

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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EQUAL EMPLOYMENT OPPORTUNITY :  
COMMISSION, :

Plaintiff, :

WALTER FRANKS, :

Plaintiff-Intervenor :

Civil No. 16-CV-5194 (KAM)(PK)

v. :

LAQUILA GROUP, INC. :

Defendant. :

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**CONSENT DECREE**

EEOC filed this action on September 17, 2016 under Title VII of the Civil Rights Act of 1964 (Title VII) and Title I of the Civil Rights Act of 1991. EEOC alleges that Laquila Group, Inc. (Laquila or Defendant) subjected Charging Party Walter Franks and other similarly aggrieved Black laborers (collectively, the Claimants) to racial harassment. Specifically, EEOC alleges that, Defendant subjected Franks and the Claimants to abusive and discriminatory language, slurs, and epithets based on their race. The EEOC also alleges that Defendant retaliated against Franks by terminating and failing to rehire him after he complained to his union shop steward about the discriminatory treatment.

Franks filed an Amended Complaint in Intervention on February 3, 2017 alleging that after Franks complained to his Union and to Laquila’s Superintendent in late January 2014, he was terminated by Laquila a few days later and that Laquila foreman Angelo Sicchio was involved in the decision to terminate him.

Defendants Laquila and Sicchio have consistently denied both the allegations and claims contained in the EEOC's pleadings as well as the pleadings filed by Plaintiff-Intervenor Franks. This Consent Decree is not an admission of any liability or wrongdoing. The Court has made no findings regarding the merits of this case and this Consent Decree does not constitute an adjudication and/or finding on the merits of the case.

To avoid the uncertainties and cost of further litigation, Plaintiff EEOC, Plaintiff-Intervenor Walter Franks, and Defendant Laquila (jointly, the parties) agree to resolve this action by the terms of this Consent Decree (the Decree). In consideration of the mutual promises of each party to the Decree, the sufficiency of which is hereby acknowledged, it is agreed and IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

**PART I GENERAL PROVISIONS**

**Section 101 Purpose of this Decree**

A. The parties desire to settle this action, and therefore do hereby stipulate and consent to entry of this Decree as final and binding between the parties.

B. The Decree resolves all issues that were raised in EEOC's Complaint, EEOC Charges of Discrimination Number 520-2014-02232 which served as the jurisdictional prerequisite in this case, and Plaintiff-Intervenor's Amended Complaint. This Decree in no way affects EEOC's right to process any pending or future charges that may have been or will be filed against Defendant, and to commence civil actions on any such charges.

C. The parties agree that this Court has jurisdiction over the subject matter of this litigation and the parties, that venue is proper, and that all administrative prerequisites have been met. No Party will contest the validity of this Decree or the jurisdiction of the federal district court to enforce this Decree and its terms.

D. The terms of this Decree represent the full and complete agreement of the parties. The parties agree that this Decree may be entered into without Findings of Fact and Conclusions of Law being made and entered by the Court.

**Section 102 Definitions**

A. Days: Days means business days, that is, official working days of the week including Monday through Friday, excluding weekends and Federal holidays.

B. Effective date: The effective date of this Decree will be the date it is docketed by the clerk of court after it is signed by and/or receives approval from the Court.

**Section 103 Applicability of Decree to Successors and Assigns or Upon Purchase, Merger or Consolidation**

Defendant will provide written a copy of this Decree to any purchaser of its business or assets, and to any successors, assigns, subsidiaries, or affiliates, including any entity with which Defendant may merge or consolidate. Defendant will provide written notice to EEOC at least twenty-one days before it is purchased, merges or consolidates with any other entity.

**Section 104 Amendments to this Decree**

By mutual consent of the parties, this Decree may be amended in the interests of justice and fairness and to facilitate execution of this Decree's provisions. No waiver, modification, or amendment of any provision of this Decree will be effective unless made in writing, approved by all parties to this Decree, and approved or ordered by the Court.

