

1 Mark Brnovich
2 Attorney General
3 Firm State Bar No. 14000

4 DANIEL E. NIES, No. 030659
5 LESLIE A. ROSS, No. 027207
6 ANGELA R. SCHULTZ, No. 033478
7 Assistant Attorneys General
8 OFFICE OF THE ATTORNEY GENERAL
9 2005 North Central Avenue
10 Phoenix, Arizona 85004-1592
11 Telephone: (602) 542-4909
12 Facsimile: (602) 542-8899
13 CivilRights@azag.gov
14 *Attorneys for Plaintiff*

15
16
17
18
19
20
21
22
23
24
25
26

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, ex rel. MARK
BRNOVICH, Attorney General, and the
CIVIL RIGHTS DIVISION OF THE
ARIZONA DEPARTMENT OF LAW,

Plaintiff,

vs.

SUNBURST FARMS IRRIGATION
DISTRICT,

Defendant.

BRENDA BROWN, individually,

Plaintiff,

vs.

SUNBURST FARMS IRRIGATION

Case No: CV2019-001156

(Consolidated with CV2019-052608)

CONSENT DECREE

(Tier 2 Case)

(Assigned to the Honorable
Andrew Russell)

1 DISTRICT; RICHARD MITTEN,
2 individually and in his capacity as Irrigation
3 Manager for Sunburst Farms Irrigation
4 District; and JANE DOE MITTEN, husband
5 and wife; KAY LORENZEN, individually and
6 in her capacity as President of the Board of
7 Directors of the Sunburst Farms Irrigation
8 District, and JOHN DOE LORENZEN, wife
9 and husband; BRETT HARRISON,
10 individually and in his capacity as Treasurer
11 of the Board of Directors of the Sunburst
12 Farms Irrigation District, and JANE DOE
13 HARRISON, husband and wife; et al.

14
15 Defendants.

16 The State of Arizona *ex rel.* Mark Brnovich, the Attorney General, through the Civil
17 Rights Division of the Arizona Department of Law (the "Division") (collectively, the "State")
18 filed this action against Defendant Sunburst Farms Irrigation District ("Defendant") to enforce
19 the Arizona Civil Rights Act, A.R.S. § 41-1401 et seq. ("ACRA"). The State alleged that
20 Defendant subjected Plaintiff Brenda Brown ("Brown") to a sex-based hostile work
21 environment, sexual harassment, and different treatment in the terms, conditions, and privileges
22 of employment based on sex, in violation of A.R.S. § 41-1463 (the "Claims").

23 I. COMPROMISE OF DISPUTED CLAIMS

24 The State and Defendant (collectively, the "Parties") desire to resolve the issues raised in
25 the Complaint in order to avoid the time, expense, and uncertainty of further contested litigation.
26 Defendant denies the Claims. The Parties expressly acknowledge that this Consent Decree is the
compromise of the Claims and that there has been no adjudication of any Claim or finding of
any liability, or lack thereof, on the part of Defendant. Defendant and the State agree to be
bound by this Consent Decree and to not contest that it was validly entered into in any
subsequent proceeding to implement or enforce its terms. Accordingly, the Parties stipulate to

1 the entry of this Consent Decree, do not object to the jurisdiction of the Court over this action
2 and waive a hearing and the entry of Findings of Fact and Conclusions of Law.

3 THEREFORE, upon consent of the Parties, and it appearing to the Court that entry of this
4 Consent Decree will fairly resolve the Complaint, **IT IS HEREBY ORDERED, ADJUDGED**
5 **AND DECREED** as follows:

6 **II. JURISDICTION**

7 1. This Court has jurisdiction over the subject matter of this action and over the
8 Parties.

9 2. Venue in Maricopa County is proper.

10 3. The allegations of the Complaint are sufficient to state claims upon which relief
11 could be granted against Defendant under the ACRA.

12 4. The Court will retain jurisdiction over the subject matter of this Consent Decree,
13 the State and Defendant for two (2) years from the date of its entry to effectuate and enforce this
14 Consent Decree. Any time after eighteen (18) months, the Parties may stipulate to reduce the
15 timeframe for the Court's retention of jurisdiction.

16 5. The State may, for good cause shown, petition this Court for compliance with this
17 Consent Decree at any time during the period that this Court maintains jurisdiction over this
18 action or file for enforcement of the Consent Decree at any time in the future for those
19 provisions that last beyond the Court's retention of jurisdiction.

- 20 a. If after the State and Defendant confer in good faith, the State moves to compel
21 Defendant's compliance with this Consent Decree, the Defendant shall be
22 automatically fined \$2,500.00 in civil penalties upon the State's filing of the court
23 action. This remedy is in addition to any other relief the Court deems fair and just
24 under the circumstances pursuant to Paragraph 5(b)
25
26

1 b. Should the Court determine that Defendant has not complied with the Consent
2 Decree's terms, appropriate relief, including but not limited to, extension of this
3 Consent Decree for such period as may be necessary to remedy Defendant's non-
4 compliance, an award of attorney's fees and costs, civil penalties, and fines for
5 contempt of court may be ordered.

6 6. In the event the Parties have not stipulated and the Court has not ordered an
7 extension of its jurisdiction over this Consent Decree, the Court will no longer retain jurisdiction
8 over this action two (2) years after entry of the Consent Decree.

