

CC: TO JUDGE ZG

THE HONORABLE ROBERT LASNIK

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

AMERICAN SEAFOODS COMPANY,

Defendant.

NO. C99-1570L

JUAN VALDESPINO, BENJAMIN
VALDESPINO, and MARIO SMITH,

CONSENT DECREE

Plaintiffs-in-Intervention,

v.

AMERICAN SEAFOODS COMPANY,

Defendant-in-intervention.

I. INTRODUCTION

1. This action originated with charges of discrimination filed by Juan Valdespino, Benjamin Valdespino, and Mario Smith with the Equal Employment Opportunity Commission (EEOC), alleging violations of Title VII of the Civil Rights Act of 1964, as

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amended, 42 U.S.C. Section 2000e et seq. ("Title VII").

2. With private counsel, plaintiffs intervened in the matter on October 7, 1999. In the complaint-in-intervention, the plaintiffs allege that the defendant violated Title VII and the Washington Law Against Discrimination by subjecting Hispanic employees to unlawful harassment and other discriminatory practices based on their national origin. Plaintiffs-in-intervention also allege violations of the Jones Act, 42 U.S.C. §688, U.S. Constitution Art. III, Sec. 2, tort law, and the General Maritime Law. American Seafoods Company LLC ("American Seafoods"), the successor in interest to American Seafoods Company have vigorously contested these allegations.

3. The Commission, the parties in-intervention, and the defendant want to fully and finally conclude all claims arising out of the above charges without the expenditure of further resources and expenses in contested litigation. They agree that entry of this consent decree will be in the interest of the parties and will further the objectives of equal employment opportunity as set forth in Title VII.

II. JURISDICTION AND VENUE

4. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331, 1337, 1343 and 1345. This action is authorized pursuant to Sections 705(g)(6), 706(f)(1) and (3) and Section 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000e-4(f)(6), 2000e-5(f)(1) and (3) and 2000e-6 ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a. Some of the employment practices alleged to be unlawful in the complaint filed herein occurred within the jurisdiction of the United States District Court for the Western District of Washington.

III. PURPOSE OF THE DECREE

5. The parties have entered into this Consent Decree in order to achieve the following purposes:

a. To assure the implementation of policies and procedures which prohibit American Seafoods from discriminating or retaliating against employees on the basis of national origin.

b. To assure that American Seafoods implements a policy and enforcement program to effectively prevent discrimination and harassment based upon national origin and to address and correct situations in which such discrimination and harassment is alleged.

c. To assure that plaintiffs-in-intervention are fully compensated for lost wages and damages suffered in connection with their employment by American Seafoods.

d. To avoid the time, expense and uncertainty of further litigation.

IV. GENERAL PROVISIONS

6. This consent decree is intended to and does effectuate the full, final, and complete resolution of all allegations of unlawful employment practices and discrimination encompassed by the original discrimination charges and the complaint filed in EEOC and Juan Valdespino, Benjamin Valdespino and Mario Smith v. American Seafoods Company, Civil No. C99-1570L, pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq.

7. No findings have been made by the Court substantiating or refuting any of the allegations made by plaintiffs-in-intervention. The existence of this consent decree shall not in any way constitute an admission by the defendant that it has violated Title VII or any other applicable law.

8. This Consent Decree constitutes the complete understanding between the EEOC and American Seafoods with respect to matters herein. No waiver, modification or amendment to any provisions of this Consent Decree will be effective unless it is agreed to in accordance with provisions of Section IX, Consent Decree Amendment Procedures.

9. Except as contained in this subparagraph, this Consent Decree in no way affects EEOC's right to process, in accordance with standard Commission procedures, charges filed by individuals against American Seafoods alleging violations of Title VII. Charges include those pending as of the effective date of this Consent Decree and filed in the future. Processing includes the administrative investigation and conciliation and commencement of civil actions on the basis of such charges.

10. It is expressly agreed that if EEOC concludes that American Seafoods has failed to comply with this Consent Decree, the Commission may bring an action in the United States District Court for the Western District of Washington to enforce this Consent Decree after compliance with the terms in Section VIII, Dispute Resolution Procedures.

V. DEFINITION OF TERMS

For the purposes of this Consent Decree the following definitions shall apply:

11. "The Effective Date of This Consent Decree" is the date the Consent Decree is approved by the United States District Court for the Western District of Washington.

12. Unless otherwise indicated, the word "days" refers to calendar days.

13. "Key Crew, Supervisor, Manager" refers to the captain, master, fish master, mate, fish mate, bosun, chief engineer, factory manager, factory foreperson and chief cook.

14. "Formal or Informal Complaints" includes any complaint, whether written or oral, made to a supervisory employee of American Seafoods.

