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EEOC v. Aqua Tri Pool Water Products,

Judge George H. King

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EEOC v. Aqua Tri Pool Water Products,

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27 **UNITED STATES DISTRICT COURT**
28 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

AQUA TRI, POOL WATER
PRODUCTS, and DOES 1-10,
Inclusive,

Defendants.

No. 09-CV-7062-GHK(VBKx)

[PROPOSED] CONSENT DECREE

The Honorable George H. King
U.S. District Court Judge

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I. INTRODUCTION

Plaintiff U.S. Equal Employment Opportunity Commission (the “EEOC”) and Defendants Aqua Tri and Pool Water Products (hereinafter collectively “Defendants”) hereby stipulate and agree to entry of this Consent Decree (“Decree”) to resolve the above-captioned enforcement action (the “Action”) filed by the EEOC under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* (“Title VII”). The EEOC and Defendants are collectively referred to herein as the “Parties.”

A. On September 29, 2009, the EEOC initiated the Action by filing its Complaint against Aqua Tri. The EEOC alleged that certain charging parties and other similarly situated individuals were subjected to unlawful employment practices because of sex and/or retaliation in violation of Sections 703(a) and 704(a) of Title VII. On May 11, 2010, the EEOC filed its First Amended Complaint adding Pool Water Products as an additional defendant.

B. On December 29, 2009, Aqua Tri filed its Answer to the EEOC’s Complaint, denying all material allegations. On May 27, 2010, Aqua Tri and Pool Water Products filed their Answer to the EEOC’s First Amended Complaint, denying all material allegations.

C. In the interest of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations and private mediation on November 15, 2010, and December 3, 2010, the Parties have agreed that the Action should be finally resolved by entry of this Decree.

D. This Decree is final and binding upon the Parties, their agents, successors, and assigns.

E. The Parties agree that this Decree resolves any and all claims arising out of the underlying Complaint and First Amended Complaint, as well as any and all allegations arising in the Action.

1 **II. PURPOSES AND SCOPE OF THE CONSENT DECREE**

2 A. In the interest of resolving this matter, the Parties have agreed that this
3 Action should be finally settled by entry of this Decree. The Parties have entered
4 into this Decree in order to:

- 5 1. provide monetary and injunctive relief;
- 6 2. ensure that Aqua Tri’s employment practices comply with Title
7 VII;
- 8 3. ensure a work environment at Aqua Tri that is free from sex
9 discrimination, sexual harassment and retaliation;
- 10 4. ensure training for managers, supervisors, leads, human
11 resource and other employees of Aqua Tri with respect to their obligations
12 and rights under Title VII;
- 13 5. provide an effective mechanism at Aqua Tri for receiving and
14 handling discrimination, harassment and retaliation complaints;
- 15 6. avoid expensive and protracted costs incident to litigation; and
- 16 7. provide a final and binding settlement as to all claims and
17 allegations made in, and arising out of, this Action and as to all persons
18 receiving monetary payments under the Decree.

19 B. This Decree shall not be interpreted as an express or implied
20 determination that the current policies, practices, or procedures of Defendants
21 either do or do not comply with Title VII.

22 C. This Decree is intended to resolve disputed claims and is not an
23 adjudication or finding that Defendants have violated Title VII or any other federal
24 employment statute. Defendants deny that they have engaged in any violations of
25 Title VII or any other federal employment statute and Defendants’ agreement to
26 enter into this Decree is not intended to and should not be construed as an
27 admission by Defendants of any violation or liability for the claims alleged.

III. RELEASE OF CLAIMS; DISMISSAL OF DEFENDANT POOL WATER PRODUCTS

A. This Decree completely and finally resolves all issues, claims and allegations made in, and arising out of, the EEOC’s Complaint and First Amended Complaint filed in this Action in the United States District Court, Central District of California, and captioned *U.S. Equal Employment Opportunity Commission vs. Aqua Tri, Pool Water Products, and DOES 1-10, Inclusive*; Case No. 09-CV-7062-GHK(VBKx), and constitutes a complete resolution of all claims of sexual harassment and retaliation that were made by the EEOC in this Action. The Decree also completely and finally resolves all issues, claims and allegations made in, and arising out of, (1) EEOC charge of discrimination Nos. 480-2008-04571, 480-2009-00504, 480-2009-01378, 480-2009-01387, 480-2009-01388, 480-2009-01389, and 480-2009-02515, as well as any amendments to those charges; and (2) any other charges of discrimination which allege violations of Title VII by Aqua Tri filed with the EEOC prior to the Effective Date by any individual who receives monetary relief under this Decree (the “Charges of Discrimination”).

B. Nothing in this Decree shall be construed to preclude the EEOC from bringing suit to enforce the terms of this Decree in accordance with its enforcement provisions.

C. Nothing in this Decree shall be construed to limit or reduce Defendants’ obligations to comply fully with Title VII or any other federal anti-discrimination statute.

D. This Decree in no way affects the EEOC’s right to bring, process, investigate or litigate other charges of discrimination unrelated to this Action that may later arise against Defendants, but are now unknown to the EEOC and unrelated to this Action.

E. The Action as to Pool Water Products is dismissed with prejudice in its entirety and with each side to bear its own costs and attorneys’ fees. The EEOC

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1 agreed to dismiss with prejudice Pool Water Products based upon Pool Water
2 Products' and Aqua Tri's agreement to make Aqua Tri's Human Resources
3 independent of Pool Water Products' Human Resources, and Aqua Tri's retention
4 of a Human Resources Representative as provided in Section X(H), *infra*.

