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US Equal Employment Opportunity Commission v. Clougherty Packing Company d/b/a Farmer John and Does 1-10, inclusive

Judge Gary A. Feess

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US Equal Employment Opportunity Commission v. Clougherty Packing Company d/b/a Farmer John and Does 1-10, inclusive

Keywords

EEOC, Clougherty Packing Company, Farmer John and Does, CV 04-8051 GAF (PLAx), Consent Decree, Disparate Treatment, Hiring, Race, Black, Employment Law, Title VII

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CLERK, U.S. DISTRICT COURT
OCT 17 2005
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

ENTERED
CLERK, U.S. DISTRICT COURT
OCT 19 2005
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

BY v.

CLOUGHERTY PACKING
COMPANY d/b/a FARMER JOHN
AND DOES 1-10, inclusive,

Defendants.

CASE NO. CV 04-8051 GAF (PLAx)

~~PROPOSED~~ CONSENT
DECREE; ORDER

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d)

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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
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I.

INTRODUCTION

Plaintiff U.S. Equal Employment Opportunity Commission ("EEOC" or "Commission") and Defendant Clougherty Packing Company, d/b/a Farmer John, ("Farmer John ") hereby stipulate and agree to entry of this Consent Decree to resolve the Commission's Complaint (the "Complaint"), filed under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* ("Title VII"). This Consent Decree resolves all issues raised by the EEOC in the present lawsuit involving the Charging Party, Donnie Gaut, ("Charging Party") and the additional Claimants, including Chris Allen, Gilbert Dawson, Kenneth Dawson, Dawed Seid, Robin Griggs, and Samuel White, (the "other Claimants"). (The "Claimants" refers to both Charging Party and the other Claimants unless otherwise specified).

II.

PURPOSES AND SCOPE OF THE CONSENT DECREE

A. The parties to this Consent Decree ("Decree") are EEOC and Farmer John. The scope of this Decree includes Farmer John's operations at its Los Angeles, California facility. This Decree shall be binding on and enforceable against Farmer John and its officers, directors, agents, successors and assigns, and against the Commission for the effective period of the Decree as noted in section V.

- B. The parties have entered into this Decree for the following purposes:
1. To provide relief agreed upon through settlement for the Claimants;
 2. To ensure that Farmer John's employment practices to comply with federal law;
 3. To avoid expensive and protracted costs incident to litigation; and,
 4. To provide a final and binding settlement upon the parties as to all claims alleged by the Commission in the Complaint filed in this action.

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III.

RELEASE OF CLAIMS

A. This Decree fully and completely resolves all issues, claims, and allegations made by the EEOC against Farmer John that are raised in the Complaint filed in this action in the United States District Court, Central District of California on September 28, 2004, captioned U.S. Equal Employment Opportunity Commission v. Clougherty Packing Company d/b/a Farmer John and DOES 1 to 10, Inclusive, Case No. CV 04-8051 GAF (PLAx).

B. Nothing in this Decree shall be construed to preclude either party from bringing suit to enforce this Decree in the event that any party hereto fails to perform the promises and representations contained herein.

C. Nothing in this Decree shall be construed to limit or reduce Farmer John's obligation to comply fully with Title VII or any other federal employment statute.

D. This Decree in no way affects the EEOC's right to bring, process, investigate, or litigate other charges that may be in existence or may later arise against Farmer John in accordance with standard EEOC procedures.

E. The existence of this Consent Decree or settlement of the claims in the Commission's Complaint, in general, may not be construed in any way as an admission of any liability on Farmer John's part.

IV.

JURISDICTION

A. The Court has jurisdiction over the parties and the subject matter of this lawsuit pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1345, 1367 and 42 U.S.C. § 2000e-5(f). The Complaint asserts claims that, if proven, would authorize the Court to grant the equitable relief set forth in this Decree. The terms and provisions of this Decree are fair, reasonable, and just. This Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights or privileges of any

1 person. The entry of this Decree will further the objectives of Title VII and will be in
2 the best interests of Farmer John, the Commission, and those for whom the
3 Commission alleges relief is appropriate (the Claimants).

4 B. The Court shall retain jurisdiction of this action during the duration of the
5 Decree for the purposes of entering all orders, judgments and decrees that may be
6 necessary to implement the relief provided herein.

