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8-21-2006

# Equal Employment Opportunity Commission v. Amelco Electric San Francisco and Amelco Corporation

Judge Charles R. Breyer

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# Equal Employment Opportunity Commission v. Amelco Electric San Francisco and Amelco Corporation

**Keywords**

EEOC, Amelco Electric San Francisco, 05-02492 MEJ, 06-3008 CRB, Consent Decree, Disparate Treatment, National Origin, Race, Religion, Sex, Hostile Work Environment, Utilities, Employment Law, Title VII

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12 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15 EQUAL EMPLOYMENT OPPORTUNITY ) Case No. 05-02492 MEJ and  
16 COMMISSION, ) Case No. 06-3008 CRB  
17 )  
18 Plaintiff, ) **SETTLEMENT AGREEMENT**  
19 ) **BETWEEN THE EQUAL**  
20 v. ) **EMPLOYMENT OPPORTUNITY**  
21 ) **COMMISSION AND AMELCO**  
22 ) **ELECTRIC SAN FRANCISCO &**  
23 ) **AMELCO CORPORATION; ORDER**  
24 )  
25 ) **Defendants.** )  
26 )  
27 )  
28 )

29 **I. INTRODUCTION**

30 A. Plaintiff Equal Employment Opportunity Commission (“Commission”) filed  
31 Case No. 05-02492 MEJ under Title VII of the Civil Rights Act of 1964, as amended, on  
32 behalf of Carl McNair and a class of similarly situated individuals, alleging that Carl McNair  
33 and class members were electricians working for Amelco Electric San Francisco and Amelco  
34 Corporation (individually and collectively, “Defendants”) when they were subjected to  
35 harassing comments and/or disparate treatment due to their race, gender, religion and national  
36 origin in violation of Title VII.

1 B. Case No. 06-3008 CRB was filed by the Commission on behalf of Susanna  
2 Ortiz and a class of similarly situated electricians against Defendants Amelco Electric San  
3 Francisco and Amelco Corporation. This action alleges that they were subjected to harassing  
4 comments and/or disparate treatment due to their gender, race and/or national origin in  
5 violation of Title VII.

6 C. Amelco Corporation and Amelco Electric S.F. Inc. (erroneously named as  
7 Amelco Electric San Francisco), answered and denied all allegations of discrimination,  
8 harassment and unlawful conduct in Case No.05-02492 MEJ.

9 D. Defendants were never served with Case No.06-3008 CRB, but received a copy  
10 of the Complaint, and have alleged that it represents an abuse of EEOC process by the  
11 Commission. The EEOC has mailed a Request for Waiver of Service of Case No.06-3008  
12 CRB to Defendants' attorney of record.

13

14 The Commission and Defendants now seek to resolve both Case No. 05-02492 MEJ and  
15 Case No.06-3008 CRB (individually and collectively, the "Actions") as to each other, and as to  
16 all Class Members referenced in the Actions (individually and collectively, the "Class  
17 Members"), without further contested litigation, through the instant Settlement Agreement.

18

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

20 This resolution does not constitute any admission of liability or any other act or fact on  
21 the part of Defendants, nor constitute any finding one way or the other as to any allegations  
22 stated in the Commission's Complaints, or in Defendants' Answer or allegations in or about the  
23 Actions. This Settlement Agreement represents a good faith settlement of contested and  
24 disputed claims.

25

26 **III. GENERAL PROVISIONS**

27 1. This Settlement Agreement constitutes a full and final resolution as against Defendants,  
28 and each of them, of all claims in the Actions by and on behalf of the Commission and

- 1 by and on behalf of all Class Members.
- 2 2. This Settlement Agreement will be filed as an exhibit to Plaintiff EEOC's Notice of  
3 Dismissal of the Actions.
- 4 3. This Settlement Agreement is final and binding on Defendants, the Commission and the  
5 Class Members, and each of them, and their successors and assigns, and each of them.
- 6 4. The Commission, Class Members, and Defendants will each bear their own costs and  
7 attorneys' fees in this action.

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#### IV. NON-RETALIATION

- 10 5. The Defendants and their current officers, agents, employees agree not to retaliate  
11 against Carl McNair, Susanna Ortez and class members for having testified or  
12 participated in any manner in the Commission's investigation and the proceedings in  
13 these cases.

14

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#### V. MONETARY AND OTHER TERMS

- 16 6. Upon execution of this Agreement, and subject to other conditions stated herein,  
17 Defendants agree to pay a total of \$125,000.00 in settlement of the Actions.

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(A) The specific allocation of these monies among Carl McNair, Susanna Ortez and/or other Class members shall be within the sole discretion of the EEOC, without any input requested from or required of Defendants.