5 Notwithstanding this dismissal with prejudice, Pool Water Products must ensure
6 training of Greg Edman, and/or his successor, as set forth in Section X(G)(5),
7 *infra*.

8 **IV. JURISDICTION**

9 A. The Court has jurisdiction over the Parties and the subject matter of
10 this Action. The First Amended Complaint asserts claims that, if proven, would
11 authorize the Court to grant the relief set forth in this Decree. The terms and
12 provisions of this Decree are fair, reasonable and just. This Decree conforms with
13 the Federal Rules of Civil Procedure and Title VII and is not in derogation of the
14 rights and privileges of any person. Entry of this Decree will further the objectives
15 of Title VII and will be in the best interest of Aqua Tri, Pool Water Products, the
16 EEOC, and those for whom the EEOC has sought relief.

17 B. The Court shall retain jurisdiction over this Action for the duration of
18 the Decree for the purposes of entering all orders, judgments and decrees that may
19 be necessary to fully implement the relief provided herein.

20 **V. EFFECTIVE DATE AND DURATION OF DECREE**

21 A. The provisions and agreements contained herein are effective
22 immediately on the date which this Decree is entered by the Court ("Effective
23 Date").

24 B. Except as otherwise provided herein, this Decree shall remain in
25 effect for three (3) years after the Effective Date. Upon recommendation of the
26 Equal Employment Opportunity Consultant identified in Section X(B), *infra*, made
27 at any time more than twenty-four (24) months after the Effective Date, the EEOC
28 in its sole discretion may reduce the Decree term to 2.5 years and so notify the

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1 Court. The EEOC agrees not to unreasonably refuse such a recommendation by
2 the Equal Employment Opportunity Consultant.

3 **VI. DECREE ENFORCEMENT**

4 A. If the EEOC has reason to believe that Aqua Tri has in any way failed
5 to comply with any provision of this Decree, the EEOC may file a motion before
6 this Court to enforce the Decree. Before filing such a motion, however, the EEOC
7 shall notify Aqua Tri and its legal counsel, in writing, of the nature of the dispute.
8 This notice shall (1) specify the particular provision(s) with which the EEOC
9 believes Aqua Tri has failed to comply; (2) provide a brief description of how
10 Aqua Tri failed to comply; and (3) to the extent an appropriate remedy is readily
11 identifiable to the EEOC at the time that the EEOC gives notice of the potential
12 violation, the EEOC will identify possible remedies. Absent a showing that the
13 delay will cause irreparable harm to a current and/or former employee or applicant
14 of Aqua Tri, Aqua Tri shall have thirty (30) days from the date of notice (“Dispute
15 Resolution Period”) to attempt to resolve or cure the alleged breach in a manner
16 satisfactory to all Parties.

17 B. The Parties agree to cooperate with each other and use their best
18 efforts to resolve any claimed non-compliance with the terms of the Decree,
19 including meetings between the Equal Employment Opportunity Consultant and
20 representatives of Aqua Tri and the EEOC, if necessary.

21 C. After the Dispute Resolution Period has passed with no resolution or
22 agreement to extend the time further, the EEOC may petition the Court for
23 resolution of the dispute. Upon a showing made by the EEOC that is approved by
24 the Court, that a Dispute Resolution Period would cause irreparable harm to an
25 employee or applicant of Aqua Tri, the EEOC may immediately file a motion to
26 enforce the Decree. Where there is no such showing, the EEOC may file a motion
27 to enforce the Decree only after the expiration of the Dispute Resolution Period.

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VII. MODIFICATION AND SEVERABILITY

A. This Decree constitutes the complete understanding of the Parties with respect to the matters contained herein. By the Parties’ mutual agreement, this Decree may be amended or modified in the interests of justice and fairness in order to effectuate the provisions of the Decree. No waiver, modification or amendment of any provision of this Decree shall be effective unless made in writing and signed by an authorized representative of each Party and approved by the Court.

B. If one or more provisions of this Decree are rendered unlawful or unenforceable, the Parties shall make good faith efforts to agree upon the appropriate amendments to this Decree necessary to effectuate its purposes. If the Parties are unable to reach agreement, the Court shall order the appropriate alternative provisions necessary to effectuate the purposes of the Decree. Should one or more provisions of this Decree be deemed unlawful, all other provisions shall remain in full force and effect.

VIII. MONETARY RELIEF

A. Aqua Tri shall pay a total of \$462,500 (the “Settlement Fund”), to be distributed, at the sole discretion of the EEOC, amongst the claimants identified by the EEOC to counsel for Defendants (collectively, “Claimants”).

B. Prior to entry of the Decree, the EEOC has provided Aqua Tri with a complete and final list of all Claimants specifying each Claimant’s portion of monetary relief, and identifying information for distribution of monetary relief, including name, address, and taxpayer identification number and a duly executed W-9 form signed by each Claimant designated to receive a portion of the monetary relief under the Decree. Each Claimant and Aqua Tri have entered into a separate release of Title VII claims to which the EEOC is not a party.

