

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	Case No. 4:15-cv-00066 (DLH-
)	CSM)
and)	
)	
MATTHEW CLARK,)	
)	
Plaintiff-Intervenor,)	
)	
v.)	
)	
AMERICAN CASING & EQUIPMENT, INC.)	CONSENT DECREE
)	
Defendant.)	
)	

INTRODUCTION

Plaintiff Equal Employment Opportunity Commission (“EEOC”) has filed a Complaint *EEOC v. American Casing & Equipment, Inc.*, Civil No. 4:15-cv-00066 (DLH-CSM), alleging that Defendant American Casing & Equipment, Inc. (“Defendant”) discriminated against Matthew Clark (“Clark”) in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”). The EEOC alleged that Defendant discriminated against Clark when it subjected him to harassment based on his race, Asian, and national origin, Filipino. The EEOC further alleged that Defendant terminated Clark’s employment in retaliation for his complaints about the harassment in violation of Section 703(a), 42 U.S.C. §2000e-2(a) and 704(a), 42 U.S.C. §2000e-3(a).

In reaching this Consent Decree, the EEOC and Defendant, acting by and through their counsel, engaged in negotiations and an exchange of information. The parties have obtained sufficient information to assess reliably the relative merits of the claims and defenses. Throughout this process, the EEOC and Defendant were represented by counsel knowledgeable in this area of the law.

THEREFORE, upon the consent of the parties, and upon review by the Court of these terms, it is ORDERED, ADJUDGED, and DECREED that the following terms are approved as set forth herein:

I. JURISDICTION

A. This Court has jurisdiction over the parties and the subject matter of this action.

B. This Court shall retain jurisdiction of this action during the duration of this Decree for the purposes of entering all orders, judgments, and decrees that may be necessary to implement the relief and enforcing compliance with the terms provided herein.

II. FINDINGS

A. The purposes of Title VII and the public interest will be furthered by the entry of this Decree.

B. The terms of this Decree constitute a fair and equitable settlement of this action.

III. SCOPE

The EEOC agrees that it will not bring any further claim against Defendant based on the charge of discrimination filed by Matthew Clark underlying this lawsuit. By entering into this Decree the parties do not intend to resolve any other charges of discrimination currently pending before the EEOC other than the charge that created the procedural foundation for the Complaint in this case, and the EEOC does not waive or in any manner limit its right to process or seek relief in any other charge or investigation.

IV. DEFINITIONS

As used herein, “American Casing & Equipment, Inc.” shall mean Defendant’s business located at 2721 West Front, Williston, ND 58802.

V. TERM

The Term of this Decree and all obligations hereunder shall be two years from the Effective Date hereof. The Effective Date hereof shall be the date that the District Court approves this Consent Decree.

VI. INJUNCTION

A. American Casing & Equipment, Inc. and its officers, agents, management (including supervisory employees), successors, assigns and all persons acting in concert with it shall not engage in any form of discrimination based on race or national origin in violation of Title VII.

B. American Casing & Equipment, Inc. and its officers, agents, management (including supervisory employees), successors, assigns and all persons acting in concert with it shall not engage in any form of retaliation against any person because such person has opposed any practice made unlawful under Title VII, made a complaint of race or

national origin harassment, filed a Charge of Discrimination under Title VII, testified or participated in any manner in any investigation, proceeding, or hearing under Title VII, or asserted any rights under this Decree.

C. In the event American Casing & Equipment is contacted by a potential employer of Matthew Clark, American Casing & Equipment, Inc. will provide a neutral reference for Mr. Clark stating only dates of employment, his position, and his starting and ending wage. American Casing & Equipment will not discuss this lawsuit or Mr. Clark's complaint against Defendant.

D. At the time American Casing & Equipment, Inc. issues the payment of monetary relief to Clark pursuant to the terms of this Consent Decree, it will include with the payment an individualized letter of apology, approved by the EEOC, and signed by Defendant's Owner Steve Larvick. This letter shall offer a specific apology for Defendant's discrimination and retaliation against Clark for his opposition to unlawful discrimination and his participation in protected activity under Title VII.

VII. POLICIES AND TRAINING

A. Within sixty (60) days after the Effective Date hereof, American Casing & Equipment, Inc. will review its workplace policies relating to race discrimination, national origin discrimination, retaliation, complaint procedures for employees, investigation of discrimination complaints and recordkeeping obligations, and revise any policies inconsistent with Title VII.

