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11-26-2008

## EEOC v. Kovacevich "5" Farms

Judge Oliver W. Wanger

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## EEOC v. Kovacevich "5" Farms

### Keywords

EEOC, Kovacevich "5" Farms, CV-06 00165 OWW TAG, Consent Decree, Disparate Treatment, Hiring, Sex, Female, Other, Employment Law, Title VII

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**CONSENT DECREE**  
**CV-06-00165 OWW TAG**

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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

**EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,**

**Plaintiff,**

**and**

**DELIA CASAS, MYRIAM CAZARES,  
MIRIAM DELGADO, PATRICIA  
DELGADO, FLOR RIVERA and  
TERRI SALCIDO,**

**Plaintiff Intervenors**

**v.**

**KOVACEVICH "5" FARMS, A  
Partnership,**

**Defendant.**

**CIV. NO. CV-06 00165 OWW TAG**

**CONSENT DECREE**

Plaintiff U.S. Equal Employment Opportunity Commission ("Commission" or "EEOC") brought this lawsuit under Title VII of the Civil Rights Act of 1964 ("Title VII") and Title I of the Civil Rights Act of 1991, to correct alleged unlawful employment practices on the basis of sex (female) and to make whole Patricia Delgado, Myriam Cazarez, Flor Rivera, Miriam Delgado, Terry Salcido, Delia Casas, and a class of rejected female farm workers and deterred female farm workers who were allegedly denied employment during the period and who were allegedly aggrieved by the alleged unlawful practices. Plaintiff EEOC alleged that defendant KOVACEVICH "5" FARMS, a partnership (hereinafter "K-5" or "Defendant") unlawfully failed to hire Patricia Delgado, Myriam Cazarez, Flor Rivera, Miriam Delgado, Terry Salcido, Delia Casas, and a class of rejected female farm workers and deterred female farm workers because of their sex. Each of the named individuals intervened alleging claims of discrimination based on sex (female) under Title VII, the California

1 Fair Employment and Housing Act (FEHA) and other California laws. Plaintiff Intervenors filed a  
2 motion for class certification pursuant to FRCP Rule 23(a) and (b)(2) to represent a class of rejected  
3 female farm workers and deterred female farm workers who were denied employment during the  
4 period in violation of Title VII and FEHA. The Court deferred ruling on said motion which is still  
5 pending before the Court. Defendant denied all the allegations.  
6

7 In the interest of resolving this matter and as a result of having engaged in comprehensive  
8 settlement negotiations, the Commission, Plaintiff Intervenors Patricia Delgado, Myriam Cazarez,  
9 Flor Rivera, Miriam Delgado, Terry Salcido, and Delia Casas, and Defendant (hereinafter referred to  
10 as “the Parties”) have agreed that the above-captioned lawsuit (the “Lawsuit”) should be fully and  
11 finally resolved by entry of this stipulated Consent Decree. This Consent Decree shall not constitute  
12 an adjudication and/or a finding on the merits of the Lawsuit.  
13

14 This Consent Decree resolves all claims arising out of EEOC Charge Nos. 375-2004-00158;  
15 375-2004-00159; 375-2004-00160; 375-2004-00161; 375-2004-00162; 375-2004-00163 and the  
16 complaint filed in the Lawsuit, and constitutes a complete resolution of all claims of discrimination  
17 based on sex (female) under Title VII that were made or could have been made by the Commission  
18 in this Lawsuit. This also constitutes a complete resolution of all claims of discrimination based on  
19 sex (female) under Title VII, FEHA or any other state law claims that were made or could have been  
20 made by the Plaintiff Intervenors, who were represented by counsel, in this Lawsuit. This Consent  
21 Decree does not, however, resolve any future charges or charges that may be pending with the  
22 EEOC other than the charges and complaint specifically referenced in this paragraph.  
23

24 This Consent Decree comprises the full and exclusive agreement of the Parties with respect  
25 to the matters discussed herein. No waiver, modification or amendment of any provision of this  
26 Consent Decree shall be effective unless made in writing and approved by all the Parties to this  
27 Decree, and any substantive change, modification or amendment of any provision of this Consent  
28

1 Decree shall also require approval by the Court.

2 The Court has reviewed this Consent Decree in light of the pleadings, the record herein, and  
3 now approves this Consent Decree. THEREFORE, IT IS ORDERED, ADJUDGED AND  
4 DECREED:

5 **I. GENERAL PROVISIONS**

6 1. This Court has jurisdiction over the subject matter and the Parties to this Lawsuit. This Court  
7 will retain jurisdiction over this Decree for all purposes until the expiration of Defendant's  
8 obligations as set forth herein

9 2. This Consent Decree is final and binding upon the Parties, their successors and assigns.