C. Aqua Tri shall send a check, 1099 form and similar State of California tax reporting form, via certified mail, to each Claimant in the amount specified by

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1 the EEOC within thirty (30) days of the Effective Date.¹

2 D. The monies to be paid to the Claimants are to be designated as non-
3 wage compensation under Title VII and no tax withholding shall be made. Aqua
4 Tri shall prepare and distribute 1099 forms and similar State of California tax
5 reporting forms to each Claimant as set forth in the distribution list provided by the
6 EEOC. Aqua Tri shall be solely responsible for any costs associated with the
7 issuance and distribution of 1099 tax reporting forms to Claimants. Claimants
8 shall be solely responsible for taxes payable, if any, on their respective portion of
9 settlement proceeds. Neither the EEOC nor Defendants make any representation,
10 or assume any responsibility for any tax liability, assessments, interest, penalties,
11 and/or costs that the Claimants may or may not incur on such payments under
12 local, state and/or federal law.

13 E. Within fourteen (14) days of the issuance of each settlement check
14 and any 1099 form, Aqua Tri shall mail a copy of each check and related
15 correspondence to the Regional Attorney, Anna Y. Park, U.S. Equal Employment
16 Opportunity Commission, 255 East Temple Street, 4th Floor, Los Angeles, CA
17 90012.

18 F. If for any reason any portion of the Settlement Fund cannot be
19 distributed to a Claimant as designated by the EEOC, the Parties shall meet and
20 confer in good faith and select a cy-pres charity to receive the residual amount left

21 ¹ One Claimant was unable to provide a W-9 form prior to the submission of the
22 Decree. The EEOC will have have up to and including December 31, 2012, to
23 provide a fully-executed W-9 form to Aqua Tri’s counsel for this Claimant.
24 Within thirty (30) days of receipt of the fully-executed W-9 form regarding this
25 Claimant, Aqua Tri will send a check, 1099 form and similar State of California
26 tax reporting form, via certified mail, to this Claimant, in the allocation of
27 monetary relief specified by the EEOC under Section VIII(B). Aqua Tri shall
28 simultaneously provide a copy of the check and accompanying tax forms
pertaining to this Claimant to the EEOC. If a fully-executed W-9 form is not
distributed to a cy-pres charity selected by the Parties in accordance with Section
VIII(F).

1 in the Settlement Fund.

2 **IX. CLAIMANT SPECIFIC INJUNCTIVE RELIEF**

3 Within sixty (60) days of the Effective Date of this Decree, Aqua Tri shall:

4 A. remove from the personnel files of each Claimant any references to
5 the Charges of Discrimination filed against Aqua Tri or the Claimant's
6 participation in this Action;

7 B. to the extent that Aqua Tri maintains records of the Charges of
8 Discrimination or any Claimant's involvement in the Action, any such records
9 shall be maintained separately from Claimants' personnel files;

10 C. unless required by law or court order, refrain from providing any
11 information about Claimants to anyone other than to verify whether the identified
12 Claimant was employed by Aqua Tri, the last position in which the Claimant was
13 employed, and the duration of employment with Aqua Tri;

14 D. to the extent that a Claimant continues to work for Aqua Tri, ensure
15 that the Claimant does not suffer discrimination, harassment, or retaliation, as
16 provided Section X(A)(2), *infra*;

17 E. reclassify the termination of Claimant Carlos Hinosa Serreno as a
18 voluntary resignation rather than a termination; and

19 F. provide a \$1.00 per hour prospective increase in pay to Claimant
20 Alicia Flores within fourteen (14) days of the Effective Date, ensure subsequent
21 increases in pay and/or promotion by applying standards as applied to all
22 candidates and/or applicants, and ensure that Flores is not subject to retaliation.

23 **X. GENERAL INJUNCTIVE RELIEF**

24 A. Non-Discrimination and Non-Retaliation.

25 1. Discrimination. Aqua Tri and its directors, officers, agents,
26 management (including all supervisory and lead employees), successors, assigns,
27 and all those in active concert or participation with them, or any of them, shall be
28 enjoined for the duration of the Decree from:

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1 (a) engaging in any employment practices that discriminate
2 against female employees in violation of Title VII on the basis of sex;

3 (b) engaging in or being a party to any action, policy or
4 practice that discriminates against any female employee in violation of Title VII on
5 the basis of sex; or

6 (c) engaging in or creating, facilitating, or permitting any
7 conduct that creates a hostile work environment in violation of Title VII on the
8 basis of sex.

9 2. Retaliation. Aqua Tri and its directors, officers, agents,
10 management (including all supervisory and lead employees), successors, assigns,
11 and all those in active concert or participation with them, or any of them, shall be
12 enjoined from engaging in, implementing, or permitting any action, policy or
13 practice that retaliates against any current or former employee or applicant because
14 he or she has in the past or during the term of this Decree:

15 (a) complained to Aqua Tri that any employment practice
16 implemented at Aqua Tri was discriminatory, harassing or retaliatory;

17 (b) filed a charge of discrimination against Aqua Tri with the
18 EEOC or a state or local fair employment agency;

19 (c) testified or participated in any investigation (including
20 any internal investigation undertaken by Aqua Tri or any investigation by a federal,
21 state or local agency) in connection with the Action and/or any other claimed Title
22 VII violation;

23 (d) was identified as a possible witness or Claimant in this
24 Action;

25 (e) asserted any rights under this Decree; or

26 (f) sought and/or received any monetary and/or injunctive
27 relief in accordance with this Decree.

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1 B. Equal Employment Opportunity Consultant.

