

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
NORTHERN DIVISION  
CASE NO: 2:10-CV-10-F

Marlen Guadalupe Landeros )  
Covarrubias, Sandivel Villanueva )  
Flores, Rita Doralí Curiel Sandoval )  
and all others similarly situated, )  
 )  
Plaintiffs )  
 )  
v. )  
 )  
Capt. Charlie's Seafood, Inc., Phillip )  
Carawan and Tara Foreman, )  
 )  
Defendants )  
 )  
\_\_\_\_\_ )

**CONSENT DECREE**

Marlen Guadalupe Landeros Covarrubias, Sandivel Villanueva Flores and Rita Doralí Curiel Sandoval ("Plaintiffs"), instituted this action pursuant to 29 U.S.C. § 216(b), 29 U.S.C. § 1800, N.C. Gen. Stat. §§ 95-25.8, 95-25.22., and common law wrongful discharge in violation of public policy. The Plaintiffs were certified to represent a class and subclass for violations of the North Carolina Wage and Hour Act under Rule 23, Fed. R. Civ. P., on July 6, 2011. ECF Doc. No. 61. The Plaintiffs' Complaint alleged that Defendants Capt. Charlie's Seafood, Inc., Phillip Carawan, and Tara Foreman engaged in certain employment practices which violated the Fair Labor Standards Act, the North Carolina Wage and Hour Act and the North Carolina common law. Defendants have denied, and continue to deny, the allegations.

In addition, the named Plaintiffs each filed charges with the U.S. Equal Employment Opportunity Commission (EEOC) alleging that the Defendants discriminated on the basis of sex in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S. §§ 2000e *et seq.* (hereinafter "Title VII"), which the Defendants have denied and continued to deny. The Plaintiffs indicated in their Complaint their intention to amend their Complaint to include claims of discrimination under Title VII.

Plaintiffs and Defendants hereby consent to the entry by the Court of the following Consent Order, in order to resolve their differences expeditiously, to do justice for all, and to minimize further legal expense. The Plaintiffs and the Plaintiff Class and Defendants agree that this Consent Order is being entered into for purposes of enforcement under Rule 71 of the Federal Rules of Civil Procedure and to ensure compliance with North Carolina law and federal law.

The terms of this Order shall apply to Defendants, their heirs, representatives, successors, and assigns, and shall be implemented immediately where not otherwise specifically stated.

The Plaintiffs and Defendants (collectively, the "Consenting Parties") have stipulated to jurisdiction of the Court over them and agree that the subject matter of this action is properly before the Court.

The Consenting Parties have advised this Court that they desire to resolve the allegations in the Complaint without the burden, expense, and delay of further litigation. It is understood and agreed that this settlement is the compromise of disputed claims (which Defendants have denied) and is not an admission of liability or wrongdoing by any Defendant.

It is therefore the finding of this Court, made on the pleadings and the record as a whole, that: (1) the Court has jurisdiction over the Consenting Parties and the subject matter of this action and (2) the purposes and provisions of the Fair Labor Standards Act, the North Carolina Wage and Hour Act and the common law will be promoted and effectuated by the entry of the Consent Decree.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

1. Defendants will make all payments to the Plaintiff class, to the named Plaintiffs, and to counsel for Plaintiffs as agreed to in the Settlement Agreement. Defendants will make the payments in the manner specified in the Settlement Agreement, less appropriate withholdings, within the time periods set forth in the Settlement Agreement.
2. Defendants will pay for, and will not seek reimbursement from their H-2B employees for, any visa fees, third-party visa processing fees, Department of Homeland Security fees, border crossing fees, or transportation costs to the United States incurred by employees relocating to the U.S. to work. Defendants shall bear such fees and costs unless and until there is contrary pronouncement by the U.S. Supreme Court or the Fourth Circuit, or an amendment of law or regulation, or a contrary interpretation by the U.S. Department of Labor stating that these expenses are for the benefit of the H-2B employee and may bring their wages below minimum wage. Plaintiffs' counsel may inspect Defendants' H-2B application materials and Defendants' records of paying the costs described herein no more than twice per year. Plaintiffs' counsel must notify Defendants in writing at least thirty (30) days before they intend to inspect the records.

