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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	CIVIL ACTION No. CV05-01625 RSM
Plaintiff,)	
v.)	
)	
Swinerton Builders Northwest, Inc.,)	[PROPOSED] CONSENT DECREE
)	
Defendant.)	
)	
)	
)	

I. INTRODUCTION

1. This action originated when Edwin Joe Estes filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC" or "Commission"). Mr. Estes alleged that Swinerton Builders Northwest, Inc. ("Swinerton NW" or "Defendant" or "the Company") discriminated against him based on his age (then 63 years old), in violation of the Age Discrimination in Employment Act ("ADEA") when he was terminated by Swinerton NW in May 2004 and replaced by someone younger and less qualified. Swinerton NW denies these allegations.

CONSENT DECREE – 1
(CV05-01625 RSM)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Seattle District Office
Federal Office Building
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Seattle, Washington 98104-1061
Telephone (206) 220-6883
Fax (206) 220-6911
TDD (206) 220-6882

1 2. On May 23, 2005, the EEOC issued a letter of determination with a finding of
2 reasonable cause to believe that Swinerton NW violated the ADEA. Swinerton NW disagrees
3 with this determination. Thereafter, EEOC attempted to conciliate the charge and conciliation
4 was unsuccessful.

5 3. The Commission filed its Complaint on September 23, 2005, in the United States
6 District Court for the Western District of Washington at Seattle. The Complaint alleges that
7 Swinerton NW discharged Mr. Estes in violation of the ADEA. Swinerton NW contested the
8 Complaint.

9 4. The parties want to conclude fully and finally all claims arising out of the EEOC's
10 Complaint and Mr. Estes' charge of discrimination filed with EEOC. The EEOC and Swinerton
11 NW enter into this Consent Decree to further the objectives of equal employment opportunity as
12 set forth in the ADEA.

13 II. NON-ADMISSION OF LIABILITY AND NON-DETERMINATION BY THE COURT

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

16 III. SETTLEMENT SCOPE

17 6. This Consent Decree is the final and complete resolution of all allegations of
18 unlawful employment practices contained in Mr. Estes' discrimination charge, in the EEOC's
19 administrative determination, and in the Complaint filed herein, including all claims by the
20 parties for attorney fees and costs.

21 IV. MONETARY RELIEF

22 7. In settlement of this lawsuit, Swinerton NW agrees to pay directly to Mr. Estes,
23 through his private attorneys, the amount of \$49,000, along with Mr. Estes' share in the costs of
24 mediation. Swinerton NW and Mr. Estes will execute a separate release of claims to which the
25 EEOC will not be a party.

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27 (CV05-01625 RSM)

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1 V. AFFIRMATIVE AND OTHER RELIEF

2 A. General Provisions

3 8. Swinerton NW, its officers, agents, and employees will not engage in practices
4 which unlawfully discriminate against applicants and/or employees on the basis of age. In
5 recognition of its obligations under the ADEA, Swinerton NW will institute the policies and
6 practices set forth below.

7 B. Anti-Discrimination Policies and Procedures

8 9. Defendant shall carry out anti-discrimination policies, procedures and training for
9 management personnel, supervisors and employees.

10 10. Swinerton NW has developed and will review with the EEOC its equal
11 employment opportunity (“EEO”) policy that prohibits discrimination against applicants and/or
12 employees on the basis of age with respect to any term, condition or privilege of employment,
13 and addresses Swinerton NW’s obligation to provide a discrimination-free work environment for
14 its employees. Not later than sixty (60) days after entry of this Consent Decree, Swinerton NW
15 will re-distribute a written copy of its EEO policy to all its employees, both management and
16 non-management.

17 C. Human Resource Manager

18 11. Swinerton NW has designated an individual (“Human Resource Manager”), who
19 has and shall continue to have training and experience in human resources and EEO management
20 and, together with the Company’s current managers, will continue to provide advice and
21 guidance to assist the Company in making employment decisions in a non-discriminatory
22 manner. The Human Resource Manager will be responsible for the implementation and
23 oversight of Swinerton NW’s EEO policy and procedures.

24 D. Equal Employment Opportunity Training

25 12. As an ongoing commitment to equal employment opportunity,

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1 Swinerton NW has provided and will continue to provide an annual EEO training seminar to all
2 of its managers, supervisors, and employees. This anti-discrimination training will include, at a
3 minimum, a discussion of federal law prohibiting employment discrimination, including the
4 ADEA, and a review of Swinerton NW's EEO policies. The training will be aimed at helping
5 attendees understand how to define and identify employment discrimination, and provide
6 information as to avenues of addressing suspected employment discrimination.

7 13. Not later than ninety (90) days after entry of this Consent Decree, Swinerton NW
8 will provide the EEO training noted in Paragraph 12 to all of its managers and supervisors,
9 including those responsible for hiring and discharge decisions.

10 14. Not later than one hundred and twenty days (120) after entry of this Consent
11 Decree, Swinerton NW will provide the EEO training noted in Paragraph 12 to those non-
12 management or supervisory employees employed at the time the EEO training seminar is
13 scheduled. Thereafter, Swinerton NW will provide an annual EEO training seminar(s) for
14 managers, supervisors and employees during the duration of the Consent Decree.

15 15. For the duration of this Consent Decree, Swinerton NW will notify the EEOC of
16 the completion of the training seminars and will specify the names and job titles of the managers,
17 supervisors and employees who participated in and completed the training. This information will
18 be provided as part of the annual report Swinerton NW submits to the EEOC.

19 E. Non-Disclosure of Information

20 16. Swinerton NW will not disclose any information or make reference to any charge
21 of discrimination or this lawsuit in responding to requests for information about Mr. Estes.