**Section 105 Severability**

If one or more provisions of this Decree are rendered unlawful or unenforceable as a result of a legislative act or a decision by a court of competent jurisdiction, the following will apply to ensure that this Decree continues to effectuate the intent of the parties. The provisions of this Decree which are not rendered unlawful, unenforceable, or incapable of performance as a

result of such legislative act or court decision will remain in full force and effect and the parties' responsibilities will not abate as to any and all provisions that have not been rendered unlawful or unenforceable, except to the extent that the intent of this Decree would be undermined.

**Section 106 Breach of Decree**

Breach of any term of this Decree by Defendant will be deemed a material and substantive breach of this Decree. Nothing in this Decree will be construed to preclude from bringing proceedings to enforce this Decree if Defendant fails to perform any of the terms contained herein.

**Section 107 Method and Persons Designated to Received Notices**

Except as otherwise provided for in this Decree, all notifications, reports, and communications to the parties required under this Decree will be made in writing and will be sufficient as emailed where email recipient will confirm receipt, hand delivered, or sent by certified, registered, or overnight mail to the following persons (or their designated successors):

**For EEOC:**

Charles F. Coleman, Jr., Trial Attorney  
33 Whitehall Street, 5th Floor  
New York, New York 10004  
Telephone No. 212.336.3699  
Facsimile No. 212.336.3623  
Email Address:charles.coleman@eoc.gov

and

decreemonitor.nydo@eoc.gov

**For Plaintiff-Intervenor:**

Michael O'Neill  
30 Vesey St., 35<sup>th</sup> Floor  
New York, NY 10007  
Email: Lawyer@oneillaw.com

**For Defendant:**

Diane Windholz  
Jackson Lewis, P.C.  
666. Third Ave., 29<sup>th</sup> Fl  
New York, New York 10017  
Email: windhold@jacksonlewis.com

Any party may change such addresses by written notice to the other parties setting forth a new address for this purpose.

**PART II INJUNCTIVE RELIEF**

**Section 201 Injunctions**

A. Defendant, its owners, managers, supervisors and employees are enjoined from subjecting any of its employees to discrimination or harassment based on race.

B. Defendant, its owners, officers, managers, supervisors and employees are enjoined from retaliating against any individual, including but not limited to an individual who complains of discrimination, who oppose practices he or she reasonably in good faith believes to be unlawfully discriminatory, and/or who participates in protected activity or who provides information related to complaints of discrimination.

C. Angelo Sicchio is no longer employed by Laquila or any of its affiliate companies.

**Section 301 Posting and Distribution of Notices**

**A. Posting of Notice of Resolution**

Within seven days of the effective date of the Decree, Defendant will conspicuously post and maintain a “Notice of Resolution” attached as Exhibit A, where employee notices are posted at Defendant’s main facility and at all of Defendant’s work sites. Defendant will confirm in writing to EEOC within seven days of posting that the Notice has been posted by the deadline, specify where it has been posted, and provide a photograph of the Notice

in its current location.

**B. Posting of EEOC Poster**

Within seven days of the effective date of the Consent Decree, Defendant will display the EEOC poster, as required by federal law, outlining all applicable EEO-laws, where employee notices are posted at Defendant's main facility and at all of Defendant's work sites. Defendant will confirm in writing to EEOC within seven days of posting that the poster has been posted by the deadline, specify where it has been posted, and provide a photograph of the poster in its current location.

**C. Distribution of Letter of Commitment, Notice, and Policy to Employees**

1. Within seven days of the effective date of this Decree, Defendant will provide to all current employees a Letter from Defendant's owners, a copy of which is attached as Exhibit B [Letter to be drafted by Defendant and reviewed by EEOC before finalizing the Decree], emphasizing Defendant's commitment to abide by all federal laws prohibiting employment discrimination, including laws prohibiting racial harassment and retaliation. Defendant will enclose with the letter a copy of the Anti-Discrimination and Anti-Retaliation Policy (Exhibit C), and a laminated Hotline Card, as further described in Section 302(B)(2) of this Decree (Exhibit D). Defendant will also confirm in writing to EEOC within seven business days after it has distributed the Letter, Policy, and Hotline Card, pursuant to this provision.

2. Defendant will provide the Letter (Exhibit B) and the Hotline Card to all future employees within three business days of the start of their employment.

