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EEOC v. Trans Bay Steel Corporation and Does 1-10 Inclusively

Judge Christina A. Snyder

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EEOC v. Trans Bay Steel Corporation and Does 1-10 Inclusively

Keywords

EEOC, Trans Bay Steel Corporation and Does 1-10 Inclusively, CV 06-7766 CAS (JTLX), Consent Decree, National Origin, Asian, Manufacturing, Employment Law, Title VII

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CENTRAL DISTRICT OF CALIFORNIA
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21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA

23 U.S. EQUAL EMPLOYMENT
24 OPPORTUNITY COMMISSION,
25 Plaintiff.

26 Case No.: ^{CM} 06-7766 CAS (JTLX)

27 ~~PROPOSED~~ CONSENT DECREE

28 v.

29 TRANS BAY STEEL CORPORATION
30 AND DOES 1-10 INCLUSIVELY,
31 Defendant(s).

DOCKETED ON CM
DEC 14 2006
BY W6 009

32 I.

33 INTRODUCTION

34 Plaintiff U.S. Equal Employment Opportunity Commission (EEOC) filed a
35 federal action against Trans Bay Steel Corporation, ("Defendant" or "Trans Bay"),
36 entitled *EEOC v. Trans Bay Steel Corporation and Does 1-10 Inclusively*, Case

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1 Number CV 06-07766 CAS (JTLx), to address alleged unlawful employment
2 practices. Specifically, the EEOC alleged that Trans Bay subjected 48 Thai workers
3 to national origin discrimination. The Defendant denies all of the allegations.
4 The EEOC and Trans Bay hereby stipulate and agree to entry of this Consent
5 Decree (“Decree”) to resolve the Commission’s Complaint under Title VII of the
6 Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e *et seq.* (“Title
7 VII”), and Title I of the Civil Rights Act of 1991, 42 U.S.C. Section 1981a, in the
8 public interest and to the benefit of the aggrieved claimants identified above.
9

10 **II.**

11 **PURPOSES OF THIS DECREE**

12 A. In the interest of resolving this matter, and as a result of having engaged in
13 comprehensive settlement negotiations, the EEOC and Trans Bay (hereinafter
14 collectively referred to as “the Parties”) have agreed that this action should be
15 finally resolved by entry of this Decree. This Decree shall be binding on and
16 enforceable against the parties, including Defendant’s officers, directors, agents,
17 successors, and assigns.

18 B. The Parties have entered into this Decree for the following purposes:

- 19 1. To provide agreed upon monetary and injunctive relief;
- 20 2. To ensure that Trans Bay’s employment practices comply with federal
21 law;
- 22 3. To ensure work environment(s) free from discrimination due to
23 national origin;
- 24 4. To ensure that Trans Bay maintains a workforce free of discrimination
25 so as to allow employees the equal employment opportunities required under Title
26 VII;
- 27 5. To ensure that employees are protected from retaliation for engaging
28 in a protected activity; and

SCANNED

1 6. To provide an appropriate and effective mechanism for handling
2 harassment, discrimination, and retaliation complaints in the workplace.

3 C. Despite defendant's position that it did not itself directly engage in unlawful
4 employment practices in violation of Title VII as to any Thai nationals that it
5 employed or any other Thai nationals, it agrees that the cost, expense and
6 consumption of time to litigate these legal arguments, which could and would
7 otherwise be herein made by both parties, does not serve the interest of the parties
8 or benefit the claimants as much as the settlement of the various claims as set forth
9 in this decree.

10 For purpose of this decree, the parties believe and aver that this resolution,
11 upon court approval, will serve to benefit the public interest, as well as the
12 claimants for whom relief is provided under the decree, and Trans Bay agrees to
13 this decree in accord with the mandates, parameters, purposes and functions of
14 Title VII of the Civil Rights Act.

15
16 **III.**
17 **JURISDICTION**

18 The Court has jurisdiction over the parties and the subject matter of this
19 lawsuit, pursuant to 28 U.S.C. Sections 451, 1331, 1337, 1343, 1367 and 42 U.S.C.
20 Section 2000(e)(5). The Court shall retain jurisdiction of this action for the
21 duration of this Decree for the purposes of entering all orders, judgments and
22 decrees that may be necessary to implement the terms and conditions specified
23 herein.

24 The Plaintiff in this action is the U.S. Equal Employment Opportunity
25 Commission, which represents the public interest.

26 The Defendant, which is subject to the jurisdiction of this Court and to the
27 terms and obligations of this Decree, is Trans Bay Steel Corporation, its
28 predecessors, successors, officers, directors, agents, and assigns.

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1 IV.
2 FINDINGS

3 Having examined the terms and provisions of this Decree and based on the
4 pleadings, record and stipulation of the Parties, the Court finds the following:

5 A. The Court has jurisdiction over the Parties and the subject matter of this
6 action. The Complaint asserts claims that, if proven, would authorize the Court to
7 grant the relief set forth in this Decree.

8 B. The terms and provisions of this Decree are adequate, fair, reasonable,
9 equitable and just, and adequately protects the interests of those claimants eligible
10 for relief in this case. The entry of this Decree will further the objectives of Title
11 VII and will be in the best interests of the Parties and claimants.

12
13 V.
14 RESOLUTION OF CLAIMS

15 A. The Parties agree that this Decree resolves all claims that EEOC alleged
16 under Title VII in its complaint filed on Dec. 7, 2006 in the United States District
17 Court, Central District of California entitled *EEOC v. Trans Bay Steel Corporation*
18 *and Does 1-10 inclusively*, with Case Number CV 06-07766 CAS (JTLx), against
19 defendant Trans Bay. The Decree constitutes a complete resolution of all claims
20 that EEOC was authorized to assert against Trans Bay, its officers, directors and
21 individual owners based upon the administrative charges underlying this lawsuit.