22 F. Policies Designed to Promote Accountability

23 17. Swinerton NW agrees that it shall impose discipline, up to and including
24 termination of employment, upon any supervisor or manager who discriminates against any
25 applicant and/or employee on the basis of age, or who retaliates against any person who

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27 (CV05-01625 RSM)

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1 complains about or participates in any investigation or proceeding concerning any allegation of
2 discrimination. Swinerton NW shall communicate this policy to all of its managers and
3 supervisors.

4 18. Swinerton NW agrees that it shall continue to advise all managers and supervisors
5 of their duty to ensure compliance with anti-discrimination laws and the Company's EEO policy.
6 In conducting performance reviews, the Company will hold managers and supervisors
7 accountable for EEO enforcement and compliance.

8 G. Reporting

9 19. Swinerton NW will agree to report to the EEOC for a period of two (2) years. The
10 reports shall be in writing and submitted on an annual basis during the two year reporting period.
11 The reporting period will run from the date of the entry of this Consent Decree by the United
12 States District Court for the Western District of Washington.

13 20. These annual reports shall contain the following information and attachments:

14 a. Certification that Swinerton NW has:

- 15 1. Continued to maintain its written EEO policies and procedures and
16 annually distributed copies of its EEO policy to all current and newly
17 hired employees and as described in Paragraph 10;
- 18 2. Continued to employ an individual to serve as Human Resource Manager,
19 as required by Paragraph 11.
- 20 3. Complied with the training provisions enumerated in this Consent Decree,
21 as provided in Paragraphs 12-14;
- 22 4. Continued to promote policies and procedures to promote EEO
23 accountability by managers and supervisors, as required by Paragraph 17-
24 18.
- 25 5. Complied with all other provisions of this Consent Decree.

26 b. Copies of the following documents will be included with each annual report
27 submitted to the Seattle office of the EEOC:

- 1 1. A copy of the Company's EEO policy and procedures developed and
2 implemented in accordance with the provisions of this Consent Decree;
- 3 2. Copies of the EEO training materials utilized during the applicable
4 reporting period;
- 5 3. A sign-in sheet or list of the Swinerton NW names and job titles of the
6 managers, supervisors and employees who completed EEO training and
7 the dates the training was conducted during the previous reporting period.

8 21. If applicable, Swinerton NW will submit a statement with its report to the EEOC
9 specifying the areas of noncompliance, the reason for the noncompliance, and the steps that will
10 be taken to bring Swinerton NW into compliance.

11 H. Posting

12 22. Swinerton NW will post a Notice to All Employees. This Notice is attached as
13 Exhibit 1 to this Consent Decree. The Notice shall be posted on a centrally located bulletin
14 board at all Swinerton NW facilities for the duration of the Consent Decree.

15 VI. ENFORCEMENT

16 23. If the EEOC determines that Swinerton NW has not complied with the terms of
17 this Consent Decree, the EEOC will provide written notification of the alleged breach to
18 Swinerton NW. The EEOC will not petition the Court for enforcement of this Consent Decree
19 for at least thirty (30) days after providing written notification of the alleged breach. The 30-day
20 period following the written notice shall be used by the EEOC and Swinerton NW for good faith
21 efforts to resolve the dispute.

22 VII. RETENTION OF JURISDICTION

23 24. The United States District Court for the Western District of Washington shall
24 retain jurisdiction over this matter for the duration of this Consent Decree.

VIII. DURATION AND TERMINATION

25. This Consent Decree shall be in effect for two (2) years from the date of entry of the Decree. If the EEOC petitions the Court for breach of this Consent Decree, and the Court finds Swinerton NW to be in violation of the terms of the Consent Decree, the Court may extend the duration of this Consent Decree.

Dated this _____ day of _____ December _____, 2005.

A. LUIS LUCERO, JR.
Regional Attorney

JAMES L. LEE
Deputy General Counsel

KATHRYN OLSON
Supervisory Trial Attorney

GWENDOLYN YOUNG REAMS
Associate General Counsel

DAMIEN LEE
Senior Trial Attorney

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1801 "L" Street, N.W.
Washington, D.C. 20507

BY: _____/s/ A. Luis Lucero, Jr._____

Attorneys for Plaintiff
Equal Employment Opportunity Commission

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BY: _____/s/ Robynne Thaxton Parkinson_____

Attorneys for Defendant
Swinerton Builders Northwest, Inc.

CONSENT DECREE – 7
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CONSENT DECREE – 8
(CV05-01625 RSM)

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1 EXHIBIT 1

2 NOTICE TO ALL EMPLOYEES

3 This notice is being posted pursuant to an agreement between Swinerton Builders
4 Northwest, Inc. ("Swinerton NW") and the U.S. Equal Employment Opportunity Commission
5 ("EEOC"), entered as the result of a resolution of a lawsuit in the United States District Court.

6 Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in
7 Employment Act of 1967, the Equal Pay Act of 1963, and the Americans with Disabilities Act of
8 1990 are enforced by the EEOC and require the following:

9 That there be no discrimination against any employee or applicant for
10 employment because of the employee's race, sex, color, religion, national origin,
11 age (40 and above), or disability with respect to hiring, firing, compensation, or
12 other terms, conditions or privileges of employment.

13 It is an unlawful employment practice for an employer to retaliate against any
14 employees or applicants for employment because they have opposed a practice or
15 because they have made a charge, testified, assisted, or participated in any manner
16 in an investigation, proceeding, or hearing under these statutes.

17 Swinerton NW has posted this notice because the Company supports and will
18 comply with these federal laws in all respects. Swinerton NW has instituted a training
19 program to train its managers, supervisors and employees regarding the requirements of
20 the above statutes.

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26 Exhibit 1
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