

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
FORT PIERCE DIVISION

SP

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

CIVIL ACTION NO.  
99-14288-CV-PAINE

SUN AG, INC.

Defendants.

\_\_\_\_\_ /

CONSENT DECREE

1. This Consent Decree (the "Decree") is made and entered into by and between Plaintiff, the Equal Employment Opportunity Commission ("the Commission" or "EEOC") and Defendant Sun Ag, Inc. ("Sun Ag"). The Commission and Sun Ag are collectively referred to herein as "the Parties."

2. The EEOC initiated this action by filing its Complaint against Sun Ag alleging a racially hostile working environment in violation of Title VII of the Civil Rights Act of 1964, as amended, including but not limited to, amendments authorized by the Civil Rights Act of 1991, 42 U.S.C. Section 2000e *et seq.* ("Title VII"). The Complaint was filed on behalf of Alvin Davis, Fred Lewis and other similarly situated employees and arose out of an EEOC Charge filed by Alvin Davis.

3. Sun Ag denies that a hostile environment has existed at its workplace and further denies that it discriminated in any way against any employee.

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CLOSE-OUT

4. In the interests of resolving this matter, to avoid costs of litigation, and as a result of having engaged in comprehensive settlement negotiations, the Parties have agreed that this action should be finally resolved by the entry of this Decree. The settlement of this matter does not constitute an admission of liability or wrongdoing by Sun Ag regarding Davis' employment or any allegations in the complaint regarding any other current or former employee of Sun Ag. This Decree is final and binding upon the Parties.

5. The Parties agree that this Decree resolves all claims against Sun Ag arising out of EEOC Charge Number 150982642 and the Complaint filed in this action, and constitutes a complete resolution of all claims under Title VII that were made by the Commission or that existed against Sun Ag in this action. The EEOC represents that it currently is unaware of any other charges of discrimination pending against Sun Ag.

6. This Decree constitutes the complete agreement between the EEOC and Sun Ag with respect to the matters referred to herein. No representations or inducements to compromise this action have been made, other than those recited or referenced in this Decree. No waiver, modification or amendment of any provision of this Decree shall be effective unless made in writing, approved by all parties to this Decree and approved by the Court or ordered by the Court.

NOW, THEREFORE, the Court having carefully examined the terms and provisions of this Consent Decree, and based on the pleadings filed by the parties, it is

**ORDERED, ADJUDGED AND DECREED THAT:**

7. This Court has jurisdiction of the subject matter of this action and over the parties for the purposes of entering and enforcing this Decree. Venue is proper.

### GENERAL INJUNCTIVE PROVISIONS

8. The term of this Decree shall be three years.

9. Defendant, its officers, managers, employees, and agents are enjoined from engaging in conduct which constitutes harassment on the basis of race or creating an intimidating, hostile or offensive working environment violating Title VII of the Civil Rights Act of 1964, as amended. Defendant is further enjoined from adversely affecting the terms and conditions of any individual's employment or by discharging (or constructively discharging) an employee in violation of Title VII.

10. Defendant, its officers, managers, employees, agents and partners, are enjoined from discriminating against any employee who in good faith opposes any of Defendant's practices which the employee believes to be a violation of Title VII; who files a charge of discrimination with the EEOC alleging violation(s) of such statute; who cooperates with the EEOC in the investigation and/or prosecution of any charge of discrimination; or who cooperated in the investigation or prosecution of this case.

### TRAINING

11. Defendant has established and distributed to all employees a written anti-harassment policy (attached as Exhibit "A" to this Consent Decree).

12. In order to further insure the effective implementation of Defendant's anti-discrimination policies, it will conduct two hour training sessions for all of its managers and supervisory personnel on all aspects of Title VII, with special emphasis on racial harassment and retaliation. Such training will be conducted by the law firm of Akerman, Senterfitt & Eidson, P.A. ("Akerman") within three months of the entry of this Decree.