22 B. Nothing in this Decree shall be construed to preclude the EEOC from
23 enforcing this Decree pursuant to its terms in the event the defendant has failed to
24 comply with any provisions of the Decree.

25 C. Nothing in this Decree shall be construed to limit or to reduce Trans Bay's
26 obligations to comply fully with Title VII or any other federal employment statute.

27 D. This Decree in no way affects the EEOC's right to bring, process,
28 investigate, or litigate further charges or claims it may have against defendants

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1 "Does 1-10," which include entities described as owners, agents, servants and
2 employees, related to the discrimination alleged in this case.

3
4 **VI.**

5 **DURATION AND EFFECTIVE DATE OF DECREE**

6 A. The provisions and agreements contained herein are effective immediately
7 upon the date that this Decree is entered by the Court ("Effective Date").

8 B. This Decree shall remain in effect for three (3) years from the Effective Date.

9
10 **VII.**

11 **DEFINITION**

12 The Plaintiff in this action is the U.S. Equal Employment Opportunity
13 Commission ("EEOC" or "Commission").

14 The Defendant in this action is Trans Bay Steel Corporation, its officers,
15 directors, assigns, successors-in-interest, and individual owners based upon the
16 administrative charges underlying this lawsuit ("Trans Bay" or "Defendant").

17 The "Project" is defined as the E2T1 Bay Bridge Project that is expected to
18 last approximately twelve (12) to fifteen (15) months, commencing November,
19 2005.

20 The "Claimant(s)" are the forty-eight (48) Thai welders who have been
21 identified by the EEOC as being members of the class of individuals whose
22 interests are represented by the EEOC in this action.

23 An "Employee" is defined as a claimant who wishes to work for Trans Bay
24 during the E2T1 Bay Bridge Project. This definition does not include the original
25 nine (9) claimants that previously worked for Trans Bay. Each of those individuals
26 shall be referred to as a "Former Employee."

27 A "Former Employee" is defined as the any of the original nine (9)
28 Claimants who previously worked at Trans Bay.

1 A "Non-Employee" is a claimant who opts not to work for Trans Bay on the
2 Project.

3
4 **VIII.**

5 **MODIFICATION AND SEVERABILITY**

6 A. This Decree constitutes the complete understanding of the parties with
7 respect to the matters contained herein. No waiver, modification or amendment of
8 any provision of this Decree will be effective unless made in writing and signed by
9 an authorized representative of each of the parties.

10 B. If one or more provisions of the Decree are rendered unlawful or
11 unenforceable, the parties shall make good faith efforts to agree upon appropriate
12 amendments to this Decree in order to effectuate the purposes of the Decree. In
13 any event, the remaining provisions will remain in full force and effect unless the
14 purposes of the Decree cannot, despite the parties' best efforts, be achieved.

15 C. By mutual agreement of the parties, this Decree may be amended or modified
16 in the interests of justice and fairness in order to effectuate the provisions of this
17 Decree.

18
19 **IX.**

20 **COMPLIANCE AND DECREE ENFORCEMENT**

21 A. The parties expressly agree that if the Commission has reason to believe that
22 Trans Bay has failed to comply with any provision of this Consent Decree, the
23 Commission may bring an action before this Court to enforce the Decree. Prior to
24 initiating such action, the Commission will notify Trans Bay and its legal counsel
25 of record, in writing, of the nature of the dispute. This notice shall specify the
26 particular provision(s) that the Commission believes Trans Bay has breached.
27 Absent a showing by either party that the delay will cause irreparable harm, Trans
28 Bay shall have thirty (30) days to attempt to resolve or cure the breach.

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1 B. The parties agree to cooperate with each other and use their best efforts to
2 resolve any dispute referenced in the EEOC notice.

3 C. After thirty (30) days have passed with no resolution or agreement to extend
4 the time further, the Commission may petition this Court for resolution of the
5 dispute, seeking all available relief, including an extension of the term of the
6 Decree for such period of time as Trans Bay is shown to be in breach of the Decree
7 and the Commission's costs and attorneys' fees incurred in securing compliance
8 with the Decree.

9
10 **X.**

11 **VICTIM SPECIFIC RELIEF**

12 A. Instatement and Monetary Relief

13 In exchange for the EEOC entering this Consent Decree, Trans Bay agrees to
14 hire twenty-two (22) of the (48) Claimants as Employees that the EEOC has
15 determined to be members of the identified class under the terms herein agreed and
16 ordered, for the duration of the Project. The remainder of the Claimants have opted
17 to be Non-Employees as defined herein.

18 1. Employees

19 a. Each Employee shall be paid a minimum of \$12.00 per hour and
20 be eligible for promotion and pay increases like any other non-
21 Thai workers at Trans Bay. Trans Bay agrees to continue to
22 employ the Employees beyond the date of completion of the
23 Project to the extent practical in light of its then need for
24 workers.

25 b. In addition to offering jobs, Defendant agrees to pay \$5,000 to
26 each Employee, in settlement of his claim for personal injury.

27 c. The parties acknowledge that the 22 workers have commenced
28 working for Trans Bay prior to the entry of this Decree and that

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1 Trans Bay has commenced meeting its obligation under this
2 Decree prior to being approved by the Court.