7 V.

8 **EFFECTIVE DATE AND DURATION OF DECREE**

9 A. The provisions and agreements contained herein are effective
10 immediately upon the date which this Decree is entered by the Court ("the Effective
11 Date").

12 B. The duration of this Consent Decree shall be four years from the date of
13 the Effective Date.

14 VI.

15 **MODIFICATION AND SEVERABILITY**

16 A. This Decree constitutes the parties' complete understanding with respect
17 to the matters contained herein. By the parties' mutual agreement, this Decree may be
18 amended or modified in the interests of justice and fairness in order to effectuate the
19 provisions of the Decree. No waiver, modification, or amendment of any provision
20 of this Decree will be effective unless made in writing and signed by an authorized
21 representative of each of the parties.

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

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VII.

COMPLIANCE AND DISPUTE RESOLUTION

A. The parties expressly agree that if the Commission has a reason to believe that Farmer John has failed to comply with any provision of this Consent Decree, the Commission may file a motion before this Court to enforce the Decree. Prior to initiating such action, the Commission will notify Farmer John and its legal counsel of record, in writing, of the nature of the dispute. This notice shall specify the particular provision(s) that the Commission believes has/have potentially been breached. Absent a showing by either party that the delay will cause irreparable harm, Farmer John shall have thirty (30) days to attempt to resolve or cure the breach in a manner satisfactory to both parties.

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

C. After thirty days have passed with no resolution or agreement to extend the time further, the Commission may petition this Court for resolution of the dispute, seeking all available relief, including an extension of the term of the Decree for such period of time as Farmer John is shown to be in breach of the Decree and the Commission's costs incurred in securing compliance with the Decree.

VIII.

MONETARY RELIEF

Farmer John, in settlement of this dispute, shall pay to the Charging Party and the Claimants the following amounts as provided herein.

A. Farmer John shall pay a total of \$ 110,000.00 as alleged damages to the Claimants. Within ten business days after the Effective Date, Farmer John shall mail to the Commission at the address listed above, via certified mail, checks payable to the Claimants and to be apportioned in the following manner:

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1	1.	Donnie Gaut	\$50,000
2	2.	Chris Allen	\$10,000
3	3.	Gilbert Dawson	\$10,000
4	4.	Kenneth Dawson	\$10,000
5	5.	Dawed Seid	\$10,000
6	6.	Robin Griggs	\$10,000
7	7.	Samuel White	\$10,000

8

9 B. As the parties agree that the \$110,000.00 total payment represents
 10 compensatory damages under Title VII, Farmer John is not required to make any
 11 employer contributions, except that it must issue 1099 forms or the equivalent as
 12 required by law for the payment made to each Claimant. These Form 1099s will also
 13 be distributed to the Commission upon issuance.

14 C. A copy of the checks and accompanying transmittal papers shall be
 15 contemporaneously forwarded to the EEOC. The EEOC shall provide Farmer John
 16 with valid addresses for each Claimant to allow Farmer John to transmit the checks
 17 and Form 1099s accurately. There shall be no recourse against Farmer John if any
 18 check or Form 1099 is not received by any Claimant as a result of the EEOC providing
 19 an invalid address. If such a situation should occur, Farmer John will forward the
 20 document (check or Form 1099) to the EEOC for service upon the Claimant at issue.

21 IX.

22 GENERAL INJUNCTIVE RELIEF

23 A. Posting

24 Within ten business days after the Effective Date and throughout the term of this
 25 Decree, Farmer John shall post notice (attached as Exhibit "A") of the terms of this
 26 Decree in at least one clearly visible locations frequented by employees at the location
 27 covered by this Decree. This posting shall remain in place for two years from this
 28 Decree's Effective Date.

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B. Training

On at least two separate occasions during the Decree's effective period, all of Farmer John's managerial employees shall be required to attend an intensive training program of at least three hours with regard to compliance under Title VII. The training shall be mandatory. All such training shall include coverage of the subjects of equal employment opportunity rights and responsibilities, including but not limited to Title VII's prohibitions against discrimination.

X.