10 3. The Commission and Defendant will each bear their own costs and attorney fees in this  
11 action.  
12

13 **II. NON-ADMISSION OF LIABILITY**

14 Nothing in this Agreement shall be interpreted or construed as an admission of liability by  
15 Defendant. Defendant specifically denies all of the Commission's and Plaintiffs'/Intervenors'  
16 allegations, and denies that it is liable in any amount, under any theory.  
17

18 **III. GENERAL INJUNCTIVE RELIEF: NON-DISCRIMINATION AND NON-**  
19 **RETALIATION**

20 4. **Sex Discrimination**: Consistent with Section 703 of Title VII, 42 U.S.C. §2000e-2, K-5, and  
21 its officers, agents, managers (including supervisory employees), successors and assigns, are  
22 enjoined from: (a) discriminating against persons on the basis of sex in the hiring and/or terms and  
23 conditions of employment; (b) engaging in or being a party to any action, policy or practice that is  
24 intended to, or is known to them, to have the effect of deterring any applicant or denying hire to any  
25 applicant on the basis of sex; or (c) creating, facilitating or permitting, to the extent known to them,  
26 the existence of discriminatory hiring practices based on sex.  
27  
28

1 5. **Retaliation:** Consistent with Section 704 of Title VII, 42 USC § 2000e-3, Defendant, its  
2 officers, agents, managers (including supervisory employees), successors and assigns, are enjoined  
3 from engaging in, implementing or permitting any action, policy or practice with the purpose of  
4 retaliating against any current or former employee of K-5 because he or she has in the past, or during  
5 the term of this Consent Decree (a) opposed any practice of harassment or other discriminatory acts  
6 on the basis of sex made unlawful under Title VII; (b) filed a Charge of Discrimination alleging any  
7 such practice; (c) testified or participated in any manner in any investigation (including, without  
8 limitation, any internal investigation undertaken by Defendant), proceeding or hearing in connection  
9 with this Lawsuit; (d) was identified as a possible witness in this Lawsuit; (e) asserted any rights  
10 under this Consent Decree; or (f) sought and/or received any monetary or non-monetary relief in  
11 accordance with this Consent Decree.  
12

13 **III. MONETARY RELIEF**

14 6. K-5 shall pay the total sum of \$1,680,000.00 (one million, six hundred and eighty thousand  
15 Dollars and No Cents) (the "Settlement Payment"). This amount is the full and complete amount K-  
16 5 shall pay, and includes attorney fees and all damages to Patricia Delgado, Myriam Cazarez, Flor  
17 Rivera, Miriam Delgado, Terry Salcido, Delia Casas, and a class of rejected female farm workers  
18 and deterred female farm workers who were denied employment during the period and who were  
19 aggrieved by the alleged unlawful practices, and any other costs and expenses.  
20

21 a. K-5 shall report the Settlement Payment to Patricia Delgado, Myriam Cazarez,  
22 Flor Rivera, Miriam Delgado, Terry Salcido, Delia Casas by issuance of IRS  
23 Form 1099 as specified by the Commission;  
24

25 b. K-5 shall pay the Settlement Payment as follows:

26 On February 10, 2009, Defendant shall pay \$400,000;

27 On February 10, 2010, Defendant shall pay \$400,000;  
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On February 10, 2011, Defendant shall pay \$400,000;

On February 10, 2012, Defendant shall pay \$480,000;

- c. On each due date, K-5 will mail a check for the scheduled amount made payable to Gilardi & Co., LLC at 3301 Kurner Avenue, San Rafael, CA 94901. K-5 will mail a copy of the check to Evangelina Fierro Hernandez, Senior Trial Attorney, c/o Equal Employment Opportunity Commission, 350 The Embarcadero, Suite 500, San Francisco, CA 94105-1260 and Marcos Camacho at Law Offices of MARCOS CAMACHO, P.O. Box 9009, Bakersfield, CA 93389 9009.
- d. K-5 will not pay any interest.

7. **Identified and Unidentified Class Members**

- a. ***Settlement Fund Amount:*** The sums deposited with Gilardi & Co., LLC (“Settlement Fund”) will be distributed to all “Eligible Claimants” (as that term is defined below) in accordance with the provisions of this Consent Decree.
- b. ***Costs:*** K-5 shall not be responsible for any costs incurred in maintaining the Settlement Fund Account.
- c. K-5 shall not be responsible for any costs incurred in locating and assisting Eligible Claimants with the claims process.
- d. ***Eligible Claimants Definition:*** The Settlement Fund shall be used to make payments to persons whom the Commission determines to be eligible to receive monetary relief in this lawsuit.
- e. ***Notification of Settlement/Claims Process:*** Notification of this Settlement, Claims Process, and Consent Decree (hereinafter referred to as “notification”)



1 shall be made in the following manner: K-5 shall post notice on the K-5  
2 premises specifically on the portable toilets in the vineyard, regarding the  
3 availability of the Settlement Fund for no less than 30 (thirty days). The  
4 notice is attached as Exhibit A to this decree.

5  
6 f. Attorney Fees: Upon receipt of monies from K-5, Gilardi & Co., LLC will  
7 also distribute a specific amount of monies to Marcos Camacho at Law  
8 Offices of MARCOS CAMACHO, P.O. Box 9009, Bakersfield, CA 93389-  
9 9009 for attorney fees and costs.

10 (i.) The amount will be specified by an agreement between the  
11 Commission and Marcos Camacho and communicated to Gilardi & Co., LLC  
12 20 days after the entry of this decree.

13 (ii.) The amounts received by Marcos Camacho will be in full satisfaction  
14 of attorney fees and costs due to him and his co-counsel, Tomas Olmos of  
15 Allred, Maroko & Goldberg.

16 (iii.) In the event that Plaintiff and Plaintiff Intervenors cannot agree, the  
17 EEOC will move for the Court's assistance in this matter, and the Court will  
18 determine the amount to be distributed to Marcos Camacho.

19 (iv.) The Court's decision will be final and binding on all parties.  
20

21  
22 **IV. SPECIFIC INJUNCTIVE RELIEF**

23 **8. Zero-Tolerance**

24 K-5 affirms the following "Statement of Zero-Tolerance Policy and Equality Objectives":  
25 K-5 is firmly committed to maintaining a zero-tolerance policy concerning discriminatory  
26 hiring, recruiting, harassment and retaliation against individuals who report discrimination in  
27 K-5's workplace; to swiftly and firmly responding to any acts of discrimination or retaliation  
28

1 of which K-5 becomes aware; to imposing appropriate discipline designed to strongly deter  
2 future acts of discrimination or retaliation; and to actively monitor its workplace in order to  
3 ensure tolerance, respect and dignity for all employees.

4 This paragraph does not create any individual contractual or common law causes of action or  
5 other rights that would not otherwise exist under statute.

6  
7 9. **EEO and Anti-Discrimination Policies**

8 a. K-5 shall revise its EEO & hiring policies, within sixty (60) days of signing  
9 the Consent Decree, such that the policies: (i) include definitions of  
10 discriminatory treatment, with specific reference to hiring based on sex; (ii)  
11 include examples to supplement the definitions of disparate treatment based  
12 on sex; (iii) provide for appropriate discipline and/or corrective action for  
13 incidents of failing to hire based on the applicant's sex designed to deter  
14 future acts of discrimination; (iv) include strong non-retaliation language with  
15 examples to supplement the definition of retaliation; (v) provide for  
16 appropriate discipline for incidents of retaliation designed to deter future acts  
17 of retaliation; (vi) provide that complaints of discrimination and/or retaliation  
18 will be accepted irrespective of whether they are made verbally or in writing;  
19 (vii) provide a reasonable timetable for commencing an investigation after a  
20 complaint is made or received and for appropriate remedial action, if  
21 warranted, to be taken upon conclusion of an investigation; and (viii) indicate  
22 that, promptly upon the conclusion of the investigation of a complaint, K-5  
23 will communicate to the complaining party the results of the investigation and  
24 the remedial actions taken or proposed, if any.