2 Within 20 calendar days of the Effective Date, Aqua Tri shall retain Puente
3 Consulting, Inc. to serve as its Equal Employment Opportunity Consultant
4 (“Consultant”) to assist in implementing the terms of the Decree and to monitor
5 Aqua Tri’s compliance with Title VII and the Decree. The date that Aqua Tri
6 retains the Consultant shall be the “Retention Date.” The Consultant shall have
7 demonstrated experience in the area of employment discrimination, sexual
8 harassment, and retaliation issues. The Consultant shall also be bilingual in
9 Spanish and English.

10 Aqua Tri shall bear all costs associated with the selection and retention of
11 the Consultant and the performance of the Consultant’s duties. If at any time
12 during the term of the Decree, the Consultant selected becomes incapacitated or is
13 no longer willing or able to carry out the duties described below, the Parties shall
14 meet and confer in good faith to select a new Consultant.

15 For the term of the Decree, the Consultant’s responsibilities shall include:

16 1. reviewing and revising Aqua Tri’s policies and procedures,
17 including its complaint procedures, relating to harassment, discrimination and
18 retaliation, to ensure that they fully comply with Title VII and the requirements set
19 forth in this Decree;

20 2. ensuring that all employees, including management,
21 supervisory, lead and human resources employees, are trained on their rights and
22 responsibilities under Title VII and this Decree, including the responsibility to
23 provide a workplace free of discrimination, harassment and retaliation;

24 3. ensuring that all employees, including management,
25 supervisory, lead and human resources employees, are trained on Aqua Tri’s
26 revised policies and procedures relating to discrimination, harassment and
27 retaliation;

28 4. monitoring any investigation of any complaint of

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1 discrimination, harassment or retaliation received by Aqua Tri during the term of
2 the Decree to ensure compliance with Title VII and this Decree;

3 5. ensuring that Aqua Tri communicates with complainants as
4 required by this Decree;

5 6. ensuring that Aqua Tri creates a centralized system of tracking
6 discrimination, harassment and retaliation complaints, as required by this Decree;

7 7. ensuring that Aqua Tri’s performance and discipline policies
8 hold all employees accountable for compliance with Title VII and managerial
9 employees accountable for failing to take appropriate action regarding complaints
10 of discrimination, harassment or retaliation, or for engaging in conduct prohibited
11 under Title VII or this Decree;

12 8. ensuring appropriate levels of discipline up to and including
13 termination, when an employee fails to meet his/her obligations regarding Aqua
14 Tri’s anti-discrimination policies and procedures, this Decree, and Title VII;

15 9. ensuring that Aqua Tri hires and retains a human resources
16 representative who is bilingual in Spanish and English and possesses demonstrated
17 experience in the area of employment discrimination and sexual harassment issues;

18 10. review Aqua Tri’s responses to complaints of sexual
19 harassment and/or retaliation during the term of the Decree to ensure that alleged
20 repeat offenders are identified and held accountable;

21 11. preparing a semi-annual report to the EEOC (and with a copy to
22 Aqua Tri) on Aqua Tri’s compliance with Title VII and this Decree; and

23 12. ensuring that Aqua Tri accurately compiles and timely submits
24 all reports required by this Decree.

25 C Posting

26 Within forty-five (45) days after the Effective Date, Aqua Tri shall post
27 notice (attached hereto as “Exhibit A”) of the settlement in a clearly visible
28 location frequented by its employees. The notice shall be posted in both English

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1 and Spanish. The notice shall remain posted for a duration to be determined by the
2 Consultant, which may be less than the duration of the Decree.

3 D. Policies Concerning Discrimination, Harassment and Retaliation

4 1. Within sixty (60) days after the Retention Date, Aqua Tri, with
5 the assistance of the Consultant, shall draft, or review and revise, its policy on
6 discrimination, harassment and retaliation (the “Nondiscrimination Policy”) as
7 described below.

8 2. The Nondiscrimination Policy shall include:

9 (a) a clear explanation of prohibited conduct in violation of
10 Title VII, including harassment on the basis of sex, with examples of prohibited
11 conduct;

12 (b) a complete copy of the final internal complaint procedure
13 described Section X(E), *infra*.

14 3. The Nondiscrimination Policy shall also include assurance that
15 Aqua Tri shall:

16 (a) hold all employees, including management, supervisory,
17 lead, non-supervisory and human resources employees, accountable for engaging
18 in conduct prohibited under Title VII or this Decree; and

19 (b) hold all management, supervisory, lead and human
20 resources employees accountable for failing to take appropriate action to address
21 discrimination, harassment, or retaliation.

22 E. Complaint Procedure

23 1. Within sixty (60) days after the Retention Date, Aqua Tri, with
24 the assistance of the Consultant, shall draft, or review and revise, its internal
25 complaint procedure (the “Internal Complaint Procedure”) as described below.