**Section 302 Non-Discrimination and Non-Retaliation Policy and Complaint Procedures**

**A. Content of Non-Discrimination and Non-Retaliation Policy and Procedures**

1. Within seven days of the effective date of the Decree, Defendant will adopt a revised anti-discrimination policies and complaint procedures (Policy), setting forth its commitment to equal opportunity in all aspects of employment and, at a minimum, containing the following: (1) a detailed explanation of the prohibition against race discrimination and racial harassment; (2) an assurance that Defendant will not retaliate against employees who make complaints of discrimination, who oppose discriminatory practices they reasonably in good faith believe to be unlawfully discriminatory, and/or who participate in protected activity or who provide information related to complaints of discrimination; (3) a clearly described complaint process that provides accessible avenues of complaint with a number of choices of individuals to whom complaints can be made, including persons outside the employee's chain of command; (4) an assurance that it will accept any and all complaints from employees who wish to file complaints internally; (5) an assurance that the filing of anonymous complaints is permitted; (6) an assurance that Defendant will keep confidential to the extent possible and not publicize unnecessarily the subject matter of the complaints or the identity of the complainants; (7) a process that provides a prompt, thorough, and effective investigation, including interviewing the complainant and all witnesses and obtaining and reviewing all material documents identified by the complainant or respondent to the extent necessary to reach a reasonable conclusion concerning the allegations; (8) a requirement that the investigation be documented in written form; (9) an assurance that upon completion of an investigation into a discrimination complaint, the complainant and the respondent will promptly receive a summary of the conclusions reached as a result of the investigation; and (10) an assurance that they will take prompt and appropriate

corrective action when it determines that discrimination has occurred. The Policy is attached as Exhibit C. Attachment of the Policy does not constitute a representation by EEOC that Defendant has been or currently is in compliance with federal anti-discrimination laws.

**B. Independent Complaint Monitor and Equal Employment Opportunity Hotline**

1. Within 28 days of the effective date of the Decree, Defendant will establish and maintain a 24 hour toll-free telephone number, which employees may call to report suspected discrimination, harassment or retaliation. The hotline will be staffed by an independent third party entity at Defendant's expense. Defendant's selection of an independent third party entity is subject to EEOC's review and approval of the third party's expertise in federal anti-discrimination laws and experience enforcing them. Defendant must ensure that applicable personnel handling calls to the hotline are aware of the purpose of the hotline under this Decree. Personnel responsible for operating the complaint hotline will record all complaints in a complaint log, including the date of the complaint, the name of the complainant, and a detailed description of the complaint. The third-party service will notify Defendant and the independent complaint monitor of all complaints within one business day of receiving them.

2. Within 28 days of the effective date of the Decree, Defendant will retain an independent complaint monitor who will investigate complaints of discrimination referred by the EEO hotline and make recommendations to Defendant upon the conclusion of an investigation on how best to address the complaint. Defendant's selection of an independent complaint monitor is subject to EEOC's review and approval of proposed monitor's expertise in federal anti-discrimination laws and experience enforcing them. Defendant must ensure that the complaint monitor is aware of the purpose of the position under this Decree. The monitor will



record all referred complaints in a complaint log, including the date of the complaint, the name of the complainant, if given, and a detailed description of the complaint. The complaint log will be supplemented by Defendant to include any and all actions taken by Defendant in response to such complaints. Defendant will provide the EEOC with the third-party monitor's log within six months of the effective date of the Decree and every six months thereafter. In the event that Defendant seeks to appoint a new complaint monitor before the expiration of this Decree, the new monitor will also be subject to review and approval by the EEOC.

3. Within 28 days of the effective date of the Decree, Defendant will provide each of its current employees with a 3" x 2" laminated wallet card containing the toll-free hotline phone number for making discrimination complaints ("Hotline Card"). Within three business days of hire, a Hotline Card will be provided to each new employee and should be printed in both English and Spanish. The content of the Wallet Card is attached as Exhibit D. Each employee will sign an acknowledgement that he or she received the Hotline Card. Within six months of the effective date of the Decree, and every six months thereafter, Defendant will provide EEOC a list of employees hired during the period and confirmation that those employees have received the Hotline Card. Such confirmation will include the names and contact information of new employees, the name of the individual who advised each new employee of their rights, and electronic copies of both the certification of Laquila management who provided the wallet cards to employees in accordance to the procedure outlined above, as well as electronic copies of signed acknowledgment from new employees that they have received the Hotline card and that the anti-discrimination policy has been explained to them to their understanding.

