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HONORABLE LONNY R. SUKO

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

OCT 26 2004

JAMES R. LARSEN, CLERK
DEPUTY
YAKIMA, WASHINGTON

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF WASHINGTON

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,

Case No. CS-03-339-LRS

v.

CONSENT DECREE

MCCAIN FOODS USA, INC.,

Defendant.

I. INTRODUCTION

1. This action originated with a charge of employment discrimination filed with the Equal Employment Opportunity Commission ("the Commission") on November 13, 2002 by Chanda Thomas. The Charge alleged that McCain Foods, Inc. ("the Company") discriminated against Ms. Thomas on the basis of her sex, female, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e ("Title VII") by denying her a promotion to a Waste Disposal Operator position for which she was qualified. During EEOC's investigation, EEOC identified Marilyn McNelly, a similarly situated class member, who was also denied an earlier promotion to the same position on the basis of her sex, female, in violation of Title VII. The Company denies that Ms. McNelly and Ms. Thomas are similarly situated class members or that it discriminated against Ms. Thomas and Ms. McNelly in any manner.

2. Following the issuance of Letters of Determination and the failure of

ORIGINAL

1 conciliation efforts, the Commission filed a lawsuit under under Title VII against
2 the Company on September 25, 2003.

3 3. The parties want to conclude the claims arising out of the charge, the
4 Commission's determination with regard to the charge, and the lawsuit arising
5 from the charge, without expending further resources in contested litigation.

6 **II. NONADMISSION OF LIABILITY AND**
7 **NONDETERMINATION BY THE COURT**

8 4. This Consent Decree is not an adjudication or finding on the merits of
9 this case and shall not be construed as an admission by the Company of a violation
10 of any law.

11 **III. SETTLEMENT SCOPE**

12 5. This Consent Decree is the final and complete resolution of all
13 allegations of unlawful employment practices included in the Charge, in the
14 Commission's Letter of Determination and in the Commission's complaint filed in
15 the case that were or could have been brought based on the administrative charge,
16 as well as claims by the parties and/or class members for attorney fees and costs.
17 The injunctive relief provisions of this Consent Decree apply to all of the
18 Company's facilities in the State of Washington and is final and binding as to all
19 such issues and claims.

20 **IV. MONETARY RELIEF**

21 6. In settlement of this suit, the Company agrees to pay Nine Thousand
22 Dollars and No Cents (\$9,000.00) to the class members in settlement and
23 satisfaction of all claims for monetary relief which were or could have been
24 asserted in the case by Ms. Thomas and/or Ms. McNelly. Ms. Thomas and Ms.
25 McNelly will each receive \$3,500 in backpay and \$1,000 in compensatory
26 damages.

27 a. Ms. Thomas and Ms. McNelly will be required to sign a
28 separate "General Release" in order to receive the monetary

1 benefits provided by this Decree. Ms. Thomas and Ms.
2 McNelly shall have the right to seek the advice of an attorney
3 of their choice before executing the General Release.

4 c. Upon receipt by the Company of the executed "General
5 Release," the Company shall, within either fourteen days or the
6 next date payroll checks are normally issued by the Company,
7 whichever is later, issue a payroll check in an amount
8 representing back pay, reduced by all payroll withholdings and
9 FICA contributions required by law. The Company will also
10 timely issue to each recipient an IRS W-2 Form representing
11 back pay payments. At the same time that the checks for the
12 back pay portion of the settlement are issued, the Company will
13 also issue the checks for the portion of the settlement allocated
14 to emotional distress. Checks shall be mailed by first class
15 mail to class members at their last known address as provided
16 by the Commission.

17 d. Within five (5) days of mailing the checks, the Company will
18 verify the mailing by providing to the EEOC copies of the
19 checks and a Declaration of an appropriate company official
20 attesting that the Company mailed the checks in compliance
21 with the Decree.

22 e. If any check is returned as undeliverable, the Company will
23 notify the EEOC within seven (7) days. The EEOC will notify
24 the Company within seven (7) days of the Company's notice of
25 any new contact information.

26 **V. INJUNCTIVE RELIEF**

27 **A. General Provisions**

28 7. The Company reaffirms its commitment to continue to comply with

1 the requirements of Title VII and all other federal laws against discrimination in
2 its employment decisions. To further this commitment, it shall monitor its
3 affirmative obligations under this Consent Decree.

