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EEOC v. Grimmway Enterprises, Inc., d/b/a Grimmway Farms; Esparza Enterprises, Inc.

Judge Lawrence Joseph O'Neill

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EEOC v. Grimmway Enterprises, Inc., d/b/a Grimmway Farms; Esparza Enterprises, Inc.

Keywords

EEOC, Grimmway Enterprises, Inc., d/b/a Grimmway Farms; Esparza Enterprises, Inc., CV-06-00561 LJO DLB, Consent Decree, Disparate Treatment, Retaliation, Sexual Harassment, Sex, Retail, Employment Law, Title VII

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15 Attorneys for Esparza Enterprises, Inc.

17 UNITED STATES DISTRICT COURT
18 EASTERN DISTRICT OF CALIFORNIA - FRESNO
19

20 EQUAL EMPLOYMENT
21 OPPORTUNITY COMMISSION,

21 *Plaintiff,*

22 v.

23 GRIMMWAY ENTERPRISES, INC.
24 d/b/a GRIMMWAY FARMS;
25 ESPARZA ENTERPRISES, INC.

25 *Defendants.*

CIVIL ACTION NO. 06 - 00561 LJO DLB

[PROPOSED] CONSENT DECREE

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CONSENT DECREE
CV-06 - 00561 LJO DLB

FILED

NOV 9 2007

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____

DEPUTY CLERK

1 Plaintiff U.S. Equal Employment Opportunity Commission ("Commission" or "EEOC")
2 brought this lawsuit under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights
3 Act of 1991, to correct alleged unlawful employment practices on the basis of sex (female) and to
4 provide appropriate relief to Charging Party Ana-Berta Rubio and other similarly situated female
5 employees who were adversely affected by such practices.
6

7 In the interest of resolving this matter the Commission, and Defendants Esparza Enterprises
8 Inc., and Grimmway Enterprises Inc., (hereinafter referred to as "the Parties") have agreed that the
9 above-captioned lawsuit (the "Lawsuit") should be finally resolved by entry of this Consent Decree.

10 This Consent Decree, being entered into with the consent of the EEOC, Grimmway Farms
11 and Esparza Enterprises, shall not constitute an adjudication and/or a finding on the merits of the
12 lawsuit and shall not be construed as an admission of liability by either Grimmway Farms or Esparza
13 Enterprises.
14

15 This Consent Decree resolves all claims arising out of EEOC Charge Nos. 375-2005-00068
16 (Ana Berta Rubio vs. Grimmway Farms) and 375-2005-00416 (Ana Berta Rubio vs. Esparza
17 Enterprises, Inc.) and the Complaint in this Lawsuit, and constitutes a complete resolution of all
18 claims of discrimination under Title VII that were made or could have been made by the
19 Commission based on these charges. This Consent Decree does not, however, resolve any future
20 charges or charges that may be pending with the EEOC other than the charges and Complaint
21 specifically referenced in this paragraph.
22

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

1 The Court has reviewed this Consent Decree in light of the pleadings, the record herein, and
2 now approves this Consent Decree.

3 THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

4 I. GENERAL PROVISIONS

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

9 This Consent Decree is final and binding upon the Parties, their agents, successors and assigns.
10 The Parties will each bear their own costs and attorney fees in this action.

11
12 II. GENERAL INJUNCTIVE RELIEF

13 Sex Discrimination: Consistent with Section 703 of Title VII, 42 U.S.C. §2000e-2, Defendants
14 and their officers, agents, managers (including supervisory employees), successors and assigns, are
15 prohibited from discriminating against persons on the basis of sex by creating, allowing or otherwise
16 supporting sexual harassment in their workforce.

17 Retaliation: Consistent with Section 704 of Title VII, 42 USC § 2000e-3, Defendants, their
18 officers, agents, managers (including supervisory employees), successors and assigns, are prohibited
19 from engaging in, implementing or permitting any action, policy or practice with the purpose of
20 retaliating against any current or former employee because he or she has in the past, or during the
21 term of this Consent Decree (a) opposed any practice of harassment or other discriminatory acts on
22 the basis of sex made unlawful under Title VII; (b) filed a Charge of Discrimination alleging any
23 such practice; (c) testified or participated in any manner in any investigation (including, without
24 limitation, any internal investigation undertaken by Defendant), proceeding or hearing in connection
25 with this Lawsuit; (d) was identified as a possible witness in this Lawsuit; or (e) asserted any rights
26 under this Consent Decree.
27
28

1 **III. MONETARY RELIEF**

2 Defendants shall pay the total sum of \$175,00.00 (One Hundred and Seventy Five Thousand
3 Dollars and No Cents) (the "Settlement Payment") as damages to Ana Berta Rubio. Each Defendant
4 shall be jointly and separately responsible for payment of the total sum; Defendants shall determine
5 between themselves the amount to be paid by each Defendant.
6

7 a. Defendants shall report the Settlement Payment by issuance of IRS Form 1099 .