**D. Distribution of Policy to New Employees**

Defendant will provide all new employees with copies of the Policy within three business days of hire and keep written records of this distribution. Each employee will sign an acknowledgement that he or she received the Policy. The EEOC, with prior notice, may request inspection of the acknowledgement forms. Within six months of the effective date of the Decree, and every six months thereafter, Defendant will provide EEOC with a list of employees hired during the period and confirmation that those employees have received the Policy.

**Section 303 Training**

**A. Anti-Discrimination and Anti-Retaliation Training For Owners, Managers, and Supervisory Employees**

1. Within 45 days of the effective date of the Decree and annually thereafter, Defendant will provide 2 hours of equal employment opportunity, anti-discrimination, and anti-retaliation training by an outside independent contractor, to all owners, managers and supervisors.

2. The training will instruct owners, managers and supervisors that they have a legal obligation to take appropriate steps to prevent discrimination, harassment and retaliation and to take prompt remedial measures if it occurs. The training will address the Policy including methods for reporting and investigating incidents of suspected discrimination, harassment and retaliation. The training will stress that owners, managers and supervisors must set the tone for enforcement of Defendant's Policy and that they must not engage in discrimination, harassment or retaliation. The training will identify the telephone number that can be used to report suspected incidents of discrimination, harassment or retaliation.

3. The training will stress that retaliation against individuals who engage in protected activity under Title VII will not be tolerated, and that individuals who engage in discrimination, harassment or retaliation will be disciplined. The training will also address Defendant's obligations under the Decree and Defendant's liability including contempt of court if the Decree is violated. Defendant will train all new managerial and supervisory employees within ten business days of the date the employees assume managerial or supervisory responsibilities.

**B. Reporting Requirements for Training**

Within seven days of each training session, Defendant will provide to EEOC an attendance sheet containing the date of the training, the printed names of those in attendance and their signatures.

**C. Pre-Training Notification Requirement**

At least thirty business days prior to the Initial and Annual trainings required under this Section, Defendant will provide EEOC notice of the date, time, and location of the scheduled training. EEOC, at its discretion, may attend and observe one or more of the training sessions and may provide changes to be implemented by the trainer.

**D. Policy Distribution and Explanation to Non-Supervisory Employees**

1. Within three business days of a new employee's first day of work, Defendant will inform new employees of Laquila's anti-discrimination policy and the appropriate point of contact for reporting a claim of discrimination; Defendant will also provide the employee with a Wallet Card.

2. Within three business days of a new employee's first day of work, a management or supervisory employee for Defendant will clearly explain the following to new

employees:

- a) Laquila prohibits all forms of discrimination, including discrimination based on race, age, religion and sexual orientation.
- b) If you believe you are being discriminated against in any way, we ask that you immediately let us know.
- c) You can speak to me or to any other supervisor on the site.
- d) We also have a 24-hour toll-free hotline number that you can call to report a complaint of discrimination. The number is on this wallet card. You are not required to give your name when calling the hotline.
- e) Laquila will not retaliate against anyone who complains about discrimination.

3. Defendant will document that it a) distributed the wallet card to new employees within three business days of the employee's first day on the job site; b) that it provided and explained the anti-discrimination policy as specified in Section 302(d)(2); c) and, that the employee acknowledges in writing receiving the wallet card and having the policy as specified in Section 302(d)(2) explained to them to their understanding.

### **Section 304 Monitoring and Reporting**

#### **A. Monitoring by EEOC**

EEOC may monitor compliance with the Decree by Defendant by unannounced inspection of Defendant's premises and records, and interviews with Defendant's officers, agents, employees, and contractors at reasonable times. Defendant will make available for inspection and copying any records related to the Decree upon request by EEOC.