26 2. The Internal Complaint Procedure shall clearly state that:

27 (a) an employee who believes that he/she has been subjected
28 to discrimination, harassment or retaliation in violation of Aqua Tri’s policies,

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1 Title VII or the Consent Decree, may file an internal complaint using Aqua Tri’s
2 Internal Complaint Procedure, or may file an external complaint to an appropriate
3 agency, or both;

4 (b) an employee may initiate an internal complaint verbally
5 or in writing to Aqua Tri’s Human Resources representative, and no special form is
6 required;

7 (c) Aqua Tri shall not permit retaliation against any
8 employee who (1) complains of discrimination, harassment or retaliation using the
9 Internal Complaint Procedure, (2) files an external complaint to a federal, state, or
10 local agency, (3) participates as a witness in an investigation of any such
11 complaint, or (4) provides information regarding the process for submitting an
12 internal or external complaint to another employee;

13 (d) the Internal Complaint Procedure does not replace the
14 right of any employee to file a charge or complaint of discrimination, harassment
15 or retaliation under any applicable municipal, state, or federal law; and

16 (e) if an allegation of discrimination, harassment or
17 retaliation against an employee is substantiated, such conduct will result in
18 appropriate discipline, up to and including discharge.

19 3. The Internal Complaint Procedure shall ensure that Aqua Tri
20 will:

21 (a) maintain the confidentiality of the complaint,
22 complainant and investigation, to the extent practicable and consistent with Aqua
23 Tri’s obligation to thoroughly investigate and take prompt and effective remedial
24 action;

25 (b) take reasonable steps to promptly resolve complaints;

26 (c) promptly commence a thorough investigation that shall
27 be conducted by a person trained to conduct such investigations who is not accused
28 of misconduct by the complaint;

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1 (d) interview the relevant witnesses, including the
2 complainant, and review the relevant documents;

3 (e) provide opportunity for the complainant to review and
4 respond to tentative findings, except in those circumstances in which it is necessary
5 to take immediate action; and

6 (f) communicate with the complainant the results of the
7 investigation and any remedial action taken.

8 4. The Internal Complaint Procedure shall also provide an appeal
9 procedure to Aqua Tri’s President should a complainant be dissatisfied with the
10 results of an internal investigation. At the discretion of Aqua Tri, the Consultant
11 may serve as the designee for Aqua Tri’s President to receive and/or respond to an
12 appeal as needed to ensure immediate and effective corrective and preventative
13 measures.

14 5. The Internal Complaint Procedure shall NOT require that the
15 complainant:

16 (a) confront his or her harasser;

17 (b) file an internal complaint instead of an external
18 complaint; or

19 (c) initiate the complaint process only by submitting a
20 written complaint.

21 6. Aqua Tri shall confidentially follow-up with every complainant
22 on two (2) occasions, once at approximately three months and the other at
23 approximately six months after final resolution of his/her complaint, to inquire
24 whether the complainant believes that he/she has been further harassed and/or
25 retaliated against, and, if necessary, Aqua Tri shall investigate any allegations of
26 further harassment or retaliation.

27 7. Aqua Tri shall establish a telephonic complaint hotline
28 (“Hotline”) and disseminate information regarding the Hotline to its employees.

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1 Aqua Tri shall inform its employees that a complaint can be lodged at any time
2 with the complaint Hotline. The Hotline shall be answered by an electronic
3 answering machine that provides instructions about making a complaint using the
4 Hotline in both English and Spanish. All messages left on the Hotline answering
5 machine shall be logged by Aqua Tri’s President or Human Resources
6 representative hired pursuant to this Decree during the term of the Decree,
7 including the time of the call and a transcription of the message left on the
8 answering machine. All complaints made on the electronic answering machine,
9 and any documents made regarding the complaints including but not limited to the
10 complaint log shall be maintained in a manner that ensures that complaints remain
11 confidential, provided however, that this provision shall not be interpreted to
12 restrict Aqua Tri from conducting a thorough investigation of any such complaint.
13 Aqua Tri shall provide a copy of the Hotline call log to the Consultant upon
14 request by the Consultant. The Hotline call log shall be retained throughout the
15 term of the Decree.

16 8. Aqua Tri shall log all complaints made by employees under the
17 revised Internal Complaint Procedure and retain records regarding investigation
18 and resolution of all such complaints, including but not limited to those complaints
19 made through the Hotline, during the term of the Decree. The Consultant shall
20 ensure that Aqua Tri notifies employees of the Internal Complaint Procedure,
21 including the Hotline, and shall monitor Aqua Tri’s investigation and resolution of
22 any complaints made. The Consultant shall also ensure that complainants are not
23 subjected to retaliation.

24 F. Finalizing and Distribution of the Nondiscrimination Policy and
25 Internal Complaint Procedure

26 1. Within seventy-five (75) days after the Retention Date, Aqua
27 Tri shall provide the EEOC with a copy of the above-described final policies,
28 including the Nondiscrimination Policy and Internal Complaint Procedure

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1 described in Sections X(D) and (E), *supra*.

2 2. Upon receipt, the EEOC shall have thirty (30) days to review
3 and comment on the revised policies, including the Nondiscrimination Policy and
4 Internal Complaint Procedure described in Sections X(D) and (E), *supra*.

5 3. If the EEOC does not provide comment within thirty (30) days
6 of receiving the revised policies, Aqua Tri shall distribute the Nondiscrimination
7 Policy and Internal Complaint Procedure in both English and Spanish to all
8 employees, including management, supervisory, lead, non-supervisory and human
9 resources employees. Aqua Tri shall have each employee who receives a copy of
10 the final policies in English or Spanish as appropriate sign a form acknowledging
11 receipt.

12 4. Throughout the term of this Decree, Aqua Tri shall post the
13 Nondiscrimination Policy and Internal Complaint Procedure, in a clearly visible
14 location frequented by employees. Such posting shall be in both English and
15 Spanish.