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(B) Within ten days of the full execution of this Settlement Agreement by all signatory Plaintiffs and Defendants, EEOC will notify Defendants' counsel of record, in writing, of the allocation of all settlement monies, identifying recipient individuals and amounts.

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(C) Within twenty (20) days of Defendants' receipt of such notification, Defendants will send checks (for the amounts and made payable to the persons specified in the notification) via certified mail, Federal Express, or United Parcel Service delivery to Commission attorney Raymond Cheung at the Commission's San Francisco District

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Office – 350 The Embarcadero, Suite 500, San Francisco, California 94105.

Defendants will issue the appropriate tax documents (1099) directly to the payees at addresses to be provided to Defendants by EEOC.

(D) Upon receipt of settlement checks totaling \$125,000, the Commission shall send to Defendants’ counsel of record a signed Notice of Dismissal with Prejudice of the entirety of both Actions, which Defendants shall be responsible for filing with the Court.

(E) The Commission shall not distribute any check to any specified individual Class Member unless and until said individual signs a Release of Claims acceptable to Defendants, which signed Releases of Claims the Commission shall thereafter send to Defendants’ undersigned counsel. If any individual refuses to sign their Release of Claims form, their check shall be returned to Defendants, for reissuance of a check or checks totaling that same amount to such other Class Member(s) as EEOC shall designate, such reissued checks being subject to the same conditions set forth herein.

7. The EEOC agrees not to institute any civil or administrative proceeding or action against Defendants, or either of them, or their officers, directors, employees, agents or representatives, based in whole or in part on any act alleged in EEOC Charge Nos. 370-2003-00215 and/or 370-2002-08472, respectively, filed by Carl McNair and Susanna Ortez, or any act alleged in the Actions, or either of them.

**VI. RETENTION OF JURISDICTION AND DISMISSAL**

8. For the purposes of enforcing the provisions of this Settlement Agreement, and pursuant to *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381-82 (1994) and *Flanagan v. Arnaiz*, 143 F.3d 540, 543-44 (9<sup>th</sup> Cir. 1998), this Court will retain jurisdiction of these two actions until Entry of the Dismissals with Prejudice of both Case Nos. 05-02492 MEJ and Case No. 06-3008 CRB.

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AMELCO ELECTRIC S.F. INC.,  
erroneously named as AMELCO  
ELECTRIC SAN FRANCISCO

Dated: 7-12-06

By [Signature]

AMELCO CORPORATION

Dated: 7-14-06

By [Signature]

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

Dated: \_\_\_\_\_

By \_\_\_\_\_  
WILLIAM R. TAMAYO  
Regional Attorney

Dated: \_\_\_\_\_

By \_\_\_\_\_  
DAVID F. OFFEN-BROWN  
Supervisory Trial Attorney

Dated: \_\_\_\_\_

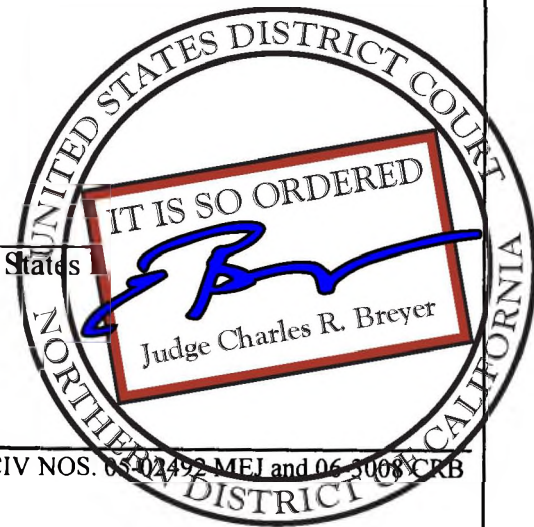
By \_\_\_\_\_  
RAYMOND T. CHEUNG  
Senior Trial Attorney

**ORDER**

It is so ordered.

Dated: August 21, 2006

United States



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AMELCO ELECTRIC S.F. INC.,  
erroneously named as AMELCO  
ELECTRIC SAN FRANCISCO

Dated: \_\_\_\_\_

By \_\_\_\_\_


AMELCO CORPORATION

Dated: \_\_\_\_\_

By \_\_\_\_\_

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

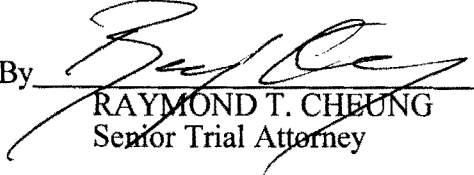
Dated: 7/18/06

By   
WILLIAM R. TAMAYO  
Regional Attorney

Dated: 7/20/06

By   
DAVID F. OFFEN-BROWN  
Supervisory Trial Attorney

Dated: 7/20/06

By   
RAYMOND T. CHEUNG  
Senior Trial Attorney

ORDER

It is so ordered.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States District Judge