8 b. Pursuant to the term of the separate settlement agreement entered into by the parties,
9 Defendants shall pay the Settlement Payment as follows:

10 Within ten (10) days of the entry of this Consent Decree, Defendants shall issue the total
11 payment made payable to Ana Berta Rubio and her attorney, William J. Smith. Defendants shall
12 make their respective payments in the form of a business check, cashier's check, or certified check.
13

14 c. Check(s) shall be sent via Federal Express to William J. Smith, Law Offices of William J.
15 Smith, 2350 West Shaw Ave., Suite 132, Fresno, CA.

16 d. A copy of the check(s) shall be faxed to EEOC Counsel Linda Ordonio-Dixon at
17 (415)625-5657.

18 **IV. SPECIFIC INJUNCTIVE RELIEF**

19 **EEO and Anti-Discrimination Policies**

20 Defendants shall revise their respective sexual harassment and complaint investigation
21 policies within sixty (60) days of signing the Consent Decree, such that the policies: (i) provide that
22 complaints of discrimination and/or retaliation will be accepted irrespective of whether they are
23 made verbally or in writing; and (ii) indicate that, promptly upon the conclusion of the investigation
24 of a complaint, the company will communicate to the complaining party the results of the
25 investigation and the remedial actions taken or proposed, if any. The revised policies shall be
26 submitted to the Commission for review to ensure that the terms above have been met.
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1 After the Commission has reviewed and approved the policies, Defendant shall effectively
2 disseminate their revised policies and procedures by:

3 i. Distributing copies to all current employees within 30 days after the
4 Commission's approval of the policies;

5 ii. Distributing copies along with employee paychecks to all employees
6 one year after the distribution indicated, above;

7 iii. Giving a copy to all new employees at all locations upon the
8 employees' hire.
9

10 **Posting.**

11 The "Notice to all Employees" which is attached to this Consent Decree shall be posted and
12 remain posted in a clearly visible location frequented by employees for the term of the Consent
13 Decree.
14

15 **Training of Employees.**

16 Once a year for the next two years, Defendants shall provide an explanation of Defendant's
17 anti-discrimination policies in an employee safety meeting or other employee meeting to all
18 employees and contract workers. The information provided at the meetings shall provide
19 participants with an understanding of the company's policies, prohibitions regarding retaliation and
20 the company's complaint discrimination procedures.
21

22 Defendants shall provide sexual harassment training to all supervisors as required by
23 California AB 1825. This training shall provide participants with an understanding of discrimination
24 issues, particularly sexual harassment, sources of legal protection for discrimination victims, the
25 employees' obligation to report sex discrimination, the employer's obligation to take preventive,
26 investigative and remedial action with respect to discrimination complaints, and to review company
27 policies (including discipline policies) and practices related to discrimination and retaliation with
28

1 employees.

2 **Acknowledgment of Dissemination of Policies and Training Attendance.**

3 All persons attending mandatory anti-discrimination training pursuant to this Consent Decree
4 shall sign an acknowledgment of their attendance at the training. Defendants shall retain the
5 originals of these acknowledgments and the EEOC may inspect the acknowledgements.
6

7 **Reports to the Commission**

8 Defendants will provide verification in the form of a yearly statement to the EEOC for two
9 years, in the ~~form~~ form of a signed verification by a company official attesting that all requirements under
10 the Consent Decree have been met for that year.

