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8

9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**
11

12 **EQUAL EMPLOYMENT OPPORTUNITY**)
COMMISSION,)

13 Plaintiff,)

14 v.)

15 **LAMBKA & RENFROE L.L.C., d/b/a/**)
16 **PERKO'S CAFÉ and DYNACO, INC.,**)

17 Defendants.)
18

Civil Action No. CIV-S-04-1751 FCD GGH

CONSENT DECREE

19
20 **I. INTRODUCTION**

21 1. Plaintiff, EEOC, filed this action alleging that defendants, Lambka & Renfroe
22 L.L.C. d/b/a Perko's Café and Dynaco, Inc., subjected Charging Party Raymie and other Hispanic
23 and/or Mexican employees to unlawful harassment based on their national origin and ultimately
24 caused the unlawful discharge of a class of Hispanic/Mexican employees. Defendants deny
25 Plaintiff's allegations and claims in this action.

26 2. Defendant Dynaco, Inc., has been dismissed from the action by the EEOC.
27

1 3. The EEOC and Defendant Lambka & Renfroe L.L.C. d/b/a Perko's Café
2 (hereinafter "Defendant") want to conclude fully and finally all claims arising out of the above
3 action without the expenditure of further resources and expenses in contested litigation.

4 **II. NON-ADMISSION OF LIABILITY**

5 4. This Consent Decree is not an adjudication or finding on the merits of this case
6 and shall not be construed as an admission of any violation or liability by Defendant.

7 **III. DEFINITION OF TERMS**

8 5. "Claimants" refers to Raymie Lopez Rajewski, the individual who filed the charge
9 of discrimination leading to the instant action, and other similarly situated individuals who the
10 EEOC determines shall participate in monetary relief pursuant to this Consent Decree.

11 6. For the purposes of this decree, the term "Harassment" refers to any alleged
12 harassment based on the protected status of race, gender, religion, national origin, color, age or
13 disability.

14 **IV. GENERAL PROVISIONS**

15 7. This Consent Decree is intended to and does effectuate the full, final, and
16 complete resolution of all allegations and claims of unlawful employment practices and
17 discrimination arising from or relating to (a) the original discrimination charge of discrimination,
18 EEOC Charge Number 370-A2-0958 and (b) the Complaint filed in this action, EEOC v.
19 LAMBKA & RENFROE L.L.C. d/b/a/ PERKO'S CAFÉ and DYNACO, INC., Civil CIV-S-04-
20 1751 FCD GGH, pursuant to Title VII of the Civil Rights Act of 1964.

21 8. This Court has jurisdiction over the subject matter and the parties to this action.

22 9. This Consent Decree constitutes a full, final, and complete resolution of Plaintiff's
23 Complaint and the underlying charge of discrimination filed with the EEOC.

24 10. This Consent Decree shall become effective upon its entry by the Court.

25 11. Each party shall bear its own costs and attorney fees.

26 12. The Court has reviewed the terms of this Consent Decree in light of the pleadings,

1 the record herein, and the applicable law, and now approves the Consent Decree in its entirety.

2 **V. MONETARY SETTLEMENT**

3 13. Defendant agrees to pay the gross sum of \$35,000.00 (hereinafter "Settlement
4 Sum") through quarterly payments outlined below. The EEOC will inform Defendant how the
5 Settlement Sum shall be apportioned between the Claimants.

6 14. Payment to the Claimants shall be made in equal quarterly payments totaling the
7 Settlement Sum of \$35,000.00, commencing on or about July 31, 2005 or as soon thereafter as
8 practicable, and continuing for a period of three (3) years thereafter. No interest shall accrue or
9 be incurred by Defendant. The monetary relief shall be issued in checks drafted in each of the
10 Claimant's names and amounts as outlined in Exhibit A. The checks shall be delivered to the
11 EEOC for distribution. The checks shall be payable to the order of the Claimants in the form of
12 business checks, cashier's checks, or certified checks. Defendant also will issue an IRS Form
13 1099 for each of the checks issued pursuant to this paragraph.

14 A. Defendant will mail the copies of the IRS Form 1099 to Evangelina Fierro
15 Hernandez, Senior Trial Attorney for the EEOC, at 350 The Embarcadero, San
16 Francisco, CA 94105, simultaneously with the mailing of the checks.

17 B. Payment of monetary relief to the Claimants shall be contingent on the
18 execution of a release of all claims against Defendant by each of the Claimants.
19 No portion of this Settlement Sum is attributable to or representative of any type
20 punitive damages claim.