16 G. Training

17 1. All non-supervisory and non-lead employees of Aqua Tri shall
18 be required to attend a live training program of at least one hour regarding
19 discrimination, harassment, and retaliation. The training under this section shall
20 include review of EEO law; every employee’s rights and responsibilities under
21 Title VII with an emphasis on hostile work environments based on sex and
22 retaliation; and Aqua Tri’s final policies and procedures for reporting and handling
23 complaints of harassment, discrimination, and retaliation. Examples shall be given
24 of the prohibited conduct. All training shall be designed to effectively teach adult
25 learners. All training shall be conducted in both English and Spanish.

26 2. The training described in Section X(G)(1), *supra*, shall be
27 mandatory and shall occur once every year for the term of this Decree. The first
28 training shall occur within thirty (30) days after EEOC’s comments on the training

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1 curriculum, as described in Section X(G)(10), *infra*, or within thirty (30) days after
2 the EEOC approves the Nondiscrimination Policy and Internal Complaint
3 Procedure, described above, whichever is later. Any non-supervisory and non-lead
4 employee who fails to attend any scheduled training shall be trained within (30)
5 days of the live training set forth above, by showing the non-supervisory/non-lead
6 employee a videotape of the training session.

7 3. All managerial, supervisory, and lead employees of Aqua Tri
8 shall be required to attend a live Management Training program of at least two
9 hours duration once every year for the term of this Decree. The first Management
10 Training program shall occur within thirty (30) days after EEOC’s comments on
11 the training curriculum, as described in Section X(G)(10), *infra*, or within thirty
12 (30) days after the EEOC approves the Nondiscrimination Policy and Internal
13 Complaint Procedure, described above, whichever is later. Any managerial,
14 supervisory, or lead employee who fails to attend any scheduled training shall be
15 trained within (30) days of the live training set forth above, by showing the
16 managerial, supervisory or lead employee a videotape of the training session.

17 4. All Management Training shall include review of EEO law;
18 every employee’s rights and responsibilities under Title VII; Aqua Tri’s final
19 policies and procedures for reporting and handling complaints of harassment,
20 discrimination, and retaliation; how to properly handle and investigate complaints
21 of discrimination, harassment and retaliation; how to take preventive and
22 corrective measures against discrimination, harassment, and retaliation; and how to
23 recognize and stop discrimination, harassment, and retaliation.

24 5. All Human Resources employees of Aqua Tri shall receive at
25 least three hours of advanced Human Resources training (“HR Training”) on
26 investigating complaints of discrimination, harassment, and retaliation; how to take
27 preventative and corrective measures against discrimination, harassment, and
28 retaliation; and how to recognize and stop discrimination, harassment, and

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1 retaliation. The HR Training shall be provided by the Consultant or through an
2 outside provider approved by the EEOC. This HR Training shall also include the
3 Consultant’s review and feedback on the Human Resources employee’s response
4 to actual complaints received during the term of the Decree. The HR Training
5 shall occur within thirty (30) days after EEOC’s comments on the training
6 curriculum, as described in Section X(G)(10), *infra*, or within thirty (30) days after
7 the EEOC approves the final Nondiscrimination Policy and Internal Complaint
8 Procedure, described above, whichever is later, and once every year for the term of
9 the Decree. The Consultant also shall provide written confirmation that Greg
10 Edman, the Pool Water Products Human Resources Manager, and/or his successor,
11 has received at least three hours of HR Training annually during the term of the
12 Decree and commencing in the same time frame set forth herein.

13 6. After the commencement of trainings provided in Sections
14 X(G)(1)-(5), *supra*, within thirty (30) days of the date of hire, for the term of the
15 Decree, every new employee, including managerial, supervisory, lead, non-
16 supervisory and human resources employees, shall receive the appropriate training
17 described above, by showing the employee a videotape of the most recent training
18 session given to employees of his/her level.

19 7. After the commencement of trainings provided in Sections
20 X(G)(1)-(5), *supra*, within thirty (30) days of the date of promotion, for the term
21 of the Decree, every employee promoted from a staff position to a managerial,
22 supervisory, lead or human resources position, shall receive the above-described
23 Management or HR Training, by showing the employee a videotape of the most
24 recent training session given to employees of his/her level.

25 8. Any employee required to attend any training under this Decree
26 shall verify in writing his/her attendance at each training session.

27 9. Within ninety (90) days after the Retention Date, Aqua Tri shall
28 submit to the EEOC a description of the training to be provided at each level and

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1 an outline of the curriculum developed for the trainees.

2 10. Upon receipt, the EEOC may provide comments within thirty
3 (30) days regarding any necessary revisions to the training.

4 H. Retention of a Human Resources Representative by Aqua Tri

5 Within ninety (90) days of the Retention Date, Aqua Tri shall also retain a
6 qualified human resources representative at the Aqua Tri plant in Ontario,
7 California, who is bilingual in Spanish and English and who shall report to Aqua
8 Tri’s President. The Aqua Tri human resources representative shall have
9 demonstrated experience in the area of employment discrimination, sexual
10 harassment, and retaliation issues.

11 Pool Water Products human resources personnel shall have no authority over
12 Aqua Tri’s human resources, *provided, however*, that Dean C. Allred, or his
13 successor, may continue to serve as President of Aqua Tri and President of Pool
14 Water Products; James R. Bledsoe, or his successor, may continue to serve as Vice
15 President of Operations for Aqua Tri and Vice President of Operations for Pool
16 Water Products; and their oversight and direction of Aqua Tri shall not be a breach
17 of this provision. The President and Vice President of Aqua Tri and their
18 successors, if any, during the term of the Decree, shall attend training as set forth
19 in Section X(G)(3-5), *supra*.