#### **B. Reporting Requirements for Discrimination Complaints**

Within six months of the effective date of the Decree, and every six months thereafter, Defendant will provide a written status report to EEOC with information regarding all verbal or written complaints of discrimination from employees or applicants received during the

preceding six months. The report will include the name of the complainant, the name of the alleged harasser or discriminator, a summary of the complaint, a description of the investigation conducted, the results of the investigation, and any remedial action taken by Defendant. If there are no complaints during the preceding six-month period, Defendant will confirm that information in writing to EEOC.

**PART III. MONETARY RELIEF**

A. Within seven days of the effective date of the Decree, Defendant will pay a total of \$625,000, as specified by EEOC in Exhibit E which shall be filed under seal.

B. Defendant will make appropriate withholdings from any back-pay portion for any applicable federal, state, or local income tax. Defendant will make any applicable employer contribution for Social Security taxes pursuant to the Federal Insurance Contribution Act. Defendant will issue to Claimants appropriate tax forms, including IRS Form W-2 for back pay and IRS Form 1099s for compensatory damages and contemporaneously send copies of all payments and tax forms to EEOC.

**PART IV SIGNATURES**

Each signatory to this Decree represents that (s)he is fully authorized to execute this Decree and to bind the parties on whose behalf (s)he signs.

**PART V DURATION OF DECREE**

A. This Decree will remain in effect for three and a half years (42 months) after the effective date of this Decree.

B. If EEOC has notified Defendant in writing not fewer than thirty business days in advance of the expiration of this Decree that Defendant is not in compliance with any sections of

this Decree, Defendant's obligations under this Decree will remain in effect until EEOC determines that Defendant is in compliance.

The Court will retain jurisdiction over this action for all purposes including, but not limited to, the entering of all orders, judgments, and decrees as necessary to implement the relief provided herein. Upon signature and approval by the Court, the matter may be administratively closed but will not be dismissed.

**SO ORDERED, ADJUDGED, AND DECREED,**

DATE: December 1, 2017

*Peggy Kuo*

Hon. Peggy Kuo  
United States Magistrate Judge

**FOR PLAINTIFF EEOC**

*Jeffery Burstein*

Jeffery Burstein, Regional Attorney

Dated: October 2, 2017

Nora E. Curtin, Supervisory Trial Attorney

Charles F. Coleman Jr., Trial Attorney  
33 Whitehall Street, 5th Floor  
New York, New York 10004  
Telephone No. 212.336.3699  
Facsimile No. 212.336.3623  
Email Address: charles.coleman@eoc.gov

**FOR PLAINTIFF-INTERVENOR**

**Walter Franks**

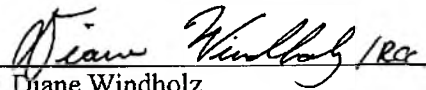
*Michael O'Neill*

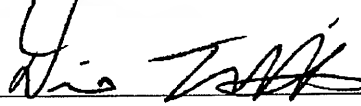
Dated: \_\_\_\_\_

By: Michael O'Neill  
30 Vesey St., 35<sup>th</sup> Floor  
New York, NY 10007  
Email: Lawyer@oneillaw.com

**FOR DEFENDANT LAQUILA GROUP INC.**

Dated: 10/5/17

  
By: Diane Windholz  
Jackson Lewis, PC  
666. Third Ave., 29<sup>th</sup> Fl.  
New York, New York 10017  
Email: [diane.windholz@jacksonlewis.com](mailto:diane.windholz@jacksonlewis.com)

  
Principal  
Laquila Group Inc.

**Attachments:**

- Exhibit A: Notice of Resolution
- Exhibit B: Letter of Commitment
- Exhibit C: Anti-Discrimination and Anti-Retaliation Policy
- Exhibit D: Content of Wallet Card
- Exhibit E: Monetary Awards

## General Information

<b>Court</b>	United States District Court for the Eastern District of New York; United States District Court for the Eastern District of New York
<b>Federal Nature of Suit</b>	Civil Rights - Other[440]
<b>Docket Number</b>	1:16-cv-05194
<b>Status</b>	CLOSED