21 **VI. GENERAL INJUNCTIVE RELIEF**

22 15. **Retaliation:** Consistent with Section 704 of Title VII, 42 U.S.C. §2000e-3,
23 Defendant, its officers, agents, managers (including supervisory employees), successors or
24 assigns and all those in active concert or participation with them, agree not to engage in,
25 implement or permit any action, policy or practice with purpose of retaliating against any of the
26 Claimants or any person who was identified as a possible claimant or witness in this action

1 because they opposed any alleged practice; or testified or participated in any manner in any
2 investigation, proceeding or hearing in connection with this case.

3 **VII. SPECIFIC INJUNCTIVE RELIEF**

4 16. Defendant affirms its continuing commitment to the objectives contained in the
5 following "Statement of Zero-Tolerance Policy and Equality Objectives":

6 Defendant is firmly committed to maintaining a zero-tolerance
7 policy concerning discriminatory harassment and retaliation against
8 individuals who report harassment in the company's workplace; to
9 swiftly and firmly responding to any acts of harassment and
10 retaliation of which the company becomes aware; to implementing
a disciplinary system that is designed to strongly deter future acts
of harassment or retaliation; and to actively monitoring its
workplace in order to ensure tolerance, respect and dignity for all
people.

11 This paragraph does not create any contractual or common law causes of action or other rights
12 that would not otherwise exist under statute.

13 17. Defendant agrees to develop and implement the following policies, procedures
14 and practices at the Perko's Café currently operated by Defendant:

15 ***EEO and Harassment Policies***

16 A. To the extent necessary Defendant shall revise its EEO & harassment
17 policies (in English and Spanish) within thirty (30) days of signing the Consent
18 Decree, such that the policies: (i) include definitions of discriminatory
19 harassment, with specific reference to harassment based on race; (ii) include
20 examples to supplement the definitions of harassment based on race; (iii) provide
21 for substantial discipline and/or corrective action for incidents of discriminatory
22 harassment; (iv) include non-retaliation language with examples to supplement
23 the definition of retaliation; (v) provide for substantial discipline for incidents of
24 retaliation; (vi) provide that complaints of harassment and/or retaliation will be
25 received irrespective of whether they are made verbally or in writing; (vii) explain
26 that Defendant will conduct a prompt and thorough investigation after a

1 complaint is made or received and will take remedial action if necessary upon
2 conclusion of an investigation; and (viii) indicate that, promptly upon the
3 conclusion of the investigation of a complaint, Defendant will communicate to the
4 complaining party the results of the investigation and the remedial actions taken
5 or proposed, if any.

6 B. Defendant shall effectively disseminate its revised policies and procedures
7 by:

8 (i) Distributing copies to all current employees of Defendant within
9 10 days of their adoption;

10 (ii) Giving a copy of the revised policies and procedures to and
11 reviewing them with all new employees of Defendant upon the employees'
12 hire.

13 C. Defendant will submit a copy of the revised EEO and harassment policies
14 to EEOC at the same time it submits its report on the completion of training as
15 described below in Section IX.

16 D. Defendant will submit a copy of the complaint procedures to the EEOC at
17 the same time it submits its certification of completion of training as required by
18 Section IX.

19 ***Supervisor Accountability.***

20 E. Defendant agrees that it shall impose substantial discipline – up to and
21 including termination, suspension without pay, or demotion – upon any supervisor
22 or manager who the company determines has engaged in harassment or has
23 knowingly permitted any such conduct to occur in his or her work area or among
24 employees under his or her supervision, or who Defendant determines has
25 retaliated against any person who complains or participates in any investigation or
26 proceeding concerning any such harassment.

1 F. Defendant shall advise managers and supervisors of their duty to actively
2 monitor their work areas to ensure employee compliance with the harassment
3 policy, and to report any incidents and/or complaints of harassment and/or
4 retaliation of which they become aware.

5 ***Harassment Training***

6 G. Within six months of entry of this Decree, Defendant will present to all of
7 its employees, including owners, managers and supervisors, at least one (1)
8 hour of mandatory anti-harassment training.

9 (i) The training shall be developed and presented by an outside source,
10 i.e., someone who is not employed by Defendant, who is knowledgeable
11 about Title VII and discriminatory harassment and who has the
12 background, skill and ability to educate Defendant's employees about the
13 issue of discriminatory harassment in the workplace. The training will
14 include examples of the types of remarks and behavior that will not be
15 tolerated in Defendant's business locations. The training will further
16 inform each participant that he or she is responsible for knowing and
17 complying with the contents of Defendant's EEO and harassment policies
18 and procedures.

19 (ii) Supervisors and/or managers who will assume responsibility for
20 enforcing Defendant's EEO and harassment policies upon expiration of
21 the Consent Decree shall also receive training on appropriate techniques
22 for documenting and investigating complaints of harassment. The training
23 on investigative techniques can be included as a component of the
24 mandatory discriminatory harassment training.

25 (iii) The owners or principals of Defendant will also receiving training
26 on appropriate techniques for documenting and investigating complaints of

1 harassment.