13. On or before December 1, 2000, the Defendant shall arrange a two hour training session for its employees, to be conducted by Akerman, that will cover the requirements of Title VII and the Florida Civil Rights Act as they relate to racial harassment and retaliation, and how to complain internally about problems in the workplace. On or before September 1, 2001, the Defendant shall arrange an additional two hour training session for its employees that will cover the requirements of Title VII and the Florida Civil Rights Act as they relate to racial harassment and retaliation, and how to complain internally about problems in the workplace. This session will be done by videotape. Each employee will be given a copy of the internal complaint procedures and anti-harassment policy at both sessions. Copies will be available in English, Spanish, and French Creole.

14. The Defendant shall arrange one hour of diversity training for all management officials, supervisory personnel and employees of Sun Ag. Such training will be conducted by former Judge Joseph Hatchett and other members of the law firm of Akerman, Senterfitt & Eidson, P.A. ("Akerman") within three (3) months of the entry of this Decree.

15. The Defendant will provide the EEOC with the date and location of the trainings, copies of all training materials to be used at the training sessions (two weeks before such training) and the name of the individual(s) who will be providing the training.

16. Defendant will post within seven (7) business days from the date of entry of this Consent Decree the notice attached hereto as Exhibit "B". Said notice shall be posted for the term of this Consent Decree on Defendant's employee bulletin boards.

### MONITORING

17. Defendant will certify to the EEOC by December 31, 2000, September 30, 2001, and January 31, 2003, that it is in compliance with all aspects of this Consent Decree. These certifications will include (a) the number and names of employees trained, (b) posting places and condition of notice, and (c) verification that the Defendant has complied with this Decree.

18. Defendant will retain all internal racial harassment and/or retaliation complaints for the duration of this Decree.

19. The Defendant shall submit written reports to the Commission on February 1, 2001, August 1, 2001, February 1, 2002, November 1, 2002, and August 1, 2003. Each report shall contain a description of any complaints of race discrimination received and the Defendant's efforts to resolve the complaints, including, but not limited to, the date of the complaint, a copy of the complaint (if written), Defendant's prompt remedial action, and the name, current home address and home phone number of the complaining individual. If the Commission reasonably believes the Defendant's response has been inadequate, the Commission shall contact the Defendant's coordinating official as identified in paragraph 20, and identify the Commission's concern. The absence of contact by the Commission does not indicate that the Defendant is in compliance. The parties agree that this Decree is intended to bring closure to this litigation and any contact initiated under this paragraph shall be made with this goal in mind and with the goal of assisting the Defendant in the proper handling of internal complaints.

The reports shall be submitted to the Equal Employment Opportunity Commission at the Miami District Office to Delner Franklin-Thomas, Regional Attorney.

20. Defendant will appoint one individual who shall be responsible for coordinating its

compliance with this Consent Decree and for providing reports to the EEOC. This person shall be appointed and the EEOC notified of his or her identify no later than October 31, 2000.

**LETTER OF REFERENCE**

21. Sun Ag will provide a letter of reference to Mr. Davis, on or before October 31, 2000, which is attached as Exhibit "C" to this Consent Decree. Should any reference check be made to Sun Ag regarding Alvin Davis, Sun Ag will not divulge any information other than what is contained in Exhibit "C", absent Alvin Davis' written consent.

**MONETARY RELIEF**

22. Defendant, Sun Ag, Inc., agrees to pay the total amount of \$249,000 in damages. The monetary amount will be divided amongst the identified class members: Alvin Davis, Fred Lewis, Joseph Huggins, and James Taylor, and their private legal counsel, Robert Taylor. No later than ten business days after the entry of the Decree, Defendant will mail checks to Alvin Davis, Fred Lewis, Joseph Huggins and James Taylor, at the addresses provided by the Commission, certified mail return receipt, and at the same time copy the EEOC on the mailings and the certified return receipts. Said copies shall be forwarded to the attention of Eve Lowe, EEOC Trial Attorney, U.S. Equal Employment Opportunity Commission, 2 South Biscayne Boulevard, Suite 2700, Miami, Florida 33131. Sun Ag will issue IRS forms W-2 and 1099 as required by law. With respect to monies paid by Sun Ag to Alvin Davis, one-half will be for compensatory damages and the other half will be for the gross backpay less lawful withholding deductions for federal income tax and employee contributions for Social Security tax. A paycheck stub setting forth the amount paid and the amounts withheld shall accompany each check.

