

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION,)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	2:09-CV-923-MEF
v.)	
READY MIX USA d/b/a COUCH)	
READY MIX USA LLC,)	
)	
Defendant.)	
)	

CONSENT DECREE

A. INTRODUCTION

This action was brought by the United States Equal Employment Opportunity Commission (“the EEOC” or “the Commission”) alleging that Ready Mix USA d/b/a/ Couch Ready Mix USA LLC, (“Ready Mix” or “Defendant”) discriminated against Roderick Cook, Carlton Paschal, Marvin Craig, Jonathan Varner, Eric Woods, Leland Jordan, all Charging Parties and EEOC class members, plus Alvin Randle Jones, an EEOC class member (“EEOC class members”), based on the class members’ race, African-American, by subjecting the members to a hostile work environment based on race. The conduct at issue occurred at or in three of Defendant’s plants in the Montgomery, Alabama area; commonly referenced as the Metro, Wetumpka, and Wares Ferry plants. As alleged in the Commission’s

Amended Complaint, the Commission alleges Defendant violated Title VII of the Civil Rights of 1964, *as amended*, 42 U.S.C. Section 2000e *et seq.* ("Title VII") [Doc. 24: 12/23/09]. The Commission further alleged Defendant's actions, and the failure to take effective remedial relief, caused the EEOC class members mental, emotional, and physical harm to those individuals.

Ready Mix denies all allegations of unlawful or wrongful conduct raised in any and all Complaints filed by the Commission. It is understood that the entry of this Consent Decree does not constitute an admission by Ready Mix of any violation of Title VII, including §1981a, and that all allegations of any legal or equitable liability are expressly denied by Ready Mix. Ready Mix represents that it is entering this agreement solely to avoid the expense, inconvenience, and uncertainty of litigation.

This Consent Decree shall fully and finally resolve all of the Title VII claims asserted by the Commission in *EEOC v. Ready Mix USA d/b/a/ Couch Ready Mix USA LLC*, [Civil Action No. 2:09-CV-923-MEF: United States District Court for the Middle District of Alabama, Northern Division], including all claims which could have been asserted by the Commission against Ready Mix.

In the interest of resolving this matter, and avoiding the expense of further litigation, and as a result of having engaged in comprehensive settlement negotiations, the Commission and Ready Mix (the "Parties") have agreed to entry of

this Consent Decree.

This Consent Decree constitutes the complete agreement among the Parties. No waiver, modification, or amendment of any provision of this Decree shall be effective unless made in writing, approved by all Parties to this Decree, and approved by the Court or ordered by the Court.

B. GENERAL PROVISIONS

Upon consent of the parties to this action, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. This Court has jurisdiction over the parties and the subject matter of this action and retains jurisdiction in order to monitor and enforce the terms of the Consent Decree.

2. The Consent Decree is entered into by the Commission and Ready Mix. The Consent Decree, and its terms, shall be final and binding on the Parties, including their present and future representatives, agents, directors, officers, assigns and successors and all persons in active concert or participation with it.

3. The Decree fully and completely resolves all claims arising out of or contained in the following EEOC charges of discrimination.

Roderick Cook: Charge No. 420-2009-00387

Carlton Paschal: Charge No. 420-2009-00386

Marvin Craig: Charge No. 420-2009-00545

Jonathan Varner: Charge No. 420-2009-00546

Eric Woods: Charge No. 420-2009-00547

Leland Jordan: Charge No. 420-2009-00548, and

Alvin Jones' claim as an EEOC class member.

4. DEFINITION. All references to discrimination herein include racial discrimination, racial harassment, a hostile work environment based on race, and retaliation.

5. The Consent Decree does not affect any other administrative charges which may be pending with the Commission or any other cases pending in this or any other court. The Consent Decree shall not constitute an adjudication of or finding on the merits of the case and shall not be construed as an admission by Defendant of any violation of Title VII.

6. The Consent Decree becomes effective upon the date on which the Court enters it and shall continue to be in effect for a period of two (2) years. Any desired modification of the Consent Decree by any party must be made by motion to the Court.

7. The Consent Decree shall apply to the Defendant's operations in Montgomery and Elmore Counties, Alabama ["Defendant's Montgomery/Elmore facilities"], as well as to all employees of Defendant, including temporary and contract employees, who provide EEO compliance and human resources support

to, and supervisory and/or decision-making authority over, operations at Defendant's Montgomery/Elmore facilities, regardless where said employees perform their duties.