B. On an annual basis for the term of this Consent Decree, American Casing & Equipment, Inc. will train all of its management and supervisory personnel on the federal

law prohibitions on race and national origin discrimination, and retaliation against employees for engaging in protected activity. The training may also include information about other laws prohibiting discrimination and harassment in the workplace and about Defendant's equal employment opportunity policies. The training for management and supervisory employees can be conducted via live webinar or video conferencing. An agenda for the training, training materials, and resumes relating to the presenters will be provided to the EEOC at least 30 days before each training session. The EEOC will have the opportunity to comment on the agenda and suggest changes to the presenters, the agenda and the materials until a week before each training. The first annual training shall total no less than one hour. Each subsequent training shall total no less than one hour, which may be presented in a one hour session, or as two thirty-minute training sessions.

C. On an annual basis, American Casing & Equipment, Inc. will train all of its non-management employees on their rights as employees to be free from discrimination and retaliation under Title VII. Such training shall include Defendant's equal employment opportunity policies and the process for making complaints about workplace conditions, discrimination or retaliation internally and advise them of their right to file charges of discrimination with the EEOC or other fair employment practices agencies. The training for non-management employees can be conducted via live webinar or video conferencing. An agenda for the training, training materials, and resumes relating to the presenters, will be provided to the EEOC at least 30 days before each training session. The EEOC will have the opportunity to comment on the agenda and suggest changes to the presenters, the agenda and the materials until a week before each training. Defendant

may choose to train non-management employees during the training for management employees, so long as the trainer explains how the obligations of management employees to respond to complaints of discrimination differ from those of non-management employees.

D. The EEOC shall be notified of the time and date of each scheduled management and supervisory employee training and one EEOC representative will be entitled to attend all management training sessions held pursuant to this Decree as a silent observer. The EEOC shall be notified of the date and method of each scheduled training for non-management employees.

E. At the beginning of each training session held under this Decree, Defendant's owner, Steve Larvick, or a manager/supervisor, will introduce the trainer and affirm that Defendant takes its obligations under all EEO laws and prohibitions seriously. Also at this time, Owner Steve Larvick, or a manager/supervisor, will describe Defendant's policy against race and national origin discrimination, and its policy of non-retaliation for individuals who engage in protected activity under federal EEO laws and identify the name and contact information of management personnel who are responsible for receiving and responding to workplace complaints.

F. American Casing & Equipment, Inc. will develop, implement, or revise its performance evaluation criteria for managers and supervisors to include measures for performance compliance with EEO laws and with its own anti-discrimination and retaliation policies and procedures. This will specifically include holding managers and supervisors accountable for failing to report and/or to take appropriate action with respect

to racial harassment, national origin harassment, retaliation or other discrimination as required under Defendant's policies and procedures, applicable state laws, or Title VII of the Civil Rights Act of 1964. Managers and supervisors will be held accountable for the discrimination of any employees by personnel under their supervision. Managers and supervisors will also be held accountable for any mishandling of complaints or investigations by personnel under their supervision.

VIII. POSTING TO EMPLOYEES

A. American Casing & Equipment, Inc. will post and cause to remain posted the posters required to be displayed in the workplace by EEOC regulation 29 C.F.R. §1601.30 in all its facilities.

B. American Casing & Equipment, Inc. will post the Notice attached as **Exhibit A** at its facility. **Exhibit A** will be posted in locations where notices for employees are generally posted, and shall remain in place for the term of this Decree. Defendant shall take steps to ensure that the posted Notice remains unobscured and, during the term of this Decree, will replace any damaged or defaced Notices.

IX. RECORDKEEPING AND REPORTING

A. American Casing & Equipment, Inc. will comply with all recordkeeping obligations under the laws prohibiting discrimination. Defendant will review and, as necessary, revise any document retention policies, human resources policies, or employee materials to comply with the record-keeping requirements under Title VII.

B. For the duration of this Decree, American Casing & Equipment, Inc. shall document, and retain all documents associated with, any complaint of discrimination on

the basis of race, national origin or retaliation, whether or not such complaint is found to be meritorious or results in the filing of a charge of discrimination.

C. On an annual basis during the term of this Decree, American Casing & Equipment, Inc. shall submit to the EEOC a certification of compliance this Decree, including that it has reviewed its workplace policies, revised any policies inconsistent with Title VII, and it has conducted the training of its personnel as required by this Decree. After the first report to the EEOC, Defendant's subsequent annual reports shall document any further revisions or changes to its workplace policies and describe how such revisions are consistent with Title VII.

D. On an annual basis, American Casing & Equipment, Inc. shall provide the EEOC with a list of all complaints of discrimination on the basis of racial harassment, national origin harassment, and retaliation made during that period with a description of the allegation made, including: (1) the name of the complaining party; (2) a description of the facts of the complaint; and (3) a description of Defendant's actions in response to the complaint. Upon the EEOC's request, Defendant shall make the underlying documents or records available to the EEOC within ten days of request.