- 3 d. For each Employee, Trans Bay shall: (1) pay for the first
4 thirteen (13) employees employed by Trans Bay a transportation
5 and relocation reimbursement of \$1,000.00 per employee; (2)
6 pay for subsequent employees employed by Trans Bay actual
7 relocation expenses up to \$1,000.00 upon proof of proper
8 receipt of said expense; (3) pay for all Employees with families
9 a lodging stipend for a period of six (6) months; (4) sign a lease
10 or a guarantee for a lease for all the Employees; (5) pay for all
11 Employees the security deposit, including first and deposit of
12 last months' rent, if required; (6) provide for all Employees'
13 training to become certified CalTrans welders; and (7) pay
14 tuition and books at Napa Community College in the area of
15 welding, so long as the Employee meets the minimum
16 requirements to become a Napa Community College student.
- 17 e. Trans Bay had paid or will pay the first two months' rent on
18 behalf of each of the employees, currently without a family, who
19 come to Trans Bay, provided that the employees house
20 themselves four (4) single employees to a unit. Thereafter, each
21 of such employees shall be responsible for 100% of his rent.
22 The Employees shall pay their rent directly to the landlord on or
23 before the first day of each month. Trans Bay shall remain on
24 the lease or rental agreement as an additional tenant or
25 "guarantor" (as required by the landlord) for up to six (6)
26 months, to help ensure the employee's housing. The Employees
27 will be added as co-signers to the lease agreement. However,
28 any employee may, at any time, choose to move into any

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1 accommodation of their choosing at their own expense.

2 Employees who hereinafter decide to move families in shall be
3 responsible for their own housing arrangements.

4 f. Trans Bay has paid or will pay a housing stipend for (8) eight
5 Employees currently with families in the amount of \$500.00 per
6 month for a period of six (6) months from the time they start
7 work for Trans Bay. The balance of their rent shall be paid
8 directly to the landlord on or before the first day of each month.

9 g. If an employee fails to pay his portion of the rent to the landlord
10 in a timely fashion, and Trans Bay becomes liable to pay the
11 rent, Trans Bay may deduct the rent from the employee's \$5,000
12 payment to be paid to each of them by Trans Bay under this
13 Decree. Trans Bay shall give written notice to the EEOC and to
14 the Employee or trainee prior to taking any such action. The
15 Employee or trainee shall be given a ten (10) day grace period
16 to cure. Trans Bay agrees that this provision shall be the sole
17 basis for recovering from Employees (other than Former
18 Employees) the amount of unpaid rent for which Trans Bay
19 becomes liable.

20 h. Any monies paid by Trans Bay over and above wages for the
21 Employees shall be considered as compensation for the
22 Employee's personal injury.

23 2. Non-Employees

24 To each of the Non-Employees, Trans Bay shall:

25 a. Pay \$7,500 as compensation for the Non-Employee's personal
26 injury within five (5) days of the Effective Date;

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- b. Pay \$300 as a stipend for tuition and books for training as a welder within five (5) days of the Effective Date;
- c. Offer first right of refusal to any Non-Employee for a welder position at Trans Bay to the extent practicable after the expiration of the Project.
 - (1) If a Non-Employee is interested in working for Trans Bay at a future time and is able to work, the Non-Employee shall inform the EEOC of such a desire.
 - (2) A list of the Non-Employees shall be given to Trans Bay. Trans Bay will make best efforts to employ any of the Non-Employees in the future in order of date and time received by Trans Bay.
 - (3) Trans Bay shall inform the EEOC if any openings for welders during the term of the Decree.
 - (4) Trans Bay shall notify the first ten (10) potential claimant employees by telephone of the job opening and shall confirm by fax, e-mail or letter to the individual and the EEOC.
 - (5) The prospective claimant employees shall contact Trans Bay by phone to acknowledge receipt of the offer of employment and their intent to accept the position within 48 hours of the telephone notification or attempt and shall confirm their intent to Trans Bay. The first employee to accept the position shall be hired.
 - (6) If Trans Bay is unable to reach any or all of the first ten (10) prospective employees, or if a prospective employee does not, within 48 hours, acknowledge receipt of the offer of employment and accept same, the next ten (10) prospective employees will be notified.

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1 (7) The first employee to accept the open position shall
2 become an employee.

3 (8) Once a Non-Employee claimant becomes an employee,
4 said employee shall become entitled to the same starting pay
5 and training as did the first 13 claimants to become employed
6 with Trans Bay. However, said claimants shall be entirely
7 responsible for their own transportation, relocation and housing
8 expenses.

9 (9) The Non-Employees need not return any of the monies
10 received under this Decree if he applies for and is employed
11 under this Section (X)(A)(2)(c)(9).

12 (10) All monies paid under this Decree over and above the
13 wages shall be considered compensation for the Non-
14 Employees' personal injury.

15 3. Former Employees

16 a. The parties acknowledge that there are nine (9) Former
17 Employees that previously worked for Trans Bay. The parties further
18 acknowledge that five (5) of the nine (9) Former Employees shall not
19 be eligible for the aforementioned \$5,000.00 payment because
20 defendant previously voluntarily provided this payment to them. The
21 Former Employees are: (1) Sanong Noikanya, (2) Thongkhon
22 Somsrimee, (3) Dith Panbunkoed, (4) Suphap Artyotha, (5) Anusak
23 Sodchuen, (6) Rungrot Siribun, (7) Saksit Yothakhun, (8) Surachai
24 Surasena, and (9) Anirut Samranchit. Of the former employees,
25 Suphap Artyotha, Dith Panbunkoed, Rungrot Siribun, and Anirut
26 Samranchit did not receive the \$5,000.00 payment during the time of
27 their prior employment. Therefore, they each shall be entitled to
28 receive a \$5,000.00 payment as part of his settlement. Payment shall

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1 be made within five (5) days of the Effective Date. Monies paid under
2 this Section shall be deemed as compensation to the Former
3 Employees for their personal injury.

4 b. Trans Bay shall ensure that the Former Employees be allowed to
5 continue to work for Trans Bay or any other employer, including
6 sponsorship for H2B visas, where appropriate. Trans Bay shall
7 facilitate the Former Employee's ability to continue to work in the
8 United States if he chooses to transfer to another company.

9 c. It is understood by the parties that these workers are considered
10 "key" employees due to their previous experience, skill and ability to
11 help train the new Employees who may be less skilled and who may
12 have difficulty in language issues training with non-Thai speaking
13 instructors.

14 d. The Former Employees shall be paid an increased wage of
15 \$18.80 per hour and be given either the title of supervisors or working
16 leads during their employment at Trans Bay when the positions
17 become available and based upon the employee's skills and leadership
18 abilities.

19 e. In addition to the foregoing, the Former Employees shall also be
20 entitled to the following:

- 21 (1) \$1,000 as relocation costs;
- 22 (2) Training to become current Cal Trans certified welder;
- 23 (3) Monies for tuition and books for eligible employees at
24 Napa Community College in the area of welding;
- 25 (4) Trans Bay shall sign a Lease/Rental Agreement or
26 Guarantee for lodging as set forth above for other single
27 employees;

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1 (5) Trans Bay shall pay the security deposit, including first
2 and deposit of last months' rent if required by landlord;

3 (6) Trans Bay shall pay or has paid for two months rent
4 calculated based upon having four occupants to a two bedroom;

5 (7) Trans Bay may pay additional relocation costs for the
6 Former Employees upon prior notification through the EEOC.

7 (8) Any of the Former Employees can request that additional
8 relocation-related costs be reimbursed by submitting them to the
9 EEOC or Trans Bay prior to incurring the cost. Trans Bay or
10 the EEOC shall inform the Former Employee within five (5)
11 days of the request whether the additional relocation cost will be
12 reimbursed. Trans Bay has already agreed to pay for the added
13 cost of shipping a vehicle across state lines and for the cost of
14 rental vehicles to facilitate the relocation of the nine (9) Former
15 Employees.

16 4. Sponsorship

17 Trans Bay agrees to provide whatever non-financial assistance which may be
18 necessary and within its reasonable ability, for immigration purposes for each
19 former employee to allow them to continue to work in the United States, including
20 sponsoring former employees for H2B or comparable visas. Any required
21 sponsorship shall occur as soon as reasonably possible.

22 5. Employment

23 Trans Bay shall endeavor to continue to employ claimants during, as well as
24 beyond, the Project, or to assist claimants to find employment elsewhere should
25 Trans Bay not be reasonably able to continue to employ the Employees or Former
26 Employees due to lack of work, loss of contracts, loss of facility rental, lease or
27 license, or other issue rendering it impossible or impractical for Trans Bay to
28 continue to employ some or all Employees or Former Employees.

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6. Right of Return

Trans Bay shall hire any Claimant who wishes to reapply to work for Trans Bay during the term of the Decree. Each Claimant shall have priority to be hired for training and to work for Trans Bay to the extent there is any work available. Trans Bay shall also inform the EEOC of any openings to allow each claimant who did not work for Trans Bay initially, the right to a position as a welder.

7. Training and Eligibility Requirements

Claimant employees, claimant former employees and claimant Non-Employees who may, in the future, become employees of Trans Bay shall not be discriminated against in terms of education, training or eligibility for advancement. As such, all claimants to become employees shall be entitled to the same educational benefits as the original claimant employees. All claimants to become employees shall be trained for Cal Trans work in the same manner as all former employees of Trans Bay who have certified for Cal Trans work and shall not be delayed in their eligibility for advancement by way of new, extended, or different certification/training requirements. Claimant employees who become Cal Trans certified welders shall be entitled to advancement, without discrimination, based upon relevant factors including: (1) Date of certification to perform Cal Trans welding work, (2) Skill level of the claimant employee, (3) Leadership ability of the claimant employee, and (4) Availability of advanced position, lead employee or supervisory position. Items (2), (3), and (4) shall be determined in the reasonable discretion of Trans Bay.

XI.

MONITORING

The EEOC shall monitor Trans Bay's compliance with this Consent Decree. Trans Bay shall prepare and forward to the EEOC an annual compliance report

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1 regarding Trans Bay's substantive obligations contained this Consent Decree
2 commencing one year from the Effective Date.

3 Trans Bay shall:

4 A. Ensure that the claimants are provided equal employment opportunity in
5 compliance with Section X. Should Trans Bay not have welding positions, Trans
6 Bay shall endeavor to help the claimant employees and former employees locate
7 work in other positions available at Trans Bay or elsewhere. In such a case, at no
8 time, shall the claimant's minimum agreed pay be impacted unless the highest paid
9 employee in the contemplated new position, over the last 12 months immediately
10 preceding the job change, is paid below the agreed minimum wage, in which case
11 the employee shall receive the same pay as said highest paid employee in said
12 position.

13 B. Trans Bay agrees that it will not terminate any claimant, Employee, Former
14 Employee, or Non-Employee that becomes employed for lack of work during the
15 E2T1 project unless it becomes "impossible" or "impractical" for Trans Bay to
16 continue its business. For purposes of this Decree, the terms "impossible" or
17 "impractical" mean that Trans Bay is completely unable to operate its business. A
18 brief (less than 30 day) suspension of business operations or delay in continuing
19 operations is not within the definition of "impossible" or "impractical."