With respect to monies paid by Sun Ag to Joseph Huggins and James Taylor, Sun Ag will

pay 50% of damages for compensatory damages and the other one-half will be for the gross back pay less lawful withholding deductions for federal income tax and employment contributions for Social Security tax. Paycheck stubs setting forth the amount paid and the amounts withheld for Joseph Huggins and James Taylor shall accompany each check.

With respect to Fred Lewis, Sun Ag will pay one hundred percent (100%) of the monies for compensatory damages.

23. If the Defendant fails to tender the above-mentioned payments, it shall pay interest on the defaulted payment at the rate calculated pursuant to 26 U.S.C. Section 6621(b) until the same is paid, and bear any additional costs incurred by the EEOC due to the non-compliance or delay of the Defendant.

#### **DISPUTE RESOLUTION**

24. In the event that any of the Parties to this Decree believes that a party has failed to comply with any provisions(s) of this Decree, the complaining party shall notify the alleged non-complaining party in writing of such non-compliance and afford the alleged non-complaining party twenty (20) business days to remedy the non-compliance or satisfy the complaining party that it has complied. If the dispute is not resolved within twenty (20) business days the complaining party may apply to the Court for appropriate relief.

#### **ENFORCEMENT OF DECREE**

25. The Commission shall have independent authority to seek the judicial enforcement of any aspect, term or provision of this Decree.

26. The Court will take whatever measures it deems appropriate to effect the enforcement of the terms of this Decree.

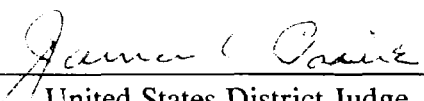
**EFFECT OF DECREE AND COSTS**

27. This Consent Decree will operate as a full and final resolution of this action. Each party shall bear its own costs and attorney's fees.

**DURATION OF CONSENT DECREE**

28. The duration of this Decree shall be three years from the date of entry of the Decree. During that time, this Court shall retain jurisdiction over this matter and the Parties for purposes of enforcing compliance with the Decree, including such orders as may be required to effect its purposes. This Decree expires three years from the date set forth below.

**SO ORDERED, ADJUDGED AND DECREED**, this 24<sup>th</sup> day of October, 2000.

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

AGREED TO:

FOR THE PLAINTIFF,  
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

By: Delner Franklin Thomas  
Delner Franklin-Thomas  
Regional Attorney  
U.S. Equal Employment Opportunity Commission  
Miami District Office  
One Biscayne Tower, Suite 2700  
2 South Biscayne Boulevard  
Miami, Florida 33131

Date: 10/12/00

AGREED TO:  
FOR THE DEFENDANT

By: Kevin W. Shaughnessy  
KEVIN W. SHAUGHNESSY, ESQ.  
CAROLYN K. ALVAREZ, ESQ.  
Akerman, Senterfitt & Edison, P.A.  
Attorney for Defendant Sun Ag, Inc.  
255 South Orange Ave.  
P. O. Box 231  
Orlando, Florida 32802-0231  
407-843-7860  
407-843-6610 FAX

Date: 10/11/00

## **No Harassment Policy**

### **I. Policy Statement**

Sun Ag is committed to providing a workplace free from harassment. We strongly disapprove of and will not tolerate harassment of employees by Managers, Supervisors, co-workers, or non-employees and will take pro-active steps to stop it.

### **II. Purpose**

The Intent of this policy is to provide guidelines relating to the discovery and remedy of harassment in our workplace.

### **III. Definition**

Harassment is any behavior which could be considered unwelcome and personally offensive by a reasonable person.