9 **III. SURVIVAL OF CERTAIN PROVISIONS**

10 7. Regardless of the Court maintaining jurisdiction of this matter, the provisions set
11 forth in Section VII and the obligations of Defendant in Paragraphs 12, 13, 14, 15 (a-d and f-j),
12 17, and 21 of this Consent Decree will remain in effect and any remedies for the breach of such
13 Consent Decree obligations shall survive. The State reserves the right to enforce Paragraphs 12,
14 13, 14, 15 (a-d and f-j), 17, and 21 of this Consent Decree, through all available means,
15 including but not limited to, litigation in any court with jurisdiction should Defendant fail to
16 comply.

17 **IV. RESOLUTION OF THE LAWSUIT**

18 8. This Consent Decree is made between the State and the Sunburst Farms Irrigation
19 District.

20 9. This Consent Decree resolves the Claims alleged in the State's Complaint as they
21 apply to Defendant, and constitutes resolution of the State's Claims of unlawful employment
22 practices under ACRA that arise against Defendant from Charge No. P18-0044.

23 10. By entering into this Consent Decree, the Parties do not intend to resolve any
24 charges of discrimination currently pending before the State and the State does not waive or in
25 any manner limit its right to process or seek relief from Defendant in any other charge or
26

1 investigation that may exist or arise. Defendant and its officers, agents, employees, successors,
2 and all other persons in active concert or participation with any of them will not interfere with
3 the relief herein ordered, but shall cooperate in the implementation of this Consent Decree.

4 11. Subject to Defendant's fulfillment of the obligations set forth in this Consent
5 Decree, the Division agrees to dismiss its Complaint (CV2019-001156) against Defendant. The
6 Division retains its right to file an enforcement action of the surviving Consent Decree
7 obligations should it believe that Defendant has not complied with the terms of this Consent
8 Decree.

9 **V. INJUNCTIVE RELIEF**

10 12. **Compliance with the Arizona Civil Rights Act.** Defendant and its officers,
11 agents, successors, Board of Directors, managers, and employees agree to abide by the Arizona
12 Civil Rights Act and are permanently enjoined from engaging in any employment practice
13 which discriminates on the basis of sex, including but not limited to, sexual harassment, hostile
14 work environment, and different terms and conditions based on sex. Defendant further agrees
15 that its managers, supervisors, Board of Directors, officers, directors, and agents will not engage
16 in any discrimination or retaliation of any kind against any person because he/she has opposed
17 any practice reasonably believed by him/her to be unlawful under A.R.S. §41-1461 et seq., or
18 because he/she has filed a complaint, given testimony or assistance, or participated in any
19 manner in any investigation or proceeding under the ACRA.

20 13. **Poster.** Defendant agrees that it will keep posted at all times in a conspicuous,
21 well-lighted place frequented by its employees and applicants for employment, in all locations it
22 maintains and operates within the State of Arizona, a poster available from www.eeoc.gov in
23 English, that discrimination in employment based on race, color, religion, age (40 and older),
24 sex, national origin, genetic information, and disability is prohibited. Defendant shall provide
25
26

1 the State with a photograph of this poster within ten (10) business days of the effective date of
2 this Consent Decree.

3 14. **Neutral Employment Reference.** Defendant agrees to provide a neutral reference
4 for Brown. A “neutral reference” means Defendant will confirm Brown’s dates of employment,
5 her last job title, and her final rate of pay. Defendant is enjoined from disclosing any information
6 or making references to Brown’s charge of discrimination, Brown’s Complaint filed against
7 Defendant, or the State’s Complaint in responding to employment reference requests for Brown.
8 Notwithstanding the above, Defendant may disclose any information required by law to state or
9 federal authorities.

10 15. **New or Revised Harassment Policy and Procedure.** Within sixty (60) days of
11 Defendant’s signing of this Consent Decree, Defendant will create, or revise its existing, written
12 employment and harassment policies (the “Policies”). The Policies shall include, at a minimum:

- 13 a. A strong and clear commitment to a workplace free of unlawful harassment
14 and unlawful sex discrimination;
- 15 b. A statement advising and encouraging employees and prospective
16 employees who believe they have been discriminated against or witnessed
17 such discrimination to report discrimination, harassment and/or retaliation;
- 18 c. An assurance of non-retaliation for persons who believe they have been
19 subjected to unlawful discrimination or harassment, made complaint of
20 discrimination or harassment, or participated in an investigation conducted
21 by or on behalf of Defendant, the Division, or United States Equal
22 Employment Opportunity Commission (“EEOC”);
- 23 d. Definitions and examples of unlawful sex discrimination and harassment,
24 including sexual harassment/hostile work environment, as well as
25 retaliation;
26

- e. The identification of a specific third-party, in accordance with Paragraph 19 of this Consent Decree, with a telephone number and email address to whom employees and applicants can report allegations of unlawful discrimination, harassment, or retaliation;
- f. Procedures for reporting unlawful discrimination, harassment, or retaliation that do not require contact with the alleged perpetrator of the discrimination, retaliation, or harassment and do not impose any adverse employment actions for failing to talk to the alleged perpetrator during the internal procedures;
- g. An assurance that allegations of discrimination, harassment, and retaliation will be investigated promptly, fairly, reasonably, and effectively by a third-party, as required in Paragraph 19 of this Consent Decree, trained in receiving, processing, and investigating allegations of discrimination;
- h. An assurance that appropriate corrective action will be taken by Defendant to make any aggrieved persons whole and to eradicate the unlawful