20 C. In the event that Trans Bay attempts to terminate any Employee during the
21 Project, the EEOC will make an independent determination as to whether the
22 proposed termination is because it is "impossible" or "impractical" for Trans Bay
23 to continue its business, it is for proper cause, or it is otherwise valid. The EEOC
24 will examine whether the proposed termination is consistent with the requirements
25 of the decree and otherwise based upon objective and verifiable standards that
26 other employees are held to at Trans Bay. The Employee will remain employed
27 until a determination is made by the EEOC. The EEOC shall make its
28 determination within a reasonable time, but not greater than fourteen (14) calendar

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1 days from written notice by Trans Bay to the EEOC. If the EEOC determines that
2 it "impossible" or "impractical" for Trans Bay to continue its business and to
3 continue to employ some or all of the claimants, Employees, Former Employees, or
4 Non-Employees that become employed, then Trans Bay shall forfeit the security
5 deposit for the apartment(s) of such claimant(s) who are terminated, and the
6 security deposit shall be distributed to the claimant(s) equally. Upon request, Trans
7 Bay agrees to provide necessary documents and to provide access to individuals
8 who may need to be interviewed to allow the EEOC to make an assessment on any
9 proposed termination.

10 D. If the EEOC determines that the proposed termination of the Employee is for
11 cause or is otherwise proper under the circumstances, upon written determination
12 of such finding by the EEOC, the Employee's termination shall become effective
13 immediately.

14 E. If the EEOC determines that the termination was not for cause, or not
15 otherwise reasonable under the circumstances, then the Employee will be entitled
16 to remain in his position.

17 F. In the event the EEOC is not able to resolve the dispute between Trans Bay
18 and the Employee, the EEOC shall inform Trans Bay of the impasse at issue, and
19 EEOC may file a motion in court, for an order reinstating the employee with
20 appropriate relief.

21 G. Should an Employee be fired or otherwise terminated for any reason,
22 including for cause, the Employee will not need to pay Trans Bay back any monies
23 previously received by said terminated employee or employees, under this Decree.
24 Termination will deny the claimant the opportunity to receive any future wages for
25 employment, but the claimant will remain eligible to receive all the other benefits
26 to which he is entitled under the Decree as compensation for his personal injury.

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1 H. Trans Bay shall also be responsible for paying the liaison services provided
2 by the Thai Community Development Center ("Thai CDC") and the Coalition to
3 Abolish Slavery and Trafficking ("CAST") as agreed to by the parties.

4 Thai CDC shall be reimbursed for costs associated with the relocation of the
5 Employees and Former Employees that have already begun working for Trans Bay.
6 The parties acknowledge that due to the language barrier, Trans Bay will reimburse
7 Thai CDC for expenses incurred to advance the interest of the Decree but not to
8 exceed \$4,000.

9 CAST shall also be reimbursed for costs associated with relocating the
10 claimants and their families. CAST shall be reimbursed for the relocation efforts of
11 the caseworkers for the original 13 Employees and the families. CAST's
12 reimbursement shall be limited to two case management sessions associated with
13 reuniting the 13 Employees with their families. Reimbursement to CAST shall not
14 exceed a cap of \$7,500.

15 CAST and Thai CDC shall submit their reimbursement requests to the
16 EEOC. The EEOC shall then review them and submit them to Trans Bay for
17 payment. Trans Bay shall pay Thai CDC and CAST within thirty (30) days of
18 receipt of notice. The EEOC shall be given simultaneous notice and copies of the
19 checks shall be forwarded to the EEOC c/o the Regional Attorney Anna Park at
20 255 East Temple Street 4th Floor, LA, CA 90012.

21 XII.

22 MONETARY DISTRIBUTION

23
24 A. For monies not yet distributed to the claimants, payment shall be made
25 within five (5) days of the Effective Date. Any reimbursement costs not yet paid
26 by Trans Bay shall be paid within thirty (30) days of notice from the EEOC of the
27 payments that are required. The parties acknowledge that Trans Bay has already
28 met some of its monetary obligations under this Decree prior to the Effective Date.

1 Claimants that have reimbursement costs, shall submit all such requests to the
2 EEOC along with documentation. In the case of mileage or other reimbursable
3 expenses, the Trainees, Employees, and Former Employees shall submit in writing
4 an itemization of such expenses to the EEOC. EEOC shall review and then submit
5 the amounts to be paid to Trans Bay. All monies paid other than for wages shall be
6 to compensate the claimants for their personal injury.

7 B. Trans Bay shall pay the reimbursement related costs directly to the identified
8 claimants within thirty (30) days of receipt of notification from the EEOC. The
9 EEOC shall oversee this process. For any payments made to the claimants, a copy
10 of the check(s) shall be simultaneously forwarded to the EEOC c/o Regional
11 Attorney Anna Park at 255 East Temple Street 4th Floor, LA, CA 90012.

12 C. Within thirty (30) days of notification of eligible claimants, (excluding
13 ineligible former employees), Trans Bay shall pay to each eligible claimant the
14 monetary distribution called for pursuant to provision X above.

15 D. All monetary distribution checks shall be written out to individual named
16 claimants and shall be forwarded to the Thai Community Development Center c/o
17 Chanchanit Martorell, Executive Director at 6376 Yucca, Street, Suite B, Los
18 Angeles, CA 90028.

19 E. A copy of the checks and related correspondence shall be forwarded to the
20 United States Equal Employment Opportunity Commission within ten (10) days of
21 issuance, c/o Regional Attorney, Anna Y. Park at 255 E. Temple Street 4th Floor,
22 Los Angeles, CA 90012.

23 F. In the event that any portion of the checks or other settlement monies to be
24 paid herein are not distributed to the claimants by the expiration of this Decree, the
25 checks for those monies shall be cancelled and a check shall be reissued in the
26 amount of those monies payable to the Thai Community Development Center. The
27 EEOC shall maintain an accounting of all checks sent to Thai Community
28 Development Center for payment to named claimants and of the disposition of each

1 such check, including the date the Thai Community Development Center received
2 the check, the date the claimant received the check, the date the check was cashed,
3 if known, and, if the claimant did not receive and/or cash the check, the efforts the
4 Thai Community Development Center made to locate the claimant to give him the
5 check and the information it provided to the claimant about cashing the check. The
6 EEOC also shall include in its accounting any other monies the Thai Community
7 Development Center receives pursuant to this Decree.

8 G. Trans Bay shall prepare and distribute 1099 tax reporting forms if required to
9 each of the eligible claimants pursuant to IRS rules and regulations. The parties
10 agree that the payments are awarded as, and represent the payment of, personal
11 injury suffered by each recipient claimant.

13 XIII.

14 INJUNCTIVE RELIEF

15 A. Non-Discrimination

16 1. National Origin Discrimination

17 Trans Bay, its officers, employees, management (including all
18 supervisory employees), successors, assigns, and all those in concert or
19 participation with them who are under Trans Bay's control, or any of them, hereby
20 agree to: (a) not engage in national origin discrimination; (b) prevent and correct
21 any harassment or other discrimination on the basis of national origin; (c) ensure
22 that employees who complain about or resist discrimination on the basis of national
23 origin are not subjected to any tangible employment actions; (d) hold managers and
24 supervisors accountable for national origin harassment or discrimination; (e) ensure
25 immediate, corrective, and preventative measures are taken when a valid complaint
26 is raised; (f) implement effective policies and procedures to ensure a workplace
27 free of hostility due to national origin; and (g) provide required training to all
28

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1 employees related to recognizing, avoiding, addressing, investigating and handling
2 of national origin discrimination claims.

3 2. Retaliation

4 Trans Bay, its officers, employees, management (including all
5 supervisory employees), successors, assigns, and all those in active concert or
6 participation with them who are under Trans Bay's control, or any of them, hereby
7 agree not to engage in, implement or permit any action, policy or practice with the
8 purpose of retaliating against any current or former employee of Trans Bay because
9 he or she has in the past, or during the term of this Decree: (a) opposed any practice
10 made unlawful under Title VII; (b) filed a charge of discrimination alleging such
11 practice; (c) testified or participated in any manner in any investigation (including
12 without limitation, any internal investigation undertaken by Trans Bay), or
13 proceeding in connection with this case and/or relating to any claim of a Title VII
14 violation; (d) was identified as a possible witness or claimant in this action; (e)
15 asserted any rights under this Decree; or (f) sought and/or received any relief in
16 accordance with this Decree.

17 Trans Bay shall promote, to the best of its abilities and in good faith, that any
18 contractors or subcontractors employed by Trans Bay, or over whom Trans Bay has
19 control, operate a workplace free from discrimination, harassment, and retaliation
20 as set forth above.

21 B. Revision and Distribution of Anti-Harassment, Anti-Discrimination, and
22 Anti-Retaliation Policies and Procedures

23 Within forty-five (45) days of the Effective Date, Trans Bay shall review and
24 revise and/or modify where necessary its anti-harassment, anti-discrimination, and
25 anti-retaliation policies.

26 The policy shall include:

- 27 1. A clear explanation of prohibited conduct;

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1 2. Assurance that employees who make complaints of harassment,
2 discrimination, or retaliation, or provide information related to such complaints
3 will be protected against retaliation;

4 3. A clearly described complaint process that provides accessible and
5 confidential avenues of complaint with contact information including name (if
6 applicable), address, and telephone number of persons both internal and external to
7 the Trans Bay (i.e., Commission and EEOC) to whom employees may report
8 alleged discrimination and retaliation, including a written statement that the
9 employee may report the discriminatory behavior to designated persons outside
10 their chain of management;

11 4. Assurance that the employer will protect the confidentiality of
12 harassment, discrimination, and retaliation complaints to the extent possible;

13 5. A complaint process that provides a prompt, thorough, and impartial
14 investigation;

15 6. A procedure for communicating with the complainant in writing
16 regarding the status of the complaint/investigation, results of the investigation, and
17 any remedial action taken;

18 7. Assurance that Trans Bay will take immediate and appropriate
19 corrective and preventative actions if it determines or believes that harassment,
20 discrimination, or retaliation occurred;

21 8. A description of the possible consequences, up to and including
22 termination, that will be imposed upon violation of the policies;

23 9. Defined policies and procedures for hiring, recruitment, screening,
24 retention, transfers, and promotion that do not discriminate based upon national
25 origin; and

26 10. A statement that Trans Bay's anti-discrimination and retaliation
27 policies apply to all persons, including but not limited to Trans Bay's owners,

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1 shareholders, directors, officers, other management officials, supervisors, vendors,
2 suppliers, third parties, and customers.

3 EEOC shall comment on the policies and procedures within thirty (30) days
4 of receipt. The parties shall meet and confer about the proposed changes. If the
5 parties are not able to resolve their differences, the parties shall follow Section XII
6 set forth below. Should the policy not require any revision, no later than ten (10)
7 business days after the forty-five (45) day period the policy shall be distributed to
8 all employees in either English, Spanish or Thai, depending on the language
9 preference of each employee. The policies and procedures shall also be
10 disseminated to all management/supervisory staff and shall also be included in any
11 relevant policy or employee manuals distributed to employees by Trans Bay.
12 Trans Bay shall maintain acknowledgments from each employee who receives the
13 revised policy, in either English, Spanish or Thai, depending on the language
14 preference of each employee. Throughout the term of this Decree, Trans Bay shall
15 also post the revised policy, in English, Spanish and Thai, in a place that is clearly
16 visible to all employees at each of its facilities covered by this Decree in 15 point
17 font.

18 All new or rehired employees shall receive a copy of the policies and
19 procedures within ten (10) days of being hired or rehired.