20 Pool Water Products has no obligations arising from this Decree other than
21 providing training for Greg Edman and/or his successor as set forth in Section
22 X(G)(5), *infra*.

23 I. Performance Evaluations for EEO Compliance

24 1. During the term of the Decree, to that extent that Aqua Tri
25 provides formal written performance reviews to its manager, supervisors and/or
26 leads, it shall revise its performance evaluation forms to include a measure for
27 compliance with Aqua Tri’s discrimination, harassment and retaliation policies and
28 procedures.

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1 2. At least thirty (30) days prior to implementing the performance
2 evaluation forms described above, if any, Aqua Tri shall provide the EEOC with
3 the proposed revisions in order to provide an opportunity for comment regarding
4 the revisions.

5 **XI. RECORD-KEEPING**

6 Within ninety (90) days of the Retention Date, Aqua Tri shall work with the
7 Consultant and establish a record-keeping procedure that provides for the
8 centralized tracking of discrimination, harassment and retaliation complaints and
9 the monitoring of such complaints. The records to be maintained during the term
10 of the Decree shall include:

11 A. all documents generated in connection with any complaint, including
12 non-privileged documents relating to all investigations or resolutions of any
13 complaints and the names of all witnesses identified by the complainant and/or
14 through Aqua Tri’s investigation;

15 B. all forms acknowledging employees’ receipt of Aqua Tri’s
16 Nondiscrimination Policy and Internal Complaint Procedure;

17 C. all documents verifying the occurrence of all training sessions and
18 names and positions of all attendees for each session as required under this Decree;

19 D. all documents generated in connection with the monitoring,
20 counseling, and disciplining of employees whom Aqua Tri (with oversight by the
21 Consultant) determines to have engaged in a violation of Aqua Tri’s
22 Nondiscrimination Policy and/or Title VII;

23 E. all documents generated in connection with Aqua Tri’s confidential
24 follow-up inquiries into whether a complainant believes he/she has been retaliated
25 against; and

26 F. all documents generated in connection with the establishment or
27 review of performance evaluation measures for leads, supervisors and managers, if
28 any.

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1 During the term of the Decree, Aqua Tri shall produce non-privileged
2 records maintained pursuant to subparagraphs XI(A) through XI(F) to the EEOC
3 within thirty (30) business days following a written request by the EEOC. To the
4 extent that any documents are withheld from such production by Aqua Tri on the
5 basis of attorney-client privilege and/or attorney work product, Aqua Tri shall
6 provide a privilege log to the EEOC at the time it produces the requested records.
7 The format of the privilege log shall conform with the format used by the Parties in
8 this litigation and must be in compliance with the requirements of this court.

9 **XII. REPORTING**

10 In addition to the notice and reporting requirements described above, Aqua
11 Tri shall provide, the following reports to the EEOC in writing, by mail or e-mail:

12 A. Within 120 days after the Retention Date, Aqua Tri shall submit to
13 EEOC an initial report containing:

- 14 1. a copy of the Nondiscrimination Policy and Internal Complaint
15 Procedure;
- 16 2. a summary of the procedures and record-keeping methods
17 developed with the Consultant for centralized tracking of discrimination,
18 harassment and retaliation complaints and the monitoring of such complaints;
- 19 3. a statement confirming that the required notices pertaining to
20 the Nondiscrimination Policy and Internal Complaint Procedure have been posted;
- 21 4. a statement confirming all required training has been completed
22 or is scheduled to be completed; and
- 23 5. a statement confirming that Aqua Tri has complied with Section
24 IX, above, regarding Claimant Specific Injunctive Relief.

25 B. Aqua Tri shall also provide the following reports semi-annually
26 throughout the term of this Decree:

- 27 1. a complete list of then-current employees, including name, start
28 date and job title;

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1 2. a complete attendance list for all training sessions required
2 under this Decree that took place during the previous six (6) months; and

3 3. a description of all discrimination, harassment and retaliation
4 complaints made, investigated or resolved in the previous six (6) months, including
5 the names of the complainants; the nature of the complaint; the names of the
6 persons accused of discrimination, harassment or retaliation; the dates of the
7 alleged harassment or retaliation; a brief summary of how each complaint was
8 resolved; the identity of each of Aqua Tri’s employee(s) or agents who
9 investigated or resolved each complaint; and the identity and most recent contact
10 information for each witness identified by the complainant and/or investigation.

11 C. During the term of the Decree, Aqua Tri will provide a report to the
12 EEOC discussing any planned changes to (1) the Nondiscrimination Policy or the
13 Internal Complaint Procedure, and (2) the record-keeping procedure that provides
14 for the centralized tracking of discrimination, harassment and retaliation
15 complaints and the monitoring of such complaints, at least thirty (30) days prior to
16 implementing such changes.