VI. MONETARY RELIEF

15. In settlement of plaintiffs' claims for illness, Jones Act, general maritime and tort law, employment discrimination, attorneys fees, costs, and all other claims alleged in the complaints or related to this lawsuit, American Seafoods agrees to pay the plaintiffs-in-intervention \$300,000.00, less applicable withholding required by law. In addition,

American Seafoods agrees to pay EEOC \$20,000.00 for the remaining class of Hispanic processors working aboard the Pacific Explorer during the 1998 "B" season. Distribution of settlement funds for plaintiffs-in-intervention will be handled by plaintiffs' private counsel and American Seafoods. Distribution of settlement funds for the remaining class of Hispanic processors will be handled by the EEOC and American Seafoods.

VII. INJUNCTIVE RELIEF

A. Compliance With Title VII

16. Defendant reaffirms its commitment to comply with Title VII and other federal anti-discrimination statutes. In furtherance of this commitment, American Seafoods will monitor the affirmative obligations of this Consent Decree. American Seafoods reaffirms that it will not discriminate against employees on the basis of national origin, race or ethnicity in any employment decisions.

17. Defendant will not retaliate against any employee for making a charge of discrimination or for testifying, assisting, or participating in any investigation, proceeding, or hearing associated with this lawsuit.

18. In recognition of its obligations under Title VII, American Seafoods will institute the policies and practices set forth below.

19. American Seafoods will translate the EEO provisions set forth in its Employee Handbook into the following languages: Spanish, Vietnamese, Tagalog, and French, in order that the largest portion of their processors can understand the process which is to be employed for reporting any type of discriminatory treatment.

20. Within one hundred twenty (120) days of the Effective Date of this Consent Decree, American Seafoods will amend its Employee Handbook to include the various

language versions and will distribute the amended Employee Handbook to all current employees and new hires.

21. American Seafoods will be required to follow the policies and procedures for reporting and investigating any formal or informal allegations of discriminatory treatment for the duration of this Consent Decree.

B. Posting Notice

22. American Seafoods will post the notice attached as Attachment A to this consent decree. The Notice shall be posted on a centrally located bulletin board on all American Seafoods vessels and facilities where employees will see the notice for the duration of the consent decree. American Seafoods will also post in the same location a copy of the EEO policy referenced in paragraph 11.

C. Expunging Records

23. Defendant will not disclose any information or make references to any charge of discrimination or this lawsuit in responding to employment reference requests for information about the Plaintiff-Intervenors.

24. Defendant will expunge from the personnel files of the Plaintiff-Intervenors, any references to a charge of discrimination against American Seafoods and this lawsuit. If the named plaintiffs-in-intervention wish to do so, American Seafoods will permit each individual to review his personnel file within thirty (30) days after the entry of this Consent Decree to insure that all such references have been expunged. American Seafoods will not add any information or references to the personnel files of the named plaintiffs or records regarding their charges of discrimination and this lawsuit after such references have been expunged. Files containing information about the Plaintiff-Intervenors that have been developed during the subject litigation will be maintained at the offices of defendant's counsel, Jay Zulauf.

D. Training And Awareness Program

1 25. To further the purposes and requirements of this Consent Decree, American
2 Seafoods will provide training to all management and supervisory employees with regard to
3 American Seafoods' policies and procedures regarding discrimination and harassment.

4 26. The objectives of this training will be to convey to employees American
5 Seafoods' commitment to the personnel policies and procedures established by this
6 Consent Decree and to provide information and guidance on how to carry out those
7 policies, and for individual employees, how to utilize the new policies and procedures. Each
8 training session for vessel personnel will include a videotaped presentation by a high
9 ranking official within American Seafoods emphasizing American Seafoods' commitment to
10 prevent discrimination and harassment.

11 27. American Seafoods will utilize outside resources to assist with the
12 development of this training. As soon as possible after the effective date of the Consent
13 Decree, the Commission, American Seafoods, and any other individuals involved in
14 developing the training will discuss the objectives of the training and the concepts and
15 approaches to be used. American Seafoods will provide to the Commission, within ninety
16 (90) days of the effective date of this Consent Decree, a detailed outline of the training to be
17 given. Within thirty (30) days of receipt of the outline the Commission may provide any
18 comments to American Seafoods with respect to the substance of the training as outlined,
19 which American Seafoods will consider. American Seafoods will provide to the Commission
20 a copy of the materials to be used in the training. American Seafoods will likewise provide
21 the Commission with any material revisions to such materials prior to implementing the
22 revisions. American Seafoods will provide information concerning the scheduled training
23 locations, dates, and times to the Commission.

24 28. The training outlined above will be conducted at (1) the orientation program for
25

all new hires, (2) at the contract signing held prior to the start of each season, and (3) at the training and orientation session(s) held for key crew members, beginning prior to the start of the 2001 A season.