2 H. The cost of the training described in paragraph G above shall be borne by
3 Defendant.

4 I. Defendant will retain records of the training programs, copies of any
5 materials distributed during the training and lists documenting the dates on which
6 it held the training and identifying the persons who attended. Defendant will
7 provide a copy of these records and training materials to the EEOC within thirty
8 (30) days of completion of the trainings.

9 **VIII. REPORTING**

10 18. Six months after entry of the Consent Decree and again every six months
11 thereafter, Defendant will submit reports to the EEOC summarizing any complaints of
12 harassment received by Defendant during the preceding six-month period. The reports will
13 include the identities of the complainant(s) and the alleged harasser(s), a summary of action
14 taken in response to the complaint, and the resolution of any such complaint. Defendant will
15 attach copies of the corresponding written records.

16 19. Within thirty (30) days of the entry of this Consent Decree, Defendant will send
17 the EEOC appropriate verification of its completion of harassment training for its employees.

18 20. Defendant shall submit a final report to the EEOC thirty (30) days before the
19 Consent Decree expires containing a statement verifying its compliance with the terms of the
20 Consent Decree.

21 **IX. RETENTION OF JURISDICTION AND EXPIRATION OF**
22 **CONSENT DECREE**

23 21. This Consent Decree shall terminate three (3) years from the date of entry by the
24 court, unless EEOC petitions this court for an extension of the Decree because of alleged
25 noncompliance by Defendant. If EEOC determines that Defendant has not complied with the
26 Consent Decree, EEOC will provide written notification of the alleged breach to Defendant and

1 will not petition the court for enforcement sooner than thirty (30) days after providing such
2 written notification. The thirty-day period following written notice shall be used by the parties
3 for good faith efforts to resolve the issue. If EEOC petitions the court and the court finds
4 Defendant to be in substantial violation of the terms of the Decree, the court may extend this
5 Consent Decree and provide appropriate remedies and orders.

6 22. This Court shall retain jurisdiction over this action for the purposes of enforcing
7 the provisions of this Consent Decree. This Consent Decree shall expire by its own terms at the
8 end of three (3) years without further action by the parties.

9 Respectfully submitted,

10 DATED: 7/22, 2005

11 By 
12 WILLIAM TAMAYO
13 U.S. EQUAL EMPLOYMENT
14 OPPORTUNITY COMMISSION

15 DATED: 7/22, 2005

16 By 
17 JONATHAN PECK
18 U.S. EQUAL EMPLOYMENT
19 OPPORTUNITY COMMISSION

20 DATED: 7/22, 2005

21 By 
22 EVANGELINA FIERRO HERNANDEZ
23 U.S. EQUAL EMPLOYMENT
24 OPPORTUNITY COMMISSION

25 DATED: _____, 2005

26 By _____
27 ROBERT J. SCHNACK
28 BULLIVANT HOUSER BAILEY PC
29 11335 Gold Express Drive, Suite 105
30 Gold River, CA 95670-6310

31 APPROVED AND SO ORDERED:

32 _____
33 U.S. District Judge

34 Consent Decree
35 Civil Action No. CIV-S-04-1751 FCD GGH

1 Consent Decree, EEOC will provide written notification of the alleged breach to Defendant and
 2 will not petition the court for enforcement sooner than thirty (30) days after providing such
 3 written notification. The thirty-day period following written notice shall be used by the parties
 4 for good faith efforts to resolve the issue. If EEOC petitions the court and the court finds
 5 Defendant to be in substantial violation of the terms of the Decree, the court may extend this
 6 Consent Decree and provide appropriate remedies and orders.

7 22. This Court shall retain jurisdiction over this action for the purposes of enforcing
 8 the provisions of this Consent Decree. This Consent Decree shall expire by its own terms at the
 9 end of three (3) years without further action by the parties.

10 Respectfully submitted,

11 DATED: _____, 2005

By _____
 WILLIAM TAMAYO
 U.S. EQUAL EMPLOYMENT
 OPPORTUNITY COMMISSION


15 DATED: _____, 2005

By _____
 JONATHAN PECK
 U.S. EQUAL EMPLOYMENT
 OPPORTUNITY COMMISSION

18 DATED: _____, 2005

By _____
 EVANGELINA FIERRO HERNANDEZ
 U.S. EQUAL EMPLOYMENT
 OPPORTUNITY COMMISSION

21 DATED: 7/22, 2005

By 
 ROBERT J. SCHNACK
 BULLIVANT HOUSER BAILEY PC
 11335 Gold Express Drive, Suite 105
 Gold River, CA 95670-6310

24 APPROVED AND SO ORDERED on July ____, 2005:

26 _____
 U.S. District Judge

27 Consent Decree
 Civil Action No. CIV-04-1751 FCD CGH