17 **XIII. COSTS OF ADMINISTRATION AND IMPLEMENTATION OF**
18 **CONSENT DECREE**

19 Each Party shall bear its own costs and attorneys’ fees related to compliance
20 with the Decree.

21 **XIV. COSTS AND ATTORNEYS’ FEES**

22 Each Party shall bear its own costs of suit and attorneys’ fees.

23 **XV. MISCELLANEOUS PROVISIONS**

24 A. During the term of this Decree, Aqua Tri shall provide a successor-in-
25 interest with a copy of this Decree within a reasonable time of not less than thirty
26 (30) days prior to the execution of a final agreement for (1) assumption of control
27 of all or substantially all of Aqua Tri’s production facilities, or (2) acquisition of all
28 or substantially all of Aqua Tri’s assets, and shall simultaneously inform the EEOC

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1 of same.

2 B. During the term of this Decree, Aqua Tri and its successors shall
3 ensure that each of their directors, officers, human resource representatives,
4 managers, supervisors and leads is aware of any term(s) of this Decree which may
5 be related to his/her job duties.

6 C. Unless otherwise stated, all notices, reports and correspondence
7 directed to the EEOC under this Decree shall be delivered to the attention of the
8 Regional Attorney, Anna Y. Park, U.S. Equal Employment Opportunity
9 Commission, Los Angeles District Office, 255 E. Temple St., 4th Fl., Los Angeles,
10 CA 90012.

11 D. Unless otherwise stated, all notices, reports and correspondence
12 directed to the Aqua Tri under this Decree shall be delivered to the attention of
13 Dean C. Allred, President, Aqua Tri, 17872 Mitchell, Suite 250, Irvine, CA 92614-
14 6034, with a copy to Aqua Tri’s counsel, Thomas H. Reilly, Esq., Newmeyer &
15 Dillion, LLP, 895 Dove Street, 5th Floor, Newport Beach, CA 92660.

16 E. The Parties agree to entry of this Decree subject to final approval by
17 the Court.

18 **XVI. COUNTERPARTS AND FACSIMILE SIGNATURES**

19 This Decree may be signed in counterparts. A facsimile signature shall have
20 the same force and effect as an original signature or copy thereof. All parties,

21 ///
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1 through the undersigned, respectfully apply for and consent to the entry of this
2 Decree as an Order of this Court.

3 U.S. EQUAL EMPLOYMENT
4 OPPORTUNITY COMMISSION

5 Dated: _____, 2011

By: _____
6 Anna Y. Park, Regional Attorney
7 Attorneys for Plaintiff EEOC

8 NEWMEYER & DILLION LLP

9 Dated: _____, 2011

By: _____
10 Thomas H. Reilly
11 Attorneys for Defendants Pool Water
12 Products and Aqua Tri

13 POOL WATER PRODUCTS

14 Dated: _____, 2011

By: _____
15 Dean C. Allred, President

16 AQUA TRI

17 Dated: _____, 2011

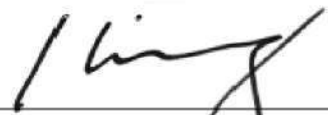
By: _____
18 Dean C. Allred, President

19 **[PROPOSED] ORDER**

20 The provisions of the foregoing Consent Decree are hereby approved and
21 compliance with all provisions thereof is HEREBY ORDERED. The Court hereby
22 retains jurisdiction over this Consent Decree until its termination as determined by
23 the Court in accordance with its terms.

24 IT IS SO ORDERED.

25 Date: 9/27/11

26 
27 _____
28 The Honorable George H. King
United States District Court Judge

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EXHIBIT A

NOTICE OF SETTLEMENT AND CONSENT DECREE

TO: ALL EMPLOYEES

The U.S. Equal Employment Opportunity Commission (“EEOC”) filed a lawsuit in the United States District Court for the Central District of California against Aqua Tri and Pool Water Products, Case Number CV-09-7062-GHK (VBKx), alleging that employees were subjected to a sexually hostile work environment, constructively discharged for complaining about or rejecting the sexual harassment, or subjected to retaliation for opposing a hostile work environment. Aqua Tri and Pool Water Products denied these claims.

A Court approved Consent Decree between Aqua Tri and the EEOC provides monetary relief to claimants identified by the EEOC. Persons entitled to monetary relief have been contacted by the EEOC.

Under the Consent Decree, Aqua Tri agreed to implement additional policies and procedures for the benefit of its employee, including:

- Revising its Nondiscrimination Policy and Internal Complaint Procedure to ensure compliance with Title VII;
- hiring an outside consultant to oversee policy revisions, investigations of complaints, and compliance with Title VII;
- hiring a human resources representative at the Aqua Tri plant; and
- training employees regarding sexual harassment.

Federal law prohibits harassment or discrimination against any employee or applicant for employment because of a person’s age, disability, race, sex, color, religion or national origin. This prohibition applies with respect to hiring, compensation, promotions, discharge, terms and conditions or privileges of employment. Federal law also prohibits retaliation against those who oppose or resist harassment or discrimination or participate in investigations regarding complaints of discrimination.

Aqua Tri is committed to complying with federal anti-discrimination laws in all respects. Sexual harassment or discrimination will not be tolerated. Any employee who files a complaint or formal charge of discrimination, gives testimony or assistance, or participates in any manner in any investigation will be protected from retaliation.

If you believe that you have been harassed or discriminated against because of your sex, national origin, age, race, color, religion, or disability, you are encouraged to follow Aqua Tri’s internal complaint procedure and submit a complaint to Aqua Tri’s human resources representative.

You may also seek assistance from:
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
255 East Temple Street, 4th Floor
Los Angeles, CA 90012
TELEPHONE NUMBER: (213)894-8479

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