25  
26  
27 b. K-5 shall effectively disseminate its revised policies and procedures required  
28

1 by the preceding paragraph a. by:

- 2 i. Distributing copies of the policy to all current employees within 30  
3 days of the entry of this Consent Decree;  
4 ii. Giving a copy of the policy to all new employees at all locations upon  
5 the employees' hire.

- 6  
7 c. K-5 will submit a copy of the revised EEO and hiring policies to EEOC at the  
8 same time it submits the report on the completion of training as described  
9 below.

10 10. **Complaint Procedure.**

- 11 a. K-5 shall develop or reaffirm a complaint procedure in English and Spanish  
12 designed to encourage employees and applicants to come forward with  
13 complaints about violations of its discrimination policy. As part of the policy,  
14 K-5 shall provide its employees and applicants with convenient, confidential  
15 and reliable mechanisms for reporting incidents of discrimination and  
16 retaliation. Said policy shall be continuously posted in a prominent place in  
17 the vineyard.  
18  
19 b. K-5 will submit a copy of the complaint procedures to the EEOC twenty (20)  
20 days before the completion of training as required below.  
21  
22 c. Within one hundred eighty (180) days after entry of this Decree, K-5 will mail  
23 to counsel for the Commission a report containing the following information  
24 and documentation:  
25 i. Copies of all complaints received in the last six months that are related  
26 to any claim that K-5 failed to hire the complainant because of her sex, and a  
27 statement regarding the result of the investigation of each such complaint.  
28

1 Additionally, the Company will provide the name, address and telephone  
2 number of the complainant and name the person who received the complaint.

3 A copy of all records, documents and other writings relevant to such  
4 complaints and investigations shall be maintained by the Company during the  
5 period of the Consent Decree and will be made available to the Commission  
6 within ten (10) days following a written request from the Commission.  
7

8 ii. Beginning on June 1, 2009, on the first day of January and June of  
9 each year during the duration of this Consent Decree, the Company will mail  
10 to counsel for the Commission a report containing the documentation and  
11 information specified in the preceding paragraph 10.(c).(i.)

12 11. **Posting.**

13 The attached Notice of Settlement, in English and Spanish, shall be, and remain, posted on  
14 the portable toilets located in the vineyards for thirty (30) days.  
15

16 12. **Training of Employees.**

17 K-5 shall require all current and new employees to attend an anti-discrimination training  
18 session provided by K-5 at the start of every harvest season throughout the duration of this Consent  
19 Decree. The purpose of said training shall be to give participants an understanding of discrimination  
20 issues, particularly sex discrimination, including but not limited to what constitutes discrimination  
21 based on gender including the failure to hire women, sources of legal protection for discrimination  
22 victims, the employees' obligation to report sex discrimination, the employer's obligation to take  
23 preventive, investigative and remedial action with respect to discrimination complaints, and a review  
24 of company policies (including discipline policies) and practices related to discrimination and  
25 retaliation. The training shall be in English and Spanish.  
26

27 13. **Training Logistics.**

1 The content and method of training and the size of training classes is subject to approval by  
2 the Commission which approval shall not be unreasonably withheld and which shall take into  
3 consideration K-5's operational needs. K-5 agrees to provide a description of each training program  
4 to counsel for the Commission no later than twenty (20) days before the training programs are  
5 scheduled to be held.

6  
7 14. **Acknowledgment of Training Attendance.**

8 All persons attending mandatory anti-discrimination training pursuant to this Consent Decree  
9 shall sign an acknowledgment of their attendance at the training, the date thereof, and their position  
10 with K-5. K-5 shall retain the originals of these acknowledgments and provide the EEOC with a  
11 copy within 30 days of training.