X. MONETARY REMEDY

A. American Casing & Equipment, Inc. agrees to pay \$250,000 to Matthew Clark in resolution of this matter within ten (10) days after the Effective Date hereof, and to provide notice of its payment to Clark to the EEOC.

B. Clark's execution of a release of all claims against Defendant and its directors, officers, shareholders, employees, successors, and assigns will be a condition

precedent of his receipt of relief under this Decree.

C. Contemporaneously with its payment to Clark, Defendant will provide Clark with appropriate income tax documentation. For purposes of this settlement, Defendant will provide Clark a W-2 income tax form reflecting the payment of \$77,200 for Clark's back pay losses. Defendant will make all appropriate withholdings and employer tax contributions applicable to the back pay amount. Defendant will provide Clark with a 1099 tax form reflecting the payment of \$77,200 for Clark's compensatory damages. Defendant will provide Clark with a 1099 tax form reflecting the payment of \$95,600 for Clark's attorney's fees paid to Madia Law LLC. Defendant will provide the EEOC with a copy of the checks and any related correspondence provided to Clark.

XI. NOTIFICATION OF SUCCESSORS

The terms of this Consent Decree shall be binding upon the present and future directors, officers, managers, agents, successors and assigns of American Casing & Equipment, Inc. Defendant and any successors of it, shall provide a copy of this Decree to any organization or person who proposes to acquire or merge with it, or any successor, prior to the effectiveness of any such asset sale, acquisition or merger. This paragraph shall not be deemed to limit any remedies available in the event of any finding by the Court regarding violation of this Decree.

XII. DISPUTE RESOLUTION

The EEOC will give American Casing & Equipment, Inc., ten (10) business days notice of any alleged noncompliance with the terms of the Decree before initiating enforcement actions under this Decree. If Defendant has not remedied the alleged non-

compliance or has not satisfied the EEOC that it has complied with the Decree at the end of that period, the EEOC may apply to the Court for appropriate relief. The dispute resolution proceedings in this Section do not apply to those cases where the EEOC has determined the need to seek immediate injunctive or other extraordinary relief.

XIII. COMPLIANCE REVIEW

The EEOC may review American Casing & Equipment, Inc.'s, compliance with the aforementioned provisions of this Decree during the term of this Decree upon written notice to Defendant's attorney of record at least ten (10) business days in advance of any inspection of Defendant's documents or premises. Upon such notice, Defendant will allow representatives of the EEOC to review its compliance with this Decree by inspecting and photocopying relevant, non-privileged documents and records, interviewing employees and management officials on its premises, and inspecting its premises.

XIV. COSTS AND ATTORNEYS FEES

The EEOC and Defendant shall bear their own costs and attorney's fees. Clark's attorney's fees shall be paid by Defendant as indicated in Section X. Monetary Remedy, paragraph C.

By the Court:

IT IS SO ORDERED.

Dated: _____, 2016

Daniel L. Hovland
United States District Judge

The parties jointly request that the Court approve and enter this Consent Decree.

This 18th day of May, 2016.

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[American Casing & Equipment, Inc. Letterhead]

EXHIBIT A

NOTICE TO EMPLOYEES

This Notice is posted pursuant to a Consent Decree resolving a lawsuit with the United States Equal Employment Opportunity Commission ("EEOC"). The EEOC brought suit against American Casing & Equipment, Inc., alleging that it subjected a former employee to harassment based on his race, Asian, and national origin, Filipino. The EEOC's lawsuit also alleged that American Casing & Equipment terminated the former employee in retaliation for his complaints about the discrimination. The EEOC alleged that American Casing & Equipment's actions were in violation of Title VII of the Civil Rights Act of 1964.

The Consent Decree resolving this lawsuit provided a monetary settlement to former employee Matthew Clark and requires training for American Casing & Equipment personnel on Federal laws prohibiting race and national origin discrimination and retaliation, and mandates regular reporting to the EEOC. The Consent Decree also requires that American Casing & Equipment comply with Federal law that prohibits racial and national origin harassment and retaliation.

American Casing & Equipment will not retaliate against any person who opposes a practice made unlawful under Title VII, who filed a charge of discrimination under Title VII, or who participated in proceedings or asserted rights under Title VII or under the Consent Decree.

If you have a question about the Consent Decree, you should contact the Minneapolis office of the EEOC at 612-335-4040. You can find out more about the EEOC and the laws that it enforces by going to <http://www.eeoc.gov>.

Steve Larvick, Owner
American Casing & Equipment, Inc.