RECORD KEEPING AND REPORTING

A. Record Keeping

Farmer John shall (1) submit annual EEO-1 reports pursuant to applicable law, (2) shall maintain supporting documentation as required by applicable law, and (3) shall maintain employment applications and resumes as required by applicable law.

B. Audit Report

Within sixty calendar days after each annual anniversary date of the Effective Date, Farmer John shall conduct an annual audit of the previous twelve-month period (the "Audit Period") and submit a written report (the "Audit Report") to the EEOC stating the total number of persons identified by race who were hired at the location covered by this Decree during the Audit Period.

In addition to the Audit Report to the EEOC specified above, Farmer John shall provide a list providing the names for all those who attended any training sessions described in section IX(B) to the EEOC in writing, by mail or facsimile, if any such training sessions took place during the applicable twelve-month period.

XI.

**COSTS OF ADMINISTRATION AND IMPLEMENTATION
OF CONSENT DECREE**

Farmer John shall bear all costs associated with its administration and implementation of its obligations under this Consent Decree.

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XII.

COSTS AND ATTORNEYS' FEES

Each party shall bear its own costs of suit and attorneys' fees.

XIII.

MISCELLANEOUS PROVISIONS

A. During the term of this Consent Decree, Farmer John shall provide any potential successor-in-interest with a copy of this Decree within a reasonable time of not less than thirty days prior to the execution of any agreement for acquisition or assumption of control of any or all of Farmer John's operations, or any other material change in corporate structure, and shall simultaneously inform the EEOC of same.

B. During the term of this Decree, Farmer John and its successors shall assure that each of its officers, managers, and supervisors is aware of any term in this Decree which is related to his/her job duties.

C. The parties agree to entry of this Decree and judgment subject to final approval by the Court.

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Anna Y. Park
Peter F. Laura

Date: 13 October 05

By: Anna Y. Park by S. Padgett
Anna Y. Park
Attorneys for Plaintiff

BERENS & TATE, P.C.
Kelvin C. Berens
Rachel K. Alexander

Date: October 13, 2005

By: Rachel Alexander
Rachel K. Alexander
Attorneys for Defendant

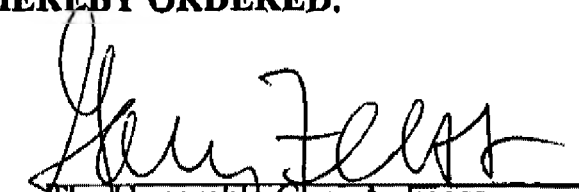
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[PROPOSED] ORDER

The provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is **HEREBY ORDERED.**

Date: 10/17/05


The Honorable Gary A. Fees
United States District Judge

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Exhibit A

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EXHIBIT "A"

SCANNED

NOTICE TO ALL EMPLOYEES

This Notice is being posted pursuant to a Consent Decree voluntarily entered into by Clougherty Packing Company, d/b/a Farmer John, ("Farmer John") and the Equal Employment Opportunity Commission ("EEOC") and approved by the United States District Court for the Central District of California.

The EEOC has alleged that Farmer John failed to hire African-American applicants because of their race in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). Farmer John denies the allegations.

To resolve the lawsuit in lieu of expending further resources, the parties have entered into a Consent Decree which requires, among other things, that Farmer John:

- 1) provide periodic reports to the EEOC regarding hiring; and
- 2) provide training to its managerial employees regarding discrimination law.

The EEOC enforces the federal laws against discrimination in employment on the basis of disability, race, color, religion, national origin, sex, pregnancy, and age. If you believe you have been discriminated against, you may contact the EEOC at 255 E. Temple Street, 4th Floor, Los Angeles, CA; (213) 894-1000; or the California Department of Fair Employment and Housing (DFEH) at (213) 439-6799. The EEOC charges no fees and has employees who speak languages other than English.

No action may be taken against you by any management official of Farmer John for: (1) opposing practices made unlawful by federal law, (2) filing a charge or assisting or participating in the filing of a charge of discrimination, or (3) assisting or participating in an investigation brought under Title VII. Should any such retaliatory actions be taken against you, you may contact the EEOC or the DFEH at the address listed above.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for two (2) years from the date below and must not be altered, defaced, or covered by any other material.

Date: _____

U.S. District Judge