29. American Seafoods will continue to provide EEO materials and information concerning its zero tolerance harassment policy to its employees through written memoranda and through training communicated to all employees.

E. Administration Of The Consent Decree

30. American Seafoods will be fully responsible for implementing this Consent Decree. American Seafood's President (currently Mike Hyde) shall have ultimate responsibility for implementation of the objectives under this Consent Decree. American Seafoods has appointed Tammy French, American Seafoods' Vice President of Human Resources as its Consent Decree Administrator.

31. To assist the Consent Decree Administrator in assuring compliance with the Consent Decree, American Seafoods will make available outside resources on equal employment law and/or practice.

32. American Seafoods will provide the Consent Decree Administrator with all support necessary to carry out her duties under the Consent Decree, including:

- a. Preparation of all reports required by the Consent Decree Administrator,
- b. Administrative and professional support as needed; and,
- c. Access to personnel officials, managers, and other employees.

33. The Consent Decree Administrator's major areas of responsibility will include:

- a. Preparation and submission to EEOC of the reports on compliance with this Consent Decree as set forth in Section VII, E, Reporting and Record Keeping;
- b. Providing information to employees concerning American Seafood's

obligations under the Consent Decree concerning matters of discrimination and

1 harassment;

2 c. Responding to employee inquiries concerning the provisions of this
3 Consent Decree;

4 d. Participating in training sponsored by American Seafoods, including
5 that provided for in this Consent Decree;

6 e. Investigating complaints regarding possible violations of the new policy
7 and procedures and reporting the results of the investigations to American Seafoods'
8 President.

9 f. Issuing discipline to supervisors, managers, and any other employees
10 for Consent Decree violations and violations of American Seafoods non-discrimination and
11 harassment policy.

12 g. Participating in discussions held among the parties to implement the
13 Consent Decree, to resolve disputes under the Consent Decree or to otherwise amend the
14 Consent Decree.

15 **F. Policies Designed To Promote Supervisor Accountability**

16 34. American Seafoods's agrees that it shall impose substantial discipline -- up to
17 and including termination, suspension without pay or demotion -- upon any supervisor or
18 manager who engages in national origin harassment or racially-based harassment or with
19 active or constructive knowledge permits any such conduct to occur in his or her work area
20 or among employees under his or her supervision, or who retaliates against any person who
21 complains or participates in any investigation or proceeding concerning any such conduct.
22 Said discipline may include a monetary penalty (similar to that assessed for other infractions
23 such as smoking, consuming alcohol or fighting) for failure to take appropriate and
24 immediate action to remedy instances of discrimination or harassment. Employees who

have been disciplined for national origin harassment in the past shall receive progressively
1 more severe discipline. American Seafoods shall communicate this policy to all of its
2 supervisors and managers in its Employee Handbook.

3 35. American Seafoods agrees that it shall continue to advise all managers and
4 supervisors of their duty to actively monitor their work areas to ensure employees'
5 compliance with the company's national origin discrimination and harassment policy, and to
6 report any incidents and/or complaints of national origin discrimination, racially-based
7 harassment and/or retaliation of which they become aware to the department charged with
8 handling such complaints.

9 36. American Seafoods agrees that it will complete its current revision of the
10 supervisor appraisal process to include performance evaluations for the handling of equal
11 employment opportunity ("EEO") issues as an element in supervisor appraisals, and in any
12 employment action based thereon.

13 37. American Seafoods agrees that it shall include "commitment to equal
14 employment opportunity" as a criterion for qualification for supervisory positions.

15 **G. Reporting, Record Keeping And Compliance Review**

16 38. The reports to be submitted by American Seafoods on a periodic basis as
17 provided in this Section will be forwarded so as to arrive at the Commission within thirty (30)
18 days after the close of the reporting period.

19 39. Within one hundred fifty (150) days after the Effective Date of this Consent
20 Decree, American Seafoods will provide the Commission with the following items:

21 a. A report confirming the date of the distribution to processors of copies
22 of the amended Employee Handbooks; (Report 1A).

23 40. On a quarterly basis beginning within one hundred fifty (150) days of the
24 Effective Date of this Consent Decree, for a period of 18 months, American Seafoods will

prepare and submit the reports described below:

a. A report on internal and external complaints of national origin, race or ethnicity discrimination and/or harassment. This report will provide for each such formal or informal complaint filed and/or resolved during the period, the name, sex, and national origin, race or ethnicity of the person making the complaint, the date the complaint was made, a description of the complaint, and resolution or status of each complaint. Copies of any complaint made during the reporting period and copies of documents relating to any complaints resolved during the period will be provided along with the report. (Report 1B);

8 b. A report of all training activities held during the period. (Report 2B);

9 41. All records required by this Consent Decree will be retained by American
10 Seafoods for the duration of this Consent Decree. American Seafoods will also maintain
11 records necessary to demonstrate compliance with the provisions of this Consent Decree
12 and to verify reports submitted, which records shall include, but are not limited to:

13 a. Records concerning national origin, race or ethnicity discrimination
14 and/or harassment incidents or complaints, including documentary evidence and
15 summaries of interviews conducted during the investigations, and the findings, resolutions
16 and/or conclusions reached;

b. Documents relating to any disciplinary action taken by American
Seafoods against any employee resulting from inappropriate conduct which could be
construed as discrimination and/or harassment of another employee on the basis of national
origin, race or ethnicity;

21 c. Documentation on individual and group training materials used during
22 the training sessions outlined in Section VII, C, Training and Awareness;

23 42. For the duration of this Consent Decree, the Commission shall have the right
24 to request information and conduct on-site reviews if the Commission determines such

reviews are necessary to effectuate the purposes of this Consent Decree, including
1 conducting interviews, attending training held pursuant to the Consent Decree, and
2 examining documents and data maintained by American Seafoods pursuant to this Consent
3 Decree and Commission regulations for the purpose of confirming compliance with this
4 Consent Decree Order. The Commission agrees that it will provide reasonable notice to
5 American Seafoods' attorney prior to conducting any review.

6 43. After the expiration of this Consent Decree, records will be maintained by
7 American Seafoods as required by law and Commission regulations.

8 44. American Seafoods will also provide EEO-1 data as required by federal law.

9 45. American Seafoods, in any employment advertisements that it may run, shall
10 include information that it is an equal opportunity employer.

11 **VIII. DISPUTE RESOLUTION PROCEDURES**

12 46. Either party shall have the right to initiate an action pursuant to the Court's
13 continuing jurisdiction for an unresolved dispute or for non-compliance with any provision of
14 the Consent Decree, as follows:

15 a. If one party believes that there is an issue to resolve, it shall promptly
16 give notice, in writing, to the other party regarding (1) the specific provision, which it
17 believes has not been met, and (2) a complete factual statement of the issue.

18 b. The parties shall promptly undertake efforts to resolve the areas of
19 dispute or alleged non-compliance, through meetings, mediation or other appropriate
20 means.

21 c. If one party determines that efforts to resolve the matter have failed, the
22 party so finding shall notify the other party in writing of such failure to resolve the matter and
23 provide a description of the facts and circumstances surrounding the matter.

24 d. The parties shall request that the Court appoint a mediator within forty-

five (45) days of receipt in writing of the notice of impasse. Discussions will be engaged in with the assistance of the Court appointed mediator until the mediator determines that discussions are no longer productive.

IX. DECREE AMENDMENT PROCEDURES

47. This Consent Decree may be modified by mutual written agreement between the Commission and American Seafoods, or by motion to the Court.

48. Any modification to the Consent Decree is subject to approval by the Court.

X. DURATION OF THE DECREE

49. This Consent Decree will become effective on the date approved and signed by the United States District Court, Western District of Washington, and will remain in effect for a period of two (2) years. If either party petitions the Court for breach of the decree, and the Court finds a violation of the terms of the decree, the Court may extend the duration of the decree.

XI. RETENTION OF JURISDICTION

50. The United States District Court for the Western District of Washington shall

retain jurisdiction over this matter for the duration of the Consent Decree.

DATED this 22nd day of November, 2000.

C. GREGORY STEWART

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IT IS SO ORDERED this 30th day of November, 2000.

Robert S. Lasnik
ROBERT S. LASNIK
UNITED STATES DISTRICT JUDGE

ATTACHMENT A

NOTICE TO ALL EMPLOYEES

This notice is being posted pursuant to a agreement between American Seafoods Company, the Equal Employment Opportunity Commission, and Juan Valdespino, Benjamin Valdespino, and Mario Smith entered as the result of a settlement of a lawsuit pending in the federal district court for the western district of Washington, NO. C99-1570L.

Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963, and the Americans with Disabilities Act of 1990 are enforced by the EEOC and require the following:

That there be no discrimination against any employee or applicant for employment because of the employee's race, sex, color, religion, national origin, age (over age 40), or disability with respect to hiring, firing, compensation, or other terms, conditions or privileges of employment.

It is an unlawful employment practice for an employer to retaliate against any employees or applicants for employment because they have opposed a practice or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under these statutes.

American Seafoods Company will institute a training program to train its managers regarding the requirements of the above statutes, with particular emphasis on national origin discrimination.

This notice is being posted because American Seafoods Company supports and will comply with these federal laws in all respects and will not take any retaliatory action against employees because they have exercised their rights under the law.

DATED _____, 2000.

American Seafoods, Inc.

By: _____