4 8. The Company shall not retaliate against any current or former
5 employee for opposing any practice made unlawful by Title VII. Nor shall the
6 Company retaliate against any current or former employee for making a charge or
7 for testifying, assisting, or participating in any investigation, proceeding, or
8 hearing associated with the case.

9 **B. Establishment of Policy and Procedures to Prevent**
10 **Discrimination**

11 9. Within thirty (30) days after entry of the Decree, the Company shall
12 reaffirm its written equal employment opportunity policy which is attached hereto
13 as Exhibit A. In addition, within five (5) business days of entry of the Decree, the
14 Company shall ensure that copies of the policy are posted in common areas within
15 each plant where employees have access.

16 **C. Training**

17 10. To further the purposes and requirements of this Consent Decree, the
18 Company agrees to provide two (2) hours of employment discrimination training
19 within the first ninety (90) days following entry of the Decree, including training
20 on sex discrimination and its EEO policy, to all managers and supervisors in its
21 Washington facilities and will include such training as part of its new hire
22 orientation.

23 11. The Company further agrees to continue its present annual
24 employment discrimination training given to all non-management employees and
25 supervisors, including training on Title VII's prohibition against sex
26 discrimination in promotion selection decisions.

27 **D. Reporting**

28 12. Six (6) months after entry of this Consent Decree and thirty (30) days

1 after the conclusion of the term of the Consent Decree, the Company shall provide
2 a report to the Commission on the Company's compliance with the Consent
3 Decree. The Compliance Report shall include the following:

4 (a) during the reporting period applicant flow data, hires, transfers
5 and promotions by sex;

6 (b) copies of the attendee lists and materials for all training required
7 by this Decree.

8 If the Company has not complied with any term of the Consent Decree, the
9 Company shall provide a statement specifying the areas of noncompliance, the
10 reason(s) for the noncompliance, and the steps taken to bring the Company into
11 compliance.

12 **VI. ENFORCEMENT**

13 13. The United States District Court for the Eastern District of
14 Washington shall retain jurisdiction over this matter for the duration of the
15 Consent Decree. If the Commission concludes that the Company has breached
16 any of the above provisions, it shall promptly notify the Company providing a
17 written statement of the alleged breach. The parties shall attempt to resolve the
18 dispute for a period not to exceed thirty (30) days after the Commission's
19 notification of the alleged breach. If the Commission is unable to resolve the
20 dispute to its satisfaction, the Commission may bring an action to enforce this
21 Decree.

22 **VII. TERMINATION OF DECREE**

23 14. This Consent Decree shall be in effect for two (2) years commencing
24 with the date the Consent Decree is entered by the Court. If the Commission peti-
25 tions the Court and the Court finds the Company to have violated the terms of the
26 Consent Decree, the Court may extend the period of the Consent Decree and
27 award the Commission its costs in bringing an enforcement action.
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DATED this 21st day of October, 2004.

A. LUIS LUCERO, JR.
Regional Attorney

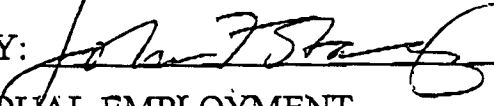
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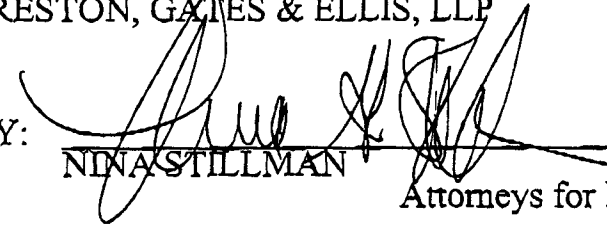
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Attorneys for Plaintiff EEOC

Dated: Oct. 18, 2004

MORGAN, LEWIS & BOCKIUS, LLP
PRESTON, GATES & ELLIS, LLP

BY: 


NINA STILLMAN

Attorneys for Defendant

ORDER

The Court having considered the foregoing stipulated agreement of the parties, IT IS HEREBY ORDERED THAT the foregoing consent decree be, and the same hereby is, approved as the final decree of this Court in full settlement of this action. This lawsuit is hereby dismissed with prejudice and without costs or attorneys' fees to any party. The Court retains jurisdiction of this matter for purposes of enforcing the consent decree approved herein.

DATED this 26th day of October, 2004.



LONNY R. SUKO
UNITED STATES DISTRICT JUDGE

PRESENTED BY:



WESLEY KATAHIRA
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION