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FILED
 CLERK U.S. DISTRICT COURT
 JUN 14 2005
 CENTRAL DISTRICT OF CALIFORNIA
 EASTERN DIVISION BY DEPUTY

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22 **UNITED STATES DISTRICT COURT**
 23 **CENTRAL DISTRICT OF CALIFORNIA**

24 EQUAL EMPLOYMENT)
 25 OPPORTUNITY COMMISSION,)

Case No.: EDCV 03-01117 RT
 (SGL)

26 Plaintiff,)

^{RT}
 [PROPOSED] CONSENT
 DECREE

27 v.)

Hon. Robert J. Timlin

28 RIVERA VINEYARDS, INC. d/b/a)
 BLAS RIVERA VINEYARDS, et al,)
 Defendants.)

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I. INTRODUCTION

On September 05, 2003, Plaintiff U.S. Equal Employment Opportunity Commission (“EEOC” or “Commission”) filed a federal lawsuit against Rivera Vineyards, et al., (“Defendants”), entitled EEOC v. Rivera Vineyards, Inc. d/b/a Blas Rivera Vineyards; Linda Vineyards, Inc.; BR Company; and Oasis Distributing; and Does 1-10 Inclusively, Case Number EDCV 03-01117 RT (SGL), to correct unlawful employment practices. Specifically, the EEOC alleged that Defendants subjected Virginia Mejia, Rosario Taylor, and other similarly situated women to sexual harassment. The EEOC also alleged that Defendants unlawfully subjected Ms. Mejia, Ms. Taylor, and other similar situated individuals to retaliation for engaging in a protected activity of opposing the sexual harassment by subjecting them to termination and/or for failing to recall them to work. The EEOC further alleged that the Defendant subjected women to sex discrimination by segregating and prohibiting women from working certain positions, such as pruning, girdling, irrigation, and other positions. The Defendants deny all of the accusations.

The EEOC and the Defendants hereby stipulate and agree to entry of this Consent Decree (“Decree”) to resolve the Commission’s Complaint under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq. (“Title VII”), and Title I of the Civil Rights Act of 1991, 42 U.S.C. Section 1981a on behalf of the aggrieved claimants identified above.

II. PURPOSES OF THIS DECREE

23 A. In the interest of resolving this matter, and as a result of having engaged in
24 comprehensive settlement negotiations, the EEOC, Rivera Vineyards, Inc., Linda
25 Vineyards, Inc., BR Company and Oasis Distributing, (hereinafter collectively
26 referred to as “the Parties”) have agreed that this action should be finally resolved
27 by entry of this Decree. This Decree shall be binding on and enforceable against
28

1 all the parties, including Defendants and its officers, directors, agents, successors,
2 and assigns.

3 B. The Parties have entered into this Decree for the following purposes:

- 4 1. To provide appropriate monetary and injunctive relief;
- 5 2. To ensure that Defendants' employment practices comply with federal
6 law;
- 7 3. To ensure a work environment free from hostility due to their sex
8 (female);
- 9 4. To ensure training for Defendants' managers and employees with
10 respect to their obligations under Title VII;
- 11 5. To ensure that Defendants maintain a non segregated work force to
12 allow women the equal employment opportunities required under Title VII;
- 13 6. To ensure that employees are protected from retaliation for engaging
14 in a protected activity; and
- 15 7. To provide an appropriate and effective mechanism for handling
16 harassment, discrimination, and retaliation complaints in the workplace.

17 III. JURISDICTION

18 The Court has jurisdiction over the parties and the subject matter of this
19 lawsuit, pursuant to 28 U.S.C. Sections 451, 1331, 1337, 1343, 1367 and 42 U.S.C.
20 2000e-5. The Court shall retain jurisdiction of this action during the duration of
21 this Decree for the purposes of entering all orders, judgments and decrees that may
22 be necessary to implement the terms and conditions specified herein.

23 The Plaintiff in this action is the U.S. Equal Employment Opportunity
24 Commission.

25 The Defendants who are bound to the jurisdiction of this Court and to the
26 terms and obligations of this Decree are as follows: Rivera Vineyards (a sole
27 proprietorship); Oasis Distributing (a sole proprietorship); BR Company (a sole
28 proprietorship); Indian Wells Vineyards, Inc.; Rivera Vineyard Inc., Linda

1 Vineyards Inc.; BR Inc.; Mr. Blas Rivera as an individual and in his capacity as
2 Trustee of the Rivera Family Trust; its predecessors, successors, officers, directors,
3 agents, and assigns.

4 IV. FINDINGS

5 Having examined the terms and provisions of this Decree and based on the
6 pleadings, record and stipulation of the Parties, the Court finds the following:

7 A. The Court has jurisdiction over the Parties and the subject matter of this
8 action. The Complaint asserts claims that, if proven, would authorize the Court to
9 grant the relief set forth in this Decree.

10 B. The terms and provisions of this Decree are adequate, fair, reasonable,
11 equitable and just. The rights of the Defendants, the Commission and those for
12 whom the Commission seeks relief are protected adequately by this Decree.

13 C. This Decree conforms with the Federal Rules of Civil Procedure and Title
14 VII and is not in derogation of the rights and privileges of any person. The entry
15 of this Decree will further the objectives of Title VII and will be in the best interest
16 of the Parties.

17 V. RESOLUTION OF CLAIMS

18 A. The Parties agree that this Decree resolves all claims and causes of action
19 arising out of EEOC Charge Nos. 340-2002-00015 and 340-2002-00019, the
20 complaint filed on September 5, 2003, and the First Amended Complaint filed on
21 or about February 25, 2004 in the United States District Court, Central District of
22 California entitled EEOC v. Rivera Vineyards, Inc. d/b/a Blas Rivera Vineyards;
23 Linda Vineyards, Inc.; BR Company; and Oasis Distributing; and Does 1-10
24 Inclusive, with Case Number EDCV 03-01117 RT (SGL). The Decree
25 constitutes a complete resolution of all claims under Title VII that were made or
26 could have been made by the EEOC in this action and by those for whom the
27 Commission sought relief.

1 B. Nothing in this Decree shall be construed to preclude the EEOC or
2 Defendants from enforcing this Decree pursuant to its terms in the event any party
3 has failed to perform the promises and representations contained herein.

4 C. Nothing in this Decree shall be construed to limit or to reduce Defendants'
5 obligation to comply fully with Title VII or any other federal employment statute.

6 D. This Decree in no way affects the EEOC's right to bring, process,
7 investigate, or litigate other charges that may be in existence or may later arise
8 against Defendants in accordance with standard EEOC procedures provided that
9 the facts upon which any such action would be based occurred on or after March
10 24, 2005.

11 VI. DURATION AND EFFECTIVE DATE OF DECREE

12 A. The provisions and agreements contained herein are effective immediately
13 upon the date which this Decree is entered by the Court ("Effective Date").

14 B. This Decree shall remain in effect until the Defendants fully pay the monies
15 owed under this Decree or three (3) years from the Effective Date, whichever is
16 later. The term of the Decree shall be no less than three (3) years from the
17 Effective Date.

18 VII. MONETARY RELIEF

19 A. Terms

20 In settlement of this lawsuit, Defendants shall pay a total of one million
21 fifty-thousand dollars (\$1,050,000.00) ("Monetary Obligation") to resolve this
22 action. Defendants shall be jointly and severally liable for the full amount of all
23 such payments. The Defendants shall make payments according to the following
24 schedule: (1) \$100,000.00 due 60 days after the Effective Date; (2) \$75,000.00 due
25 six (6) months after the Effective Date; (3) \$75,000.00 due twelve (12) months
26 after the ///

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1 Effective Date. Thereafter, Defendants shall pay \$100,000.00 annually on the
2 second through ninth anniversary (annually) of the Effective Date, without interest.

3 1. Defendants shall accelerate payment of the remaining balance, at any
4 point during the duration of this Decree upon Defendants' sale of any of its
5 agricultural real property, at the rate of \$750.00 per acre but in no event more than
6 the full remaining balance of the Monetary Obligation. Upon any sale of
7 Defendants' agricultural real property and receipt by Plaintiff of a sum equal to
8 Seven Hundred Fifty Dollars (\$750.00) for each acre sold (but in no event
9 exceeding the remaining balance of the Monetary Obligation), Plaintiff shall
10 provide a partial reconveyance of the deed of trust with respect to the properties
11 sold.

12 2. In addition, upon Defendants' refinance of any existing debt against
13 their agricultural real property, Plaintiff shall provide Defendants a subordination
14 of the Deed of Trust provided the new, refinanced loan does not exceed the
15 existing loan balance (as of the Effective Date), of the debt it replaces. If any new
16 loan amount secured by Defendants' agricultural real property would be greater
17 than the existing loan balance, (as of the Effective Date) of the debt it replaces
18 ("New Loan"), then, except as provided below, upon recordation of the New Loan,
19 the EEOC shall be paid the net differential up to but not exceeding the remaining
20 balance of the Monetary Obligation. Upon receipt by Plaintiff of any loan
21 proceeds from a New Loan, as described above, Plaintiff shall provide Defendants
22 a partial reconveyance of the Deed of Trust with respect to all of the property
23 which is the subject of the refinance. If the proceeds of a New Loan are used
24 exclusively for crop production purposes ("Crop Loan"), then in that event, if
25 necessary, the EEOC shall subordinate the lien of the Deed of Trust to said Crop
26 Loan provided that the Crop Loan is secured by a crop mortgage, personally
27 guaranteed by Blas Rivera; and that the Crop Loan does not exceed Three Million
28 Dollars (\$3,000,000.00) and that Plaintiff receives twenty-five percent (25%) of

1 the Crop Loan, net of loan costs (but not exceeding the remaining balance of the
2 Monetary Obligation) as a condition of the subordination.

3 3. Further, upon the full payment by Defendants to Plaintiff of the
4 Monetary Obligation Plaintiff shall provide Defendants an unconditional request
5 for full reconveyance and deed of full reconveyance of the Deed of Trust and the
6 release of the personal guarantee of Blas Rivera, all forms and content for any of
7 the matters described in Section VII.A.1, 2 and 3 shall be provided by Defendants
8 to Plaintiff.

9 B. Personal Liability of Blas Rivera

10 Blas Rivera shall be personally liable for monies owed under this Decree in
11 the amount of \$1,050,000.00. Mr. Blas Rivera shall also be liable as a Trustee of
12 the Rivera Family Trust. Accordingly Mr. Rivera as an individual and as a Trustee
13 of Rivera Family Trust agrees to be bound by the terms and obligations of this
14 Decree as set forth herein and the jurisdiction of this Court (known hereafter as
15 being subsumed herein along with the other "Defendants").

16 C. Collateral

17 As security for Defendants' obligations under this Decree, Defendants shall
18 record a memorandum of this Decree in the County of Riverside and Imperial
19 County in the State of California within ten (10) days of the Effective Date
20 creating a lien against all real and personal property owned by the Defendants,
21 including Blas Rivera. A copy of the recorded Memorandum shall be sent to
22 Anna Park, Regional Attorney, United States Equal Employment Opportunity
23 Commission, 255 East Temple Street, 4th Floor, Los Angeles, CA 90012 within
24 five (5) days of recording.

25 As further security for Defendants' obligations under this Decree,
26 Defendants shall execute a deed of within ten (10) days of the Effective Date,
27 creating a lien against all agricultural real and personal property owned by the
28 Defendants as of the Effective Date. A copy of the recorded deed of trust shall be

1 sent to Anna Park, Regional Attorney for the United States Equal Employment
2 Opportunity Commission, 255 East Temple Street, 4th Floor, Los Angeles, CA
3 90012 within five (5) days of recording.

4 The collateral shall also include all inventories, goods, equipment, trade
5 fixtures, contract rights, accounts, chattel paper, instruments, good will, general
6 intangibles and right to payment of every kind now owned or hereafter acquired by
7 the Defendants and/or any other company and/or partnership in which Blas Rivera
8 or Defendants hold any and all interest either individually or jointly. Defendants
9 shall be jointly and severally liable for the Monetary Obligation.

10 Should Defendants fail to record the Memorandum of this Decree and the
11 Deed of Trust within forty-five (45) days of entry of this Decree, they will be
12 deemed in default and the total amount of \$1,050,000 shall be owed and due
13 immediately, including interest at the rate of 10% per annum from and after the
14 date of default.

15 **VIII. CLASS FUND**

16 A. Defendants shall deposit all sums which become due hereunder in a Class
17 Fund. Within thirty (30) days after a payment, Defendants shall provide the
18 EEOC written verification of the first payment described above and of each and
19 every subsequent payment. Defendants shall have the sole responsibility for all
20 costs and fees connected with establishing and maintaining the class fund. The
21 Class Fund will administer and effect distribution of sums specified herein to
22 eligible claimants, all as set forth in this Decree, in accordance with the written
23 specifications of the EEOC.

24 B. The EEOC shall have the sole discretion to identify eligible claimants and
25 the sole discretion to allocate the monetary amounts for each eligible claimant that
26 may be covered by this Decree. Claimants shall execute a general release by and
27 between the Defendants. EEOC shall not be a party to the separate release. The
28 EEOC retains the sole discretion to issue a Right-to-Sue notice in this case. For all

1 eligible claimants, EEOC agrees that a Right-to-Sue Notice will not be issued in
2 this case under Title VII.

3 C. The EEOC shall determine and submit a written list of eligible claimants to
4 the Defendants along with the last known address of the claimant. Within ten (10)
5 days of receiving the list of eligible claimants, Defendants shall make payments, to
6 the extent of monies in the Class Fund, to each eligible claimant identified by the
7 EEOC by check transmitted via certified mail, return receipt requested. All
8 amounts distributed from the Class Fund shall be evidenced by IRS Form 1099 to
9 each recipient.

10 D. Within ten (10) business days of the issuance of each check, Defendants
11 shall submit a copy of each check and related correspondence to Anna, Park,
12 Regional Attorney, United States Equal Employment Opportunity Commission,
13 255 East Temple Street, 4th Floor, Los Angeles, CA 90012.

14 E. Defendants shall prepare and distribute 1099 tax reporting forms to each of
15 the eligible claimants pursuant to IRS rules and regulations. Defendants shall be
16 solely responsible for any costs associated with the issuance and distribution of the
17 1099 tax reporting forms to each of claimants.

18 F. In the event that a payment is returned, because the address is not current,
19 the Defendants shall conduct data base research for the claimant's current address
20 and/or attempt to find the claimant's current address at Defendants' own cost.
21 Defendants shall immediately notify the EEOC if a payment is returned and its
22 subsequent efforts to find a current address. Any subsequent correspondence shall
23 be sent to the Regional Attorney as outlined above in VIII (D) above. Once
24 Defendants notify EEOC of a returned payment, upon payment of said unclaimed
25 funds as described herein below, Defendants shall be released from any and all
26 further liability for the same under this Decree and the sum(s) in question shall be
27 credited to Defendants monetary obligations hereunder.

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1 G. Surplus in Class Fund

2 In the event that any portion of the Class Fund has not been distributed at the
3 expiration of this Decree, the surplus shall be paid to CRLA for providing services
4 to farm workers, specifically farm worker women about sexual harassment. The
5 EEOC shall provide the Defendants the address for CRLA ^{in the} ^{event} of a Surplus in
6 the Class Fund.

7 **IX. REINSTATEMENT**

8 A. Defendants agree to rehire the claimants who were offered reinstatement on
9 or about April of 2001 in the event defendants resume farming operations.

10 Resuming farming ^{an} operation is defined as employing 300 employees for 30
11 (thirty) consecutive calendar days. Defendants shall notify the EEOC within five
12 (5) days of: (1) the resumption of farming operations as defined above; (2) when
13 the claimants are rehired; and (3) who among the claimants was rehired. The use
14 of sub-contractors or contractors shall not exempt the Defendants' obligations
15 under this provision (IX) of the Decree. In the event a claimant is not rehired even
16 though he or she was offered reinstatement on or about April of 2001, the
17 Defendants shall notify the EEOC in writing of the reasons for not hiring the
18 claimant.

19 B. Additionally, claimants who participate herein but were not offered
20 reinstatement on or about April of 2001 shall not be precluded from being
21 considered for future employment.

22 **X. INJUNCTIVE RELIEF**

23 A. Non-Discrimination

24 1. Sexual Harassment

25 Defendants, their officers, agents, management (including all supervisory
26 employees), successors, assigns, and all those in concert or participation with them,
27 or any of them, hereby agree: (a) not to engage in sexual harassment or sex based
28 harassment; (b) to prevent and correct any harassment or other discrimination on

1 the basis of sex; (c) to ensure that employees who complain about or resist
2 discrimination on the basis of sex are not subjected to any tangible employment
3 actions; (d) to hold managers and supervisors accountable for sex harassment; (e)
4 to ensure immediate, corrective, and preventative measures are taken when a valid
5 complaint is raised; and (f) to create effective policies and procedures are in place
6 to ensure a workplace free of hostility due to sex.

7 2. Job Segregation Due to Sex Discrimination

8 Defendants agree to hire women into all positions, including but not limited
9 to, pruning, girdling, irrigation, and other positions that were found to be
10 segregated based upon sex (female) by the EEOC. Defendants, their officers,
11 agents, management (including all supervisory employees), successors, assigns,
12 and all those in concert or participation with them, or any of them, further hereby
13 agree: (a) not to engage in, implement or permit any action, policy or practice that
14 discriminates against employees due to their sex (female); (b) to ensure a
15 workplace free of segregation due to sex (female); and (c) to promote equal
16 employment opportunity regardless of gender in all positions; and (d) to hold
17 managers and/or supervisors accountable for violating Title VII.

18 3. Retaliation

19 Defendants, their officers, agents, management (including all supervisory
20 employees), successors, assigns, and all those in active concert or participation
21 with them, or any of them, hereby agree not to engage in, implement or permit any
22 action, policy or practice with the purpose of retaliating against any current or
23 former employee of Defendants, or either of them, because he or she has in the
24 past, or during the term of this Decree: (a) opposed any practice made unlawful
25 under Title VII; (b) filed a charge of discrimination alleging such practice; (c)
26 testified or participated in any manner in any investigation (including without
27 limitation, any internal investigation undertaken by Defendants), proceeding in
28 connection with this case and/or relating to any claim of a Title VII violation; (d)

1 was identified as a possible witness or claimant in this action; (e) asserted any
2 rights under this Decree; or (f) sought and/or received any relief in accordance with
3 this Decree.

4 Defendants shall ensure to the best of their ability and in good faith that any
5 contractors or subcontractors employed by Defendants ensure a workplace free
6 from discrimination, harassment, and retaliation as set forth above.

7 B. Retention of Equal Employment Opportunity Consultant

8 Within thirty (30) days after the Effective Date, Defendants shall retain a
9 Consultant with demonstrated experience in the area of employment discrimination
10 and sexual harassment issues, to monitor Defendants' compliance with Title VII
11 and the provisions of this Decree. The Consultant shall be subject to the
12 Commission's approval, which shall not be unreasonably withheld. If the
13 Commission does not approve Defendants' proposed Consultant, the Commission
14 shall provide a list of at least three suggested candidates acceptable to the
15 Commission. Defendants shall bear all costs associated with the selection and
16 retention of the Consultant and the performance of his/her/its duties. The
17 Consultant's responsibilities shall include:

18 1. Establishing written policies/procedures for Defendants to handle
19 complaints of discrimination, harassment and retaliation ^{AND TO RPT} comply with its
20 obligations, under this Decree;

21 2. Establishing written policies/procedures for Defendants' anti-
22 harassment policy and reporting procedure ^{TO RPT} effectively carry out its obligations
23 under this Decree;

24 3. Establishing written policies/procedures so that managerial and
25 staff/hourly employees are trained on their rights and responsibilities under Title
26 VII, including but not limited to the responsibilities to provide a workplace free of
27 harassment, segregation, and retaliation;

1 4. Establishing written policies/procedures so that all employees are
2 trained on policies and procedures relating to sex discrimination, sexual
3 harassment, and retaliation;

4 5. Establishing written policies/procedures for Defendants' investigation
5 of all complaints of sexual discrimination/ harassment and retaliation to ensure
6 compliance with Title VII;

7 6. Establishing written policies/procedures so that Defendants properly
8 communicate with complainants regarding the complaint procedure, status of the
9 complaint investigation, results of the investigation, and any remedial action taken;

10 7. Establishing written policies/procedures so that Defendants' reports
11 required by this Decree are accurately compiled and timely submitted;

12 8. Establishing written policies/procedures so that Defendants'
13 disciplinary policies hold employees and managers accountable for failing to take
14 appropriate action or for engaging in conduct prohibited under this Decree;

15 9. Establishing written policies/procedures so that Defendants create a
16 centralized system of tracking discrimination, harassment, and retaliation
17 complaints;

18 10. Establishing written policies/procedures so that all women are
19 provided equal employment opportunity in all positions;

20 11. Establishing written policies/procedures so that individuals who are to
21 be rehired are rehired and not subject to retaliation;

22 12. Establishing written policies/procedures for complaints raised through
23 the 24 hour hotline;

24 13. Establishing written policies/procedures for compliance with the
25 terms of this Decree; and

26 14. Preparing an annual report on Defendants' progress and its compliance
27 under this Decree.
28

1 C. Revision and Distribution of Anti-Harassment, Anti-Discrimination, and
2 Anti-Retaliation Policies and Procedures

3 Within sixty (60) days of the Effective Date, Defendants shall revise and/or
4 modify its anti-harassment, anti-discrimination, and anti-retaliation policies.

5 The policy shall include:

- 6 1. A clear explanation of prohibited conduct;
- 7 2. Assurance that employees who make complaints of harassment,
8 discrimination, or retaliation, or provide information related to such complaints
9 will be protected against retaliation;
- 10 3. A clearly described complaint process that provides accessible and
11 confidential avenues of complaint with contact information including name (if
12 applicable), address, and telephone number of persons both internal and external to
13 the Defendants (i.e., Commission and Consultant) to whom employees may report
14 discrimination and retaliation, including a written statement that the employee may
15 report the discriminatory behavior to designated persons outside their chain of
16 management;
- 17 4. Assurance that the employer will protect the confidentiality of
18 harassment, discrimination, and retaliation complaints to the extent possible;
- 19 5. A complaint process that provides a prompt, thorough, and impartial
20 investigation;
- 21 6. A procedure for communicating with the complainant in writing
22 regarding the status of the complaint/investigation, results of the investigation, and
23 any remedial action taken;
- 24 7. Assurance that Defendants will take immediate and appropriate
25 corrective, and preventative actions when it determines that harassment,
26 discrimination, or retaliation occurred;
- 27 8. A description of the possible consequences, up to and including
28 termination that will be imposed upon violation of the policies;

1 9. Defined policies and procedures for hiring, recruitment, screening,
2 retention, transfers, and promotion that do not discriminate based upon sex
3 (females). Specifically, defendants shall ensure that no positions are segregated
4 based upon sex; and

5 10. A statement that Defendants' sex harassment, sex discrimination and
6 retaliation policies apply to all persons, including but not limited to the
7 Defendants' owners, shareholders, directors, officers, other management officials,
8 supervisors, vendors, suppliers, third parties, and customers.

9 EEOC shall comment on the policies and procedures within thirty (30) days
10 of receipt. The parties shall meet and confer about the proposed changes. If the
11 parties are not able to resolve their differences, the parties shall follow Section XIII
12 set forth below, Should the policy not require any revision no later than ten (10)
13 business days after the forty-five (45) day period, the policy shall be distributed to
14 all employees in either English or Spanish, depending on the language preference
15 of each employee. The policies and procedures shall also be disseminated to all
16 management/supervisory staff and shall also be included in any relevant policy or
17 employee manuals distributed to employees by Defendants. Defendants shall
18 maintain acknowledgments from each employee who receives the revised policy,
19 in either English or Spanish depending on the language preference of each
20 employee. Throughout the term of this Decree, Defendants shall also post the
21 revised policy, in English and Spanish, in a place that is clearly visible to all
22 employees at each of its facilities covered by this Decree in 15 point font.

23 All new or rehired employees shall receive a copy of the policies and procedures
24 within ten (10) days of being hired or rehired.

25 All employees and employees of subcontractors or contractors, who do
26 business with Defendants, shall be given a copy of Defendants' policies and
27 procedures and will be required under the terms of the agreement with Defendants
28 to comply with those internal policies and procedures in furtherance of Title VII.

1 D. Complaint Procedure

2 Within forty-five (45) days of the Effective Date, Defendants shall ensure
3 that it has publicized an internal complaint procedure to provide for the filing,
4 investigation and, if appropriate, remedying of complaints of harassment,
5 discrimination, and retaliation. Defendants shall establish a toll-free number that
6 shall be disseminated to all Defendants employees and employees hired through a
7 contractor or subcontractor informing them that a complaint can be logged at any
8 time. The (800) number shall be processed and monitored by the Consultant. All
9 calls shall be tracked by the Consultant during the term of the Decree. Defendants
10 shall also publicize the EEOC complaint line number of (800) 669-4000 or (213)
11 894-1983.

12 Defendants and the Consultant shall:

- 13 1. Publicize the complaint procedure;
- 14 2. Track and collect all complaints filed thereunder;
- 15 3. Investigate and resolve such complaints in a timely and effective
16 manner; and
- 17 4. Retain records regarding resolution of all such complaints.

18 The Consultant shall track all complaints filed thereunder and retain records
19 regarding resolution of all such complaints. The Consultant will review the
20 allegations of harassment, discrimination, and/or retaliation made during the term
21 of the Decree and conduct an investigation accordingly. The Consultant shall
22 provide written findings at the conclusion of its investigation. The EEOC
23 Consultant may recommend discipline, including but not limited to termination of
24 employees who have engaged in harassment, discrimination, or retaliation. If
25 Defendants reject the Consultant's recommended course of action, Defendants
26 must present written justification to the EEOC for failing to adopt the Consultant's
27 termination recommendation within twenty (20) days of the Consultant's findings.

28 The internal complaint procedure shall incorporate the following elements:

- 1 1. A policy describing how investigations will be conducted;
- 2 2. A prompt commencement and thorough investigation by a
3 Defendant's employee trained to conduct such investigations who is not connected
4 with the complaint;
- 5 3. A statement that an investigation should include interviews of all
6 relevant witnesses, including the complainant, and reviews of all relevant
7 documents;
- 8 4. A written record of all investigatory steps, and any findings and
9 conclusions, and any actions taken;
- 10 5. Provision for the reasonably prompt resolution of such complaints;
- 11 6. An opportunity for the complainant to review and respond to
12 tentative findings, except in those circumstances in which it is necessary to take
13 immediate action;
- 14 7. Confidentiality of the complaint and investigation to the extent
15 possible;
- 16 8. Appropriate communication of the final conclusions of the
17 investigation provided to the complainant;
- 18 9. An appeal procedure to an appropriate Defendants' representative,
19 should the complainant be dissatisfied with the results of the investigation;
- 20 10. A notice that employees or applicants complaining of discrimination
21 may use the company's internal complaint procedure and contact information for
22 the EEOC or state or local Fair Employment Practice (FEP) agencies. The notice
23 shall also state that filing an internal complaint does not relieve the complainant of
24 meeting any applicable deadline for the filing of a charge or complaint with EEOC
25 or state or local FEP agencies;
- 26 11. A statement that the complainant shall not be required to first report
27 the complaint to a person who is accused of the inappropriate conduct to invoke
28 the Internal Complaint Procedure;

1 12. The internal complaint procedure will permit, but not require, an
2 employee to initiate the complaint process by submitting a written complaint on a
3 form designed for the purpose;

4 13. A statement that the internal complaint procedure is not intended to
5 supplant the right of any employee to file a charge or complaint of discrimination
6 or retaliation under any available municipal, state, or federal law;

7 14. A statement that it is unacceptable to retaliate against any associate
8 for use of the Internal Complaint Procedure, for assisting in the investigation of a
9 complaint, or for otherwise assisting in the utilization of the procedure; and

10 15. A statement that if an allegation of discrimination or retaliation
11 against a manager or other associate is substantiated, then such conduct will result
12 in appropriate discipline, up to and including discharge.

13 E. Training

14 Within one hundred fifty (150) days after the Effective Date, all of
15 Defendants' managerial/supervisory and human resources employees shall be
16 required to attend a comprehensive training program on harassment,
17 discrimination, and retaliation. The training shall be mandatory and occur once a
18 year for the first three years of the term of this Decree. The training shall be
19 conducted in the Spanish and, if necessary, in English. Each employee, supervisor,
20 manager, and human resources person shall be required to attend training each
21 year, in a language that each employee best understands. Any manager,
22 supervisor, or employee who failed to attend scheduled training shall be trained
23 within thirty (30) days of the live training set forth above. The training shall also
24 include persons supervising employees working for contractors that work for
25 Defendants.

26 1. All employees' training shall include coverage of the subjects of equal
27 employment opportunity rights and responsibilities, discrimination, harassment,
28

1 retaliation, and Defendants' revised policies and procedures for reporting and
2 handling complaints of discrimination, harassment and retaliation.

3 2. A separate training of managerial and supervisory employees shall
4 additionally include training on how to properly handle and investigate complaints
5 of discrimination and/or harassment in a neutral manner, how to take preventive
6 and corrective measures against discrimination and/or retaliation, and how to
7 recognize and prevent discrimination and/or retaliation. Managers and supervisors
8 shall also be trained on proper hiring, recruitment, promotion, screening, transfer,
9 and/or retention procedures that ensure that female applicants and/or employees
10 are provided with equal employment opportunities which do not deny them
11 employment in any positions as required under Title VII. The training shall also
12 encompass a comprehensive overview of the Defendants' policies and procedures.
13 Managers and supervisors shall also be trained on monitoring, avoiding, and
14 preventing retaliation in the workplace.

15 3. Human Resources training shall be specific to their obligations,
16 including the handling and investigating of complaints of discrimination and
17 retaliation. This training shall be above and beyond the supervisor/manager
18 training as set forth above. Specifically, human resources individuals shall be
19 trained in monitoring work areas to ensure compliance with Defendants' policies
20 and procedures against harassment, discrimination, and retaliation.

21 4. For the remainder of the term of this Decree, all new employees and
22 all employees recently promoted from a staff/hourly to a managerial position shall
23 receive the managerial or staff/hourly employee training, as appropriate, within
24 thirty (30) days of hire or promotion.

25 5. After the initial training as specified above, all employees shall
26 receive the training at least annually thereafter for the remainder of the term of this
27 Decree.

28

1 6. All employees required to attend such training shall verify their
2 annual attendance in writing. A log shall be maintained to track who attended each
3 training.

4 7. Within forty-five (45) days after the Effective Date or fifteen (15)
5 days after hiring the Consultant, whichever is later, Defendants shall submit to the
6 EEOC a description of the training to be provided and an outline of the curriculum
7 developed for the trainees.

8 8. Defendants shall give the EEOC a minimum of fifteen (15) business
9 days advance written notice of the date, time and location of each training program
10 provided pursuant to this Decree. An EEOC representative may attend any such
11 training program.

12 F. Designation of Job Related Training Areas

13 Defendants and the Consultant shall ensure that female employees are not
14 isolated and subjected to harassment. As such, any job related training shall be
15 conducted in designated areas and/or in the presence of a female supervisor. To
16 the extent possible, job related instructions or training shall be done during
17 designated times and locations. Defendants shall ensure that all supervisors and
18 managers are informed that it is their obligation and duty to report incidents of
19 harassment, discrimination, or retaliation, particularly those perpetrated by other
20 supervisors and managers. Failing to do so may result in discipline.

21 G. Hiring, Recruitment, and Retention

22 Defendants shall hire women into all positions, including but not limited to,
23 pruning, vine tying, girdling, irrigation, swamping and other positions that were
24 found to be segregated based upon sex (female) by the EEOC. If Defendants
25 resume farming operations, as defined herein, during the term of this Decree, they
26 shall engage in recruitment activities targeted at hiring more women into the
27 positions where they have been excluded or limited. For each year during the term
28 of this Consent Decree, Defendants ~~(shall endeavor)~~ to obtain a hiring rate of at

1 least fifty (50) percent women in pruning, vine tying, and irrigation, and at least ten
2 (10) percent women in girdling, and swamping.

3 In pursuing this endeavor, at any time that Defendants resume farming
4 operations as defined herein, Defendants shall engage in the following activities:

5 1. Advertise and actively recruit in the radio and print media with a
6 likely audience of persons who would be interested in working for Defendants,
7 including but not limited to Spanish language radio and La Prensa;

8 2. Distribute job notices to employees and create at least two visible
9 postings centers at Defendants' facilities where employees can see job vacancy
10 postings;

11 3. Advertise and actively recruit applicants in advocacy organizations
12 such as Lideres Campesinas, the California Rural Legal Assistance, and Desert
13 Community Alliance;

14 4. Implement a hiring procedure that does not rely solely on word-of-
15 mouth for publicizing openings and that includes a systematic, predetermined
16 hiring procedure that is disclosed to all applicants to ensure that applicants are
17 evaluated based on their qualifications and interest in the open positions; Provide
18 written notice of all job openings with each employee's pay-check for the relevant
19 job and time period; and

20 5. Any other procedures recommended by the EEO Consultant.

21 If Defendants fail to meet the annual hiring endeavor, the EEOC shall, in
22 good faith, reasonably review Defendants' good faith compliance with their
23 obligations under the Decree in order to determine whether Defendants violated the
24 Decree. If Defendants have acted in good faith in their hiring practices, but, in
25 spite of their good faith efforts, have not attained the hiring endeavor for that year,
26 Defendants will be excused from such non-compliance and shall not be deemed in
27 violation of this section of the Decree.

28 ///

1 H. Performance Evaluations

2 Defendants shall revise its performance evaluation forms for managers and
3 supervisors in order to include as measures for performance compliance with
4 Defendants' Anti-Discrimination and Retaliation Policies and Procedures and Title
5 VII.

6 At least thirty (30) days prior to implementing the performance evaluation
7 forms described above, Defendants will work with the Consultant to implement a
8 measure of holding managers and supervisors accountable for compliance with
9 EEO laws.