3. Defendants will keep complete and accurate records of all time worked by employees and shall include this information on the paystubs provided to employees. When paying hourly wages, Defendants will compensate employees for each hour or part of an hour worked during each pay period in accordance with applicable law.

4. Defendants will maintain all required EEOC postings, including contact information in English and Spanish.

5. Within thirty (30) days of the Court's approval of this Settlement Agreement, Defendants will inform all current employees that every employee is free to work in any job for which they are qualified, regardless of gender or any other protected category. Defendants will inform all other employees that every employee is free to work in any job for which they are qualified, regardless of gender or any other protected category within a reasonable time after the employee begins work. Defendants will offer on-the-job paid training to employees interested in learning how to do different jobs. During the relevant seasons, this training will include training and opportunities to work in the preparing of crab traps and oyster shucking. Defendants will not classify any job based on gender and will not discriminate on the basis of sex when assigning jobs.

6. Defendants will maintain a list of all employees who ask for on-the-job training or who apply for any new position, including their name, gender, date of request or application, and the whether such training or application for a new position was accepted or denied, and the reasons for any denial. Upon request by Plaintiffs' counsel, this list will be made available for inspection two (2) times per year so that Plaintiffs' counsel may monitor the results of Defendants' implementation of paragraphs 5 through 7. Any concerns about

the impact of the policy or practices discussed in paragraphs 5 or 6 on the part of Plaintiffs' counsel should be addressed by the parties pursuant to paragraph 12 of this Decree.

7. Defendants will promulgate a written policy prohibiting discrimination on the basis of sex in the workplace, including a complaint procedure, within sixty (60) days of the Court's approval of the Settlement Agreement. The complaint procedure will specify both mechanisms for reporting discrimination internally as well as reporting such discrimination to the EEOC, including EEOC contact information. Within ninety (90) days of the Court's approval of the Settlement Agreement, Defendants will provide a copy of this policy and complaint procedure in English and Spanish to Plaintiffs' counsel.

8. Within ninety (90) days of the Court's approval of the Settlement Agreement, Defendants will explain the non-discrimination policy and complaint procedure to all current employees and provide each employee with a copy of the policy and complaint procedure in English and Spanish. Defendants will provide a copy in English and Spanish and explain the non-discrimination policy and complaint procedure to all future employees during each employee's first work week.

9. Capt. Charlie's shall require each officer and employee to attend an anti-discrimination training provided by a mutually agreeable outside provider that addresses sex discrimination. Employees will be paid for the time they spend attending the training at their normal hourly wage. The training shall be provided twice a year, once during the crab season and once during the oyster season, for each year that the consent decree is in effect. The first training shall occur between October 1, 2011 and December 31, 2011.

Defendants shall arrange for the training and shall pay for the cost of the training. In the event any officer or employee is absent or unavailable on the date(s) of training, he or she must be provided training as soon as reasonably practicable thereafter, which training may be conducted by an officer or manager of the Capt. Charlie's. Within two weeks of each anti-discrimination training, Defendants will report to Plaintiffs' counsel that the training took place and will provide a list of all employees and officers who attended and those officers and employees who did not attend.

10. During the term of this Decree, Defendants shall report the following information in electronic format to counsel for Plaintiffs in Excel or the equivalent searchable, sortable format for each H-2B worker hired by Capt. Charlie's and Capt. Neill's:

- Gender
- Years of experience with Capt Charlie's and/or Capt. Neill's
- Job functions performed
- Number of hours worked per week for each job function
- Payment per week.

This information shall be provided in April and October of each year, with the first report provided by October 31, 2011. This information shall be deemed to be confidential and proprietary business information of Defendants and shall not be published, disclosed or used by Plaintiffs or Plaintiff's counsel for any purpose other than ensuring compliance with this Decree.

11. The term of this Decree shall be for three (3) years from its entry by the Court.

12. The Court shall have jurisdiction to monitor the Consent Decree, enter any necessary orders, and over any action to enforce the Consent Decree. However, if any of the parties believe there has been a violation of this Consent Decree, counsel for the parties shall notify each other in writing and thereafter confer in good faith to resolve any perceived violation(s) of its terms before seeking judicial intervention.

SO ORDERED:

12/22/11  
Date

James C. Fox  
United States District Judge