20 C. Complaint Procedure

21 Within forty-five (45) days of the Effective Date, Trans Bay shall publicize
22 an internal complaint procedure to provide for the filing, investigation and, if
23 appropriate, remedying of complaints of harassment, discrimination, and
24 retaliation. Trans Bay shall:

- 25 1. Publicize the complaint procedure;
- 26 2. Track and collect all complaints filed thereunder;
- 27 3. Investigate and resolve such complaints in a timely and effective
28 manner; and

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1 4. Retain records regarding resolution of all such complaints.

2 Trans Bay shall track all complaints filed thereunder and retain records
3 regarding resolution of all such complaints. Trans Bay will review the allegations
4 of harassment, discrimination, and/or retaliation made during the term of the
5 Decree and conduct an investigation accordingly. Trans Bay shall provide written
6 findings at the conclusion of its investigation. Trans Bay may recommend
7 discipline, including but not limited to termination of employees who have engaged
8 in harassment, discrimination, or retaliation.

9 If Trans Bay rejects the EEOC's recommended course of action, Trans Bay
10 must present written justification to the EEOC for failing to adopt it within twenty
11 (20) days of the EEOC's findings.

12 The internal complaint procedure shall incorporate the following elements:

- 13 1. A policy describing how investigations will be conducted;
- 14 2. A prompt commencement and thorough investigation by an employee
15 of Defendant trained to conduct such investigations who is not connected with the
16 complaint;
- 17 3. A statement that an investigation should include interviews of all
18 relevant witnesses, including the complainant, and reviews of all relevant
19 documents;
- 20 4. A written record of all investigatory steps, and any findings,
21 conclusions, and any actions taken;
- 22 5. Provision for the reasonably prompt resolution of such complaints;
- 23 6. An opportunity for the complainant to review and respond to tentative
24 findings, except in those circumstances in which it is necessary to take immediate
25 action;
- 26 7. Confidentiality of the complaint and investigation to the extent
27 possible;

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1 8. Appropriate communication to the complainant of the final
2 conclusions of the investigation;

3 9. An appeal procedure to an appropriate Trans Bay representative
4 should the complainant be dissatisfied with the results of the investigation;

5 10. A notice that employees or applicants complaining of discrimination
6 may use the company's internal complaint procedure and also have the right to
7 contact the EEOC or state or local Fair Employment Practice (FEP) agencies for
8 information or to file a charge of discrimination. The notice shall also state that
9 filing an internal complaint does not relieve the complainant of meeting any
10 applicable deadline for the filing of a charge or complaint with EEOC or state or
11 local FEP agencies;

12 11. A statement that the complainant shall not be required to first report
13 the complaint to a person who is accused of the inappropriate conduct to invoke the
14 Internal Complaint Procedure;

15 12. The internal complaint procedure will permit, but not require, an
16 employee to initiate the complaint process by submitting a written complaint on a
17 form designed for the purpose;

18 13. A statement that it is unacceptable to retaliate against any associate for
19 use of the Internal Complaint Procedure, for assisting in the investigation of a
20 complaint, or for otherwise assisting in the utilization of the procedure; and

21 14. A statement that if an allegation of discrimination or retaliation against
22 a manager or other associate is substantiated, then such conduct will result in
23 appropriate discipline, which shall include discharge.

24 D. Training

25 Within one hundred fifty (150) days after the Effective Date, all of Trans
26 Bay's supervisors and employees shall be required to have attended a training
27 program on harassment, discrimination, and retaliation. The training shall be

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1 mandatory and occur once a year for the term of this Decree. The program shall be
2 given in a language that each employee best understands.

3 1. The training shall include coverage of the subjects of equal
4 employment opportunity rights and responsibilities, discrimination, harassment,
5 retaliation, and Trans Bay's revised policies and procedures for reporting and
6 handling complaints of discrimination, harassment and retaliation.

7 2. Trans Bay's managerial and supervisory employees additionally shall
8 receive training on how to properly handle and investigate complaints of
9 discrimination and/or harassment in a neutral manner, how to take preventive and
10 corrective measures against discrimination and/or retaliation, and how to recognize
11 and prevent discrimination and/or retaliation.

12 3. All employees required to attend such training shall verify their annual
13 attendance in writing. A log shall be maintained to track who attended each
14 training.

15 4. Within forty-five (45) days after the Effective Date, or fifteen (15)
16 days after hiring the EEOC, whichever is later, Trans Bay and the EEOC shall
17 submit to the EEOC a description of the of content of the training to be provided,
18 and EEOC will have fifteen (15) business days in which to comment.

19 5. Trans Bay shall give the EEOC a minimum of fifteen (15) business
20 days' advance written notice of the date, time and location of each training program
21 provided pursuant to this Decree, and an EEOC representative may attend any such
22 training program.

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XIV.

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RECORD KEEPING AND REPORTING

26

Trans Bay shall establish a record keeping procedure that provides for the
27 centralized tracking of the hiring, employment and termination of each of the

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1 claimants in this case and of any reported alleged discrimination and retaliation.

2 The records to be maintained shall include:

3 A. Record keeping of Discrimination and Retaliation Complaints

4 1. All documents generated in connection with any complaint,
5 investigation into, or resolution of every complaint of harassment, discrimination
6 or retaliation for the duration of the Decree and the identities of the parties
7 involved. This includes any disciplinary actions taken against an employee and any
8 findings;

9 2. All forms acknowledging employees' receipt of Trans Bay's revised
10 discrimination and anti-retaliation policy;

11 3. Documents tracking and analyzing complaints filed against the same
12 employee; and

13 4. All documents verifying the occurrence of all training sessions and
14 names and positions of all attendees for each session.

15 B. Record Keeping of Recruitment, Hiring, and Transferring into Positions

16 Trans Bay shall maintain records for each claimant regarding recruitment,
17 hiring, transportation and relocation expenses and payments, transferring,
18 promotion, termination, wages and hours worked for each pay period.