Harassment can be comments or other personally offensive and unwelcome behavior based on a person's race, color, religion, sex, national origin, age, marital status, disability, veteran or citizenship status or any other basis prohibited by law that results in the loss of tangible job benefits or creates a hostile, offensive, or intimidating work atmosphere. Such behavior can be reasonably determined to be illegal if:

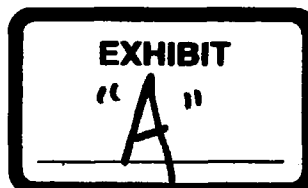
- A. Submission to the conduct is either an explicit or implicit term or condition of employment.
- B. Submission to or rejection of the conduct is used as a basis for employment decisions affecting the recipient.
- C. The conduct has the purpose or effect of substantially interfering with work performance or creating an intimidating, hostile or offensive work environment.

### **IV. Procedures**

Any employee who feels he or she has been a victim of harassment is encouraged to immediately confront the person responsible and inform the individual that his or her behavior is offensive—and ask him or her to stop.

If the offensive behavior continues, the employee is expected to report it directly to one of the following: his or her Foreman, Supervisor, Manager, any other Supervisor or Manager, the Safety and Security Manager, the Personnel Manager, or the company General Manager. From there:

- A. The Safety and Security Manager and/or Personnel Manager will confer with the complainant as soon as possible. Under no circumstances will the conference be delayed more than five (5) work days from the initial receipt of the harassment complaint.



March 1, 1998

- B. The employee will be allowed to place their complaint in writing and the complaint will be transcribed to written form by the Personnel Manager. The Safety and Security Manager and/or the Personnel Manager will conduct an investigation to determine the facts pertinent to the complaint.

The investigation will be handled as confidentially as possible. Recognizing, however, that the investigation may require disclosing information to certain individuals on a need-to-know basis.

- C. No employee will be disciplined or otherwise retaliated against for reporting offensive behavior.
- D. All complaints are to be taken seriously and will be fully investigated by Management to determine the facts. The results of all investigations will be fully documented and maintained by the Personnel Manager.

**V. Sanctions**

Sun Ag will take whatever steps are necessary to eliminate harassment in the workplace—up to and including termination of the offending party.

**11x17 POSTER**  
**EXHIBIT "B" NOTICE**  
**NOTICE TO ALL EMPLOYEES**  
**POSTED PURSUANT TO AN ORDER OF THE**  
**UNITED STATES DISTRICT COURT FOR THE**  
**SOUTHERN DISTRICT OF FLORIDA**

This Notice is being posted pursuant to a Consent Decree entered by the Court in EEOC v. Sun Ag, Inc., Civil Action No. 99-14288-CV-PAINE. As part of the Consent Decree, Sun Ag has agreed that it will not discriminate against employees because of race and other protected provisions of Title VII of the Civil Rights Act of 1964 ("Title VII"). Title VII protects individuals from employment discrimination because of their race, religion, color, national origin, or sex.

Furthermore, Sun Ag assures its employees that it supports Title VII and will not take any action against an individual because he/she has exercised his/her rights under the law to oppose discriminatory acts or to file charges with the EEOC.

This notice shall remain posted for three years from the date signed. Employees or applicants for employment who have questions about their rights under Title VII or any other federal anti-discrimination law may telephone the Miami District Office of the Equal Employment Opportunity Commission at 1-800-669-4000, (305) 530-6001 or (305) 530-6006.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2000.

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MARK SANCHEZ, Executive Vice President of  
SUN AG, INC. (To Be Signed)

*Exhibit  
"B"*

**[SUN AG LETTERHEAD]**

To Whom It May Concern:

Alvin Davis was employed by Sun Ag, Inc., from September 13, 1990 until September 1, 2000, when he resigned to seek other employment opportunities. He has held the positions of general laborer, equipment operator, field service mechanic, and grounds maintenance foreman. His duties included operation of various types of farm equipment, fueling and service work on farm and construction equipment, repair and maintenance of farm equipment, construction equipment, and light trucks and automobiles, and landscape maintenance. In fact, I hired Alvin to perform landscaping and lawn maintenance work at my home and he did so for approximately 18 months. Mr. Davis received several salary increases during his employment, and his last rate of pay was \$9.45/hr.

Sincerely,

Mark J. Sanchez  
Executive Vice President  
and General Manager

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