10 I. Claimant Specific Relief

11 Within ten (10) days of the Effective Date of this Decree, Defendant shall:

12 1. Segregate from the personnel files of each claimant identified by the
13 EEOC, all references to the charges of discrimination filed against Defendants or
14 their participation in this action. Specifically, all of Defendants' records pertaining
15 to the charges of discrimination filed by Virginia Mejia and Rosario Taylor and
16 this litigation shall be maintained confidentially and segregated ^{IN ALL} their personnel
17 files. None of these segregated documents shall be voluntarily disclosed except as
18 required by law; and

19 2. Limit employment inquiries related to the Charging Parties Virginia
20 Mejia, Rosario Taylor, and eligible claimants identified by the EEOC, to job title,
21 term of employment, and rate of pay. Defendants are not obligated to rehire these
22 two individuals.

23 The EEOC shall provide to the Defendants, a list of the claimants who are
24 subject to this subsection.

25 **XI. RECORD KEEPING AND REPORTING**

26 A. Record Keeping of Discrimination and Retaliation Complaints

27 Defendants shall establish a record-keeping procedure that provides for the
28 centralized tracking of discrimination and retaliation complaints and the

1 monitoring of such complaints to prevent retaliation. The records to be maintained
2 shall include:

3 1. All documents generated in connection with any complaint,
4 investigation into, or resolution of every complaint of harassment, discrimination
5 or retaliation for the duration of the Decree and the identities of the parties
6 involved. This includes any disciplinary actions taken against an employee and
7 any findings;

8 2. All forms acknowledging employees' receipt of Defendants' revised
9 discrimination and anti-retaliation policy;

10 3. All documents verifying the occurrence of all training sessions and
11 names and positions of all attendees for each session as required under this Decree;
12 and

13 4. Documents tracking and analyzing complaints filed against the same
14 employee.

15 B. Record Keeping of Recruitment, Hiring, and Transferring into Positions

16 Defendants shall maintain records and establish a record-keeping procedure
17 that provides for the tracking of recruitment, hiring, transferring, promotion, and
18 screening processes into all positions. Defendants shall maintain documentations
19 to support its recruiting efforts and all applications for hire, transfer, promotion,
20 and screening during the term of the Decree. Defendants will gather gender data
21 from applicants for the limited purpose of assembling data and submitting the
22 Audit Report to the EEOC as provided herein.

23 C. Reporting

24 Within sixty (60) calendar days of the Effective Date and annually each year
25 thereafter on the anniversary date of the Effective Date of this Decree for a period
26 not exceeding three years, Defendants shall conduct an annual audit of the previous
27 twelve month period (the "Audit Period") and submit a written report (the "Audit
28

1 Report”) to the EEOC stating the total number of women and men by the
2 following:

- 3 A. Position Applied for;
- 4 B. Were interviewed for;
- 5 C. Were hired;
- 6 D. Were offered positions but declined the employment offer;
- 7 E. Voluntarily withdrew from consideration for a position and the
8 reason(s) for the withdrawal, if known by Defendants; and
- 9 F. Reasons why a female applicant was not ^{hired AM} for any given position.

10 Within 120 days after the Effective Date and annually thereafter for a period
11 not exceeding three years, Defendants shall submit to the EEOC an initial report
12 which contains:

- 13 1. A copy of the revised anti-harassment, anti-discrimination, and anti-
14 retaliation policies and procedures;
- 15 2. A summary of the procedures and record-keeping methods developed
16 with the Consultant for centralized tracking of discrimination complaints and the
17 monitoring of such complaints;
- 18 3. Description of compliance or non-compliance with the training
19 requirements;
- 20 4. Description and analysis of all complaints raised during the review
21 period as set forth herein;
- 22 5. Description of Defendants' recruitment efforts;
- 23 6. Description of Defendants' hiring, promotion, screening, and
24 transferring efforts;
- 25 7. compliance of Defendants' contractors or subcontractors to the terms
26 set forth in this Decree;

1 payment, after notice and reasonable opportunity to cure, the EEOC may, without
2 further notice, accelerate the entire unpaid balance due under this Decree. The
3 meet and confer requirements under Section XIII shall not apply with respect to a
4 failure to make payments. Defendants shall be notified in writing by the EEOC of
5 the acceleration. Reasonable opportunity to cure is defined herein as 30 days.
6 Otherwise, the entire balance will be due within twenty (20) days after the
7 reasonable opportunity to cure period expires.

8 With respect to a default or violation of this Decree relating to injunctive
9 relief remedies or any other provisions herein, the parties shall follow the meet and
10 confer and enforcement mechanism set forth below in Section XIII.

11 **B. Waiver of Right to Bankruptcy Protections**

12 Defendants agree that their obligations and liabilities under this Decree shall
13 not be dischargeable under the Bankruptcy Code, Title 11 of the U.S. Code enacted
14 by the Bankruptcy Reform Act of 1978, P.L. 95-598. For Bankruptcy Code
15 purposes only, and without this being an admission by Defendants, it is agreed that
16 this debt is considered to have arisen from the "willful and malicious" injury by the
17 Defendants to the class members pursuant to 11 U.S.C. '523(a)(6).

18 This Consent Decree shall constitute an enforceable judgment for purposes
19 of post-judgment collection, in accordance with Rule 69 of the Federal Rules of
20 Civil Procedure, the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001,
21 et seq. and any other applicable authority. The United States Equal Employment
22 Opportunity Commission shall be deemed a judgment creditor for purposes of
23 payment of any unpaid amounts of the civil penalties, stipulated penalties, interest
24 and/or settlement payments owed under this Consent Decree and/or Title VII.