C. MONETARY RELIEF

8. Ready Mix agrees to pay in settlement of all claims by EEOC class members alleged against Defendant by the Commission and the Plaintiff-Interveners the gross sum of Four Hundred Thousand Dollars (\$400,000.00).

9. Plaintiff and Plaintiff-Intervener's attorneys shall determine how the Settlement Fund is to be allocated among the EEOC class members and shall advise Ready Mix of this allocation within ten days of the entry of this Decree. Ready Mix shall make payment to each EEOC class member and Plaintiff-Interveners' attorney within ten days of receiving notice of the allocation from the attorneys for the Commission. The payments to be made by Ready Mix to the EEOC class members shall be in a manner acceptable to the Commission.

10. Defendant shall provide evidence of payment (e.g. copy of check or other proof of payment) to the attention of the Regional Attorney, Equal Employment Opportunity Commission, Birmingham District Office, 1130 - 22nd Street South, Suite 2000, Birmingham, Alabama 35205 at the time payment is made.

11. The parties agree that the monies paid in settlement of this case are for

emotional distress sustained by each EEOC class member as a result of the conduct complained of in the Complaints and Amended Complaints. Accordingly, no withholdings shall be made from any of the payments. Ready Mix shall report all monetary payments to the EEOC class members under this Decree on IRS Form 1099.

D. GENERAL INJUNCTIVE RELIEF

12. Commitment to Non-Discrimination in Workplace: The lawsuit alleged that Ready Mix engaged in discrimination in violation of Title VII. While Ready Mix has and continues to deny the allegation, this Decree enjoins Ready Mix and its agents at the Defendant's Montgomery/Elmore facilities from: (a) discriminating in violation of Title VII against any employee on the basis of race; (b) engaging in or being a party to any action, policy, or practice that violates Title VII by discriminating against employees on the basis of race; and/or (c) creating, facilitating, or tolerating the existence of a work environment that is racially hostile as defined under Title VII.

13. Retaliation: Ready Mix and its officers, agents, management (including supervisory employees), successors, and assigns, and all those in active concert or participation with them, or any of them, at the Defendant's Montgomery/Elmore facilities are enjoined from: engaging in, implementing, or tolerating any action, policy, or practice which has the purpose or effect of

retaliating against any current or former employee of Ready Mix because he or she opposed any practice made unlawful under Title VII, filed a charge of discrimination challenging any such practice, testified, or participated in any manner in any investigation (including, without limitation, any internal investigation undertaken by Ready Mix), proceeding or hearing in connection with this case and/or relating to any claim of discrimination under Title VII, was identified as a possible witness in this action, asserted any rights under this Decree, or sought and/or received any monetary and/or non-monetary relief in accordance with this Decree or any subsequent modification.

E. SPECIFIC INJUNCTIVE RELIEF

14. Modification of Policies: Within the first sixty (60) days of this Decree, Ready Mix will develop and provide each Ready Mix employee at Defendant's Montgomery/Elmore County facilities with the new equal employment opportunity policy. Ready Mix represents that the new policy and any subsequent amendments thereto will achieve the following objectives:

- a. A strong and clear commitment to a workplace free from racial discrimination;
- b. A clear and comprehensive description, including concrete examples, of prohibited discrimination;

c. A statement encouraging employees to come forward if they believe that they have been the victim of discrimination;

d. A clearly described complaint process that provides multiple accessible avenues of complaint and provides a prompt, thorough, and impartial investigation;

e. A system for tracking and providing follow-up on complaints and/or inquiries regarding discrimination.

15. Development of EEO Training Program:

a. Within six (6) months of the effective date of this Decree, Ready Mix shall have in place a program to provide mandatory EEO training to: (1) all employees in Defendant's Montgomery/Elmore County facilities; and (2) all human resource managers with direct oversight over employees of Defendant's Montgomery/Elmore facilities, regardless where said employees perform their duties.

b. The EEO training program shall include: (1) a plan to ensure that all employees who are to receive the required training actually receive the training; (2) an explanation of the employees' role in reporting potential racial discrimination; (3) the employer's obligation to take preventive, investigative, and remedial action with respect to discrimination; and (4) clear and concise information about how an employee may enforce their rights under Title VII,

including information about the importance of filing a timely charge in order to preserve those rights.

c. The mandatory training will at a minimum: (1) occur once every year for the duration of this decree; (2) last one hour; and (3) be in person or through interactive training, or by videotape accompanied by materials prepared by trainers or other professionals experienced in the subject matter and shall educate the employees about the right to work in an environment free from racial harassment and race discrimination.

d. Upon request by the Commission, Ready Mix shall submit further information about the nature of the training being provided and an outline of the contents of the training to the Commission. For the term of this Consent Decree, all new employees and all employees who are promoted from a staff/hourly position to a managerial position more than 120 days before the next scheduled training under this Consent Decree shall receive EEO training or be shown a videotape of the most recent training program for managerial or staff/hourly employees, as appropriate, within thirty (30) days of hire or promotion, or as soon thereafter as practicable.

