CINDY O'HARA  
Senior Trial Attorney

23 **ORDER**

24 It is so ordered.

25 Dated: 4/19/04

26   
United States District Court Judge