25 **XIII. DECREE ENFORCEMENT**

26 The parties expressly agree that if the Commission has reason to believe that
27 Defendants have failed to comply with any provision of this Consent Decree, the
28 Commission may bring an action before this Court to enforce the Decree. Prior to

1 initiating such action, the Commission will notify Defendants and its legal counsel
2 of record, in writing, of the nature of the dispute. This notice shall specify the
3 particular provision(s) that the Commission believes Defendants has breached.
4 Absent a showing that the delay will cause irreparable harm, Defendants shall have
5 thirty (30) days to attempt to resolve or cure the breach.

6 The parties agree to cooperate with each other and use their best efforts to
7 resolve any dispute referenced in the EEOC notice.

8 After thirty (30) days have passed with no resolution or agreement to extend
9 the time further, the Commission may petition this Court for compliance with this
10 Decree at any time during which this Court maintains jurisdiction over this action
11 and the Defendants will have an opportunity to respond. Should the Court
12 determine that the Defendants have not complied with this Decree, in whole or in
13 part, it may impose appropriate relief, including but not limited to the imposition of
14 attorneys' fees and costs on the Defendants and extension of the duration of this
15 Decree for such a period as may be necessary to remedy the Defendants' non-
16 compliance. This provision shall not apply if the breach involves a failure to pay
17 money under this Decree. The parties shall comply with the Court's briefing
18 schedule pursuant to the Federal Rules.

19 **XIV. MISCELLANEOUS PROVISIONS**

20 **A. Successors In Interest**

21 During the term of this Consent Decree, Defendants shall provide any
22 potential successor-in-interest with a copy of this Consent Decree within a
23 reasonable time of not less than thirty (30) days prior to the execution of any
24 agreement for acquisition or assumption of control of any or all of Defendants'
25 facilities, or any other material change in corporate structure, and shall
26 simultaneously inform the EEOC of same. However, this shall not apply to any
27 situation involving a land sale or a restructure of business if same owners involved.

28 ///

1 B. Notice

2 During the term of this Consent Decree, Defendants and its successors shall
3 assure that each of its officers, managers and supervisors is aware of any term(s) of
4 this Decree which may be related to his/her job duties.

5 Unless otherwise stated, all notices, reports and correspondence required
6 under this Decree shall be delivered to the attention of the Regional Attorney,
7 Anna Y. Park, U.S. Equal Employment Opportunity Commission, Los Angeles
8 District Office, 255 E. Temple St., 4th Fl., Los Angeles, CA. 90012.

9 C. Cost and Attorneys Fees

10 Each party shall bear its own costs of suit and attorneys' fees. Defendants
11 shall bear all costs associated with its administration and implementation of its
12 obligations under this Consent Decree, including the costs of the EEO Consultant.
13 All costs associated with executing the Decree and the distribution of the
14 settlement funds to Charging Parties and similarly situated persons shall be paid by
15 Defendants, including without limitation, all costs related to the issuance and
16 mailing of checks.

17 D. Modification and Severability

18 This Decree constitutes the complete understanding of the parties with
19 respect to the matters contained herein. No waiver, modification or amendment of
20 any provision of this Decree will be effective unless made in writing and signed by
21 an authorized representative of each of the parties.

22 If one or more provisions of the Decree are rendered unlawful or
23 unenforceable, the parties shall make good faith efforts to agree upon appropriate
24 amendments to this Decree in order to effectuate the purposes of the Decree. In
25 any event, the remaining provisions will remain in full force and effect unless the
26 purposes of the Decree cannot, despite the parties' best efforts, be achieved.

27 By mutual agreement of the parties, this Decree may be amended or
28 modified in writing.

1 E. Counterparts and Facsimile Signatures

2 This Decree may be signed in counterparts. A facsimile signature shall have
3 the same force and effect of an original signature or copy thereof.

4 The parties agree to entry of this Decree and judgment subject to final
5 approval by the Court. All parties, through the undersigned, respectfully apply for
6 and consent to the entry of this Consent Decree as an Order of this Court.

7 Respectfully submitted,

8
9 Dated: June 14, 2005

10 Anna Y. Park
11 Cherry-Marie D. Rojas
12 Sue J. Noh
13 Elizabeth Esparza-Cervantes
14 By: 
15 Anna Y. Park
16 Regional Attorney
17 Attorneys for Plaintiff, EEOC

18
19 Dated: June __, 2005

20 Law Offices of Shawn Caine
21
22 By: _____
23 Shawn Caine
24 Attorneys for Defendants

25
26 Dated: June __, 2005

27 By: _____
28 Blas Rivera,
as Chief Executive Officer for
Defendants and as an individual
and trustee of the Rivera
Family Trust

///

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7 **Respectfully submitted,**

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9 **Dated: June __, 2005**

Anna Y. Park
Cherry-Marie D. Rojas
Sue J. Noh
Elizabeth Esparza-Cervantes

12 **By: _____**
13 **Anna Y. Park**
14 **Regional Attorney**
15 **Attorneys for Plaintiff, EEOC**

16 **Dated: June __, 2005**

Law Offices of Shawn Caine

18 **By: _____**
19 **Shawn Caine**
20 **Attorneys for Defendants**

21
22 **Dated: June 10, 2005**

23 **By: _____**
24 **Blas Rivera,**
25 **as Chief Executive Officer for**
26 **Defendants and as an individual**
27 **and trustee of the Rivera**
28 **Family Trust**

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Jun-10-2005 09:51am From-LEGAL UNIT

213-804-1301

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8
9 Dated: June __, 2005

Anna Y. Park
Cherry-Marie D. Rojas
Sue J. Noh
Elizabeth Esparza-Cervantes

12 By: _____
13 Anna Y. Park
14 Regional Attorney
15 Attorneys for Plaintiff, EEOC

16 Dated: June 12, 2005

Law Offices of Shawn Caine

17 By: 
18
19 Shawn Caine
20 Attorneys for Defendants

22 Dated: June __, 2005

23 By: _____
24 Blas Rivera,
25 as Chief Executive Officer for
26 Defendants and as an individual
27 and trustee of the Rivera
28 Family Trust

///