12 15. **Reports to the Commission**

13 ***Training Report:***

14 Within thirty (30) days of completion of the training required by this Consent Decree, K-5  
15 will send the EEOC verification of its completion of discrimination/harassment training for its  
16 employees.  
17

18 16. **Policies Designed to Promote Supervisor Accountability: Communication of Potential**  
19 **Discipline for Engaging in Sex Discrimination and/or Retaliation.**

20 K-5 agrees that it shall impose appropriate discipline, up to and including termination,  
21 suspension without pay or demotion, upon any supervisor or manager who engages in sex  
22 discrimination or retaliation or knowingly permits any such conduct to occur in his or her work area  
23 or among employees under his or her supervision, or who retaliates against any person who  
24 complains or participates in any investigation or proceeding concerning such conduct. K-5 shall  
25 communicate this policy to all of its supervisors and managers.  
26

27 //  
28

1 **17. Hiring Goals for Females**

2 During the term of this Decree, Defendant shall set goals for the hiring of females in all  
3 available positions during the harvest season. In addition, Defendant will make all reasonable effort  
4 to promote the hiring of females in all non-harvest activities based upon applications made by  
5 female employees during all other seasons.  
6

7 a. K-5 is required to make all reasonable efforts to ensure that females comprise  
8 at least one-third of the workforce over the course of the harvest season. The  
9 harvest season is approximately July through November of each year.

10 b. Defendant is required to make all reasonable efforts to promote the hiring of  
11 females in all non-harvest activities based upon applications made by female  
12 employees during non-harvest seasons.

13 c. ***Hiring Report:***

14 For each quarter during the duration of the Consent Decree, K-5 will send the  
15 EEOC verification of the above hiring goals. The report shall include the total  
16 number of applicants by gender and the total number of hires by gender.  
17

18 **V. RETENTION OF JURISDICTION AND EXPIRATION OF CONSENT DECREE**

19 a. This Consent Decree shall terminate five (5) years from the date of its entry  
20 by the Court, unless the Commission petitions this Court for an extension of  
21 the Decree because of non-compliance by K-5. If the Commission determines  
22 that K-5 has not complied with the Consent Decree, the Commission will  
23 provide written notification of the alleged breach to K-5 and will not petition  
24 the Court for enforcement sooner than thirty (30) days after providing written  
25 notification. The thirty-day period following written notice shall be used by  
26 the parties for good faith efforts to resolve the issue. If the Commission  
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petitions the Court and the Court finds K-5 to be in substantial violation of the terms of the Decree, the Court may extend this Consent Decree

b. Except as provided in the preceding paragraph, five (5) years after the entry of this Consent Decree, this lawsuit will be dismissed with prejudice, provided that K-5 has complied substantially with the terms of this Consent Decree. K-5 will be deemed to have complied substantially if the Court has not made any findings or orders during the term of the Decree that K-5 has failed to comply with any of the terms of this Decree. This Consent Decree will automatically expire without further Court Order.

For Plaintiff EEOC:

For Defendant K-5:

Dated: December 1, 2008

Dated: December 1, 2008

/s/ William T. Tamayo

/s/ Ronald H. Barsamian

**WILLIAM R. TAMAYO**  
Regional Attorney

**RONALD H. BARSAMIAN**  
Barsamian & Moody

For Plaintiff-Intervenors

Dated: December 1, 2008

Dated: December 1, 2008

/s/ David F. Offen-Brown

/s/ Marcos Camacho

**DAVID F. OFFEN-BROWN**  
Supervisory Trial Attorney

**MARCOS CAMACHO**  
Law Offices of Marcos Camacho

Dated: December 1, 2008

Dated: December 1, 2008

/s/ Evangelina Fierro Hernandez

/s/ Thomas Olmos

**EVANGELINA FIERRO HERNANDEZ**  
Senior Trial Attorney

**THOMAS OLMOS**  
Allred, Maroko & Goldberg

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IT IS SO ORDERED:

Dated: November 26, 2008

/s/ OLIVER W. WANGER  
Oliver W. Wanger  
United States District Court Judge