19 C. Reporting

20 Trans Bay shall submit an annual report to the EEOC, unless more a more
21 frequent report is necessary to track prospective employees on the waiting list for
22 work at Trans Bay. If a more frequent report is needed, the EEOC shall inform
23 Trans Bay of the frequency and substance of the report. Otherwise, the annual
24 report shall include the following:

25 1. The status of each claimant (if the status has changed), including the
26 job held, the wages received and a report of any dispute arising out the
27 employment. Should the claimant no longer work for Trans Bay, the report shall
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1 contain the date the claimant is not employed and the reasons for the non-
2 employment status;

3 2. The status of the Project, and Trans Bay's expected employment needs
4 during the next twelve months;

5 3. A description and analysis of all complaints raised during the review
6 period as set forth herein; and

7 4. A description of defendant's efforts to sponsor the claimants for
8 immigration purposes, if any.

9 **XV.**

10 **MISCELLANEOUS PROVISIONS**

11 **A. Successors In Interest**

12 During the term of this Consent Decree, Trans Bay shall provide any
13 potential successor-in-interest with a copy of this Consent Decree within a
14 reasonable time of not less than thirty (30) days prior to the execution of any
15 agreement for acquisition or assumption of control of any or all of Trans Bay's
16 facilities, or any other material change in corporate structure, and shall
17 simultaneously inform the EEOC of same. However, this shall not apply to any
18 situation involving a land sale or a restructure of business if the same owners are
19 involved.

20
21 **B. Notice**

22 During the term of this Consent Decree, Trans Bay and its successors shall
23 assure that each of its officers, managers and supervisors is aware of any term(s) of
24 this Decree which may be related to his/her job duties.

25 Unless otherwise stated, all notices, reports and correspondence required
26 under this Decree shall be delivered to the attention of the Regional Attorney, Anna
27 Y. Park, U.S. Equal Employment Opportunity Commission, Los Angeles District
28 Office, 255 East Temple Street, 4th Floor, Los Angeles, CA 90012.

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1 Each party shall bear its own costs of suit and attorneys' fees. Trans Bay shall
2 bear all costs associated with its administration and implementation of its
3 obligations under this Consent Decree.

4 D. Counterparts and Facsimile Signatures

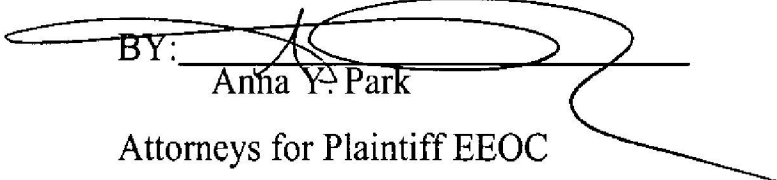
5 This Decree may be signed in counterparts. A facsimile signature shall have
6 the same force and effect of an original signature or copy thereof.

7 The parties agree to entry of this Decree and judgment subject to final
8 approval by the Court. All parties, through the undersigned, respectfully apply for
9 and consent to the entry of this Consent Decree as an Order of this Court.

12 Dated: December 8, 2006

Respectfully Submitted,

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

14 BY: 
15 Anna Y. Park

16 Attorneys for Plaintiff EEOC

18 Dated: December __, 2006

DOUGLAS N. SMITH, INC.

20 BY: _____
21 Douglas N. Smith

22 Attorneys for Defendants Trans Bay Steel
Corporation

23 Date: December __, 2006

Trans Bay Steel Inc.

26 By: _____

27 William Kavicky

28 President of Trans Bay Steel, Inc.

1 C. Costs and Attorneys' Fees

2 Each party shall bear its own costs of suit and attorneys' fees. Trans Bay
3 shall bear all costs associated with its administration and implementation of its
4 obligations under this Consent Decree.

5 D. Counterparts and Facsimile Signatures

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7 the same force and effect of an original signature or copy thereof.

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13 Dated: December __, 2006

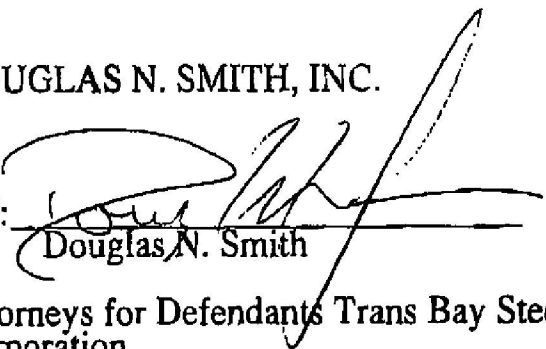
Respectfully Submitted,
U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

16 BY: _____
Anna Y. Park

17 Attorneys for Plaintiff EEOC

19 Dated: December 6, 2006

DOUGLAS N. SMITH, INC.

21 BY: 
Douglas N. Smith

23 Attorneys for Defendants Trans Bay Steel
Corporation

24 Date: December 6, 2006

Trans Bay Steel Inc.

27 By: _____
28 William Kavicky

Douglas N Smith I
TRANSBAY STEEL

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Dated: December __, 2006

Respectfully Submitted,

U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

BY:

Anna Y. Park

Attorneys for Plaintiff EEOC
DOUGLAS N. SMITH, INC.

Dated: December 6, 2006

BY:

Douglas N Smith

Attorneys for Defendants Trans Bay Steel
Corporation

Date: December 6, 2006

Trans Bay Steel Inc.

By:

William Kavicky

President of Trans Bay Steel, Inc.

ORDER OF THE COURT

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GOOD CAUSE APPEARING, The Court hereby retains jurisdiction and the provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is fair and adequate.

IT IS SO ORDERED.

Date: December 8, 2006

Christina A. Lynch

U.S. District Court Judge