11 **Policies Designed to Promote Supervisor Accountability**

12 Defendants agree that they shall impose appropriate discipline, up to and including
13 termination, suspension without pay or demotion, upon any supervisor or manager who engages in
14 sexual harassment or retaliation or knowingly permits any such conduct to occur in his or her work
15 area or among employees under his or her supervision, or who retaliates against any person who
16 complains or participates in any investigation or proceeding concerning such conduct. Defendants
17 shall communicate this policy to all of their supervisors and managers.
18
19

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

21 a. This Consent Decree shall terminate two (2) years from the date of entry by the
22 Court, unless the Commission petitions this Court for an extension of the Decree because of non-
23 compliance by either Defendant. If the Commission determines that any Defendant has not
24 complied with the Consent Decree, the Commission will provide written notification of the alleged
25 breach to said Defendant and will not petition the Court for enforcement sooner than thirty (30) days
26 after providing written notification. The thirty-day period following written notice shall be used by
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1 the parties for good faith efforts to resolve the issue. If the Commission petitions the Court and the
2 Court finds one or both Defendant(s) be in substantial violation of the terms of the Decree, the Court
3 may extend this Consent Decree, but only as to the Defendant(s) that the Court finds to be in
4 substantial violation.

5
6 b. Except as provided in the preceding paragraph, two (2) years after the entry of this
7 Consent Decree, this lawsuit will be dismissed with prejudice, provided that Defendants have
8 complied substantially with the terms of this Consent Decree. Defendants will be deemed to have
9 complied substantially if the Court has not made any findings or orders during the term of the
10 Decree that Defendants have failed to comply with any of the terms of this Decree. This Consent
11 Decree will automatically expire without further Court Order.

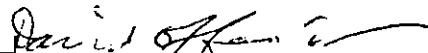
12
13 c. For purposes of enforcing the provisions of this Consent Decree, and pursuant to
14 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375,381-82 (1994) and *Flanagan v. Arnaiz*,
15 143 F.3d 540, 543-44 (9th Cir. 1998), this Court will retain jurisdiction of the instant lawsuit until the
16 expiration of the Consent Decree.

17 Dated: November 6, 2007



WILLIAM R. TAMAYO
For Plaintiff EEOC

19 Dated: November 6, 2007



DAVID E. OFFEN-BROWN
For Plaintiff EEOC

21 Dated: November 6, 2007



LINDA S. ORDONIO-DIXON
For Plaintiff EEOC

23 Dated: November 6, 2007

LORNA BRUMFIELD
For Defendant Grimmway Enterprises, Inc.

25 Dated: November 6, 2007

DANIEL K. KLINGENBERGER
For Defendant Esparza Enterprises

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 For Plaintiff EEOC

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 DAVID F. OFFEN-BROWN
 For Plaintiff EEOC

21 Dated: November 6, 2007

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 LINDA S. ORDONIO-DIXON
 For Plaintiff EEOC

23 Dated: November 6, 2007

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 LORNA BRUMFIELD
 For Defendant Grimmway Enterprises, Inc.

25 Dated: November 6, 2007

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 DANIEL K. KLINGENBERGER
 For Defendant Esparza Enterprises

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WILLIAM R. TAMAYO
For Plaintiff EEOC

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20 Dated: November 6, 2007

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DAVID F. OFFEN-BROWN
For Plaintiff EEOC

22 Dated: November 6, 2007

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LINDA S. ORDONIO-DIXON
For Plaintiff EEOC

24 Dated: November 6,2007

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LORNA BRUMFIELD
For Defendant Grimmway Enterprises, Inc.

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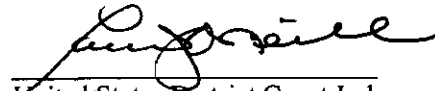
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DANIEL K. KLINGENBERGER
For Defendant Esparza Enterprises

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IT IS SO ORDERED:

Dated: November 9, 2007


United States District Court Judge

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EXHIBIT A

NOTICE TO ALL EMPLOYEES

This Notice is being posted to resolve the federal lawsuit Equal Employment Opportunity Commission/Ana Berta Rubio vs. Grimmway Farms/Esparza Enterprises, Civil Action 06-00561 LJO DLB (Eastern District of California).

Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-2(b), et seq., as amended, (Title VII"), makes it unlawful for an employer to subject an employee to sexual harassment or to otherwise discriminate against any individual because of his or her race, color, religion, sex or national origin. Title VII further prohibits retaliation against employees or applicants who avail themselves of the rights under Title VII by engaging in protected activities such as filing a charge of discrimination and/or testifying or participating in a Commission investigation. The EEOC is the federal agency which investigates charges of unlawful employment discrimination. The EEOC has the authority to bring lawsuits in federal court to enforce Title VII.

If you believe you have been discriminated against, you may contact the EEOC at 1-800-669-4000. The EEOC charges no fees and has employees who speak languages other than English.

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

This notice must remain posted for two years from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to Maricela Medina, (408) 291-7354.

By Court Order dated: _____