16. For the duration of the Consent Decree, the Human Resource Director shall retain copies of all documents generated in compliance with this Consent Decree.

17. Ready Mix shall provide the following written reports to the Commission, beginning seven (7) calendar months after the Effective Date with such reporting obligations ending immediately upon the expiration of the Consent Decree:

a. A list of the names and positions of employment of each employee who attended each training required or provided under this Consent Decree during the previous 12 months, classified by the date and type of training (supervisory employees versus hourly employees);

b. A list of the names and positions of each employee who failed to attend the training, the reason training was not attended, and written confirmation that those employees were or will be trained within thirty (30) days of the missed training or as soon thereafter as practicable;

c. Any revisions to the discrimination policies relating to the Defendant's Montgomery/Elmore facilities.

18. For the duration of the Consent Decree, Ready Mix shall not divulge to any employer or any entity or person identified as a potential employer of any EEOC class member, any of the facts or circumstances related to the underlying charges of discrimination against Ready Mix, or the lawsuit resulting from the charges of discrimination filed by the EEOC or any of the events relating to the

class members' participation in the litigation of this matter. Ready Mix shall provide, on reasonable inquiry from any prospective employer and/or business identified as doing business with any EEOC class member, or potentially conducting business in association with any EEOC class member, related to any EEOC class member, the following employment reference. This reference shall provide: (1) the dates of the EEOC class member's employment; (2) the employment positions held by the EEOC class member; and (3) state that the policy of Defendant is to uniformly provide all such neutral employment references for all former employees of the Defendant. Upon receipt of a signed authorization from an EEOC class member, Ready Mix may also verify the highest yearly salary or pay rate provided to the EEOC class member. Moreover, the EEOC class members, in any employment search and/or business related activity, may respond to any request for any employment reference by referring the person/entity making such a request to the Ready Mix Human Resources Department. Ready Mix's Human Resource Department will respond to the inquiry as set forth herein.

F. DISPUTE RESOLUTION

19. In the event any party to the Consent Decree believes that another party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other parties in writing of the alleged non-compliance. Said notification shall be made within fifteen (15) business days of discovery of the


alleged non-compliance. After service of the notice, the Parties shall schedule a telephone or in-person meeting to attempt to resolve the dispute. Absent a showing that the delay will cause irreparable harm, a party shall have ten (10) business days to attempt to resolve or cure the alleged breach. The Parties agree to cooperate with each other and use their best efforts to informally resolve any dispute which may arise. After ten (10) business days have passed without resolution or agreement to extend the time further, any party may petition this Court for compliance with this Decree. Should the Court determine that a party has not complied with the terms of this Consent Decree, appropriate relief may be requested and the Court retains jurisdiction to Order such relief as will effectuate the intent and purposes of this Decree.

G. COSTS AND ATTORNEY FEES

20. Each party is responsible for its own attorneys' fees and costs in this action.

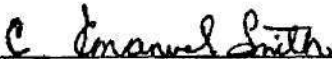
21. The parties agree to the entry of the Consent Decree subject to final approval by the Court.

IT IS SO ORDERED THIS THE 2nd day of FEBRUARY, 2012.

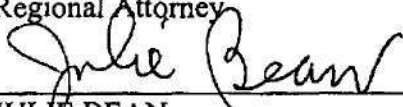


MARK E. FULLER
UNITED STATES DISTRICT JUDGE


**ATTORNEYS FOR THE EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION:**



C. EMANUEL SMITH
(MS Bar No.: 7473)
Regional Attorney




JULIE BEAN
(D.C. Bar No.: 433292)
Supervisory Trial Attorney



STEVEN L. MURRAY
(DC Bar No.: 379955)
Senior Trial Attorney

GERALD L. MILLER
(AL Bar No.: ASB-1454-E52G)
Senior Trial Attorney

**ATTORNEYS FOR DEFENDANT READY MIX USA d/b/a COUCH
READY MIX USA LLC**



JAY DANIEL S. CLAIR
Aimee Pironie Keane
Littler Mendelson, P. C.
420 20th Street North, Suite 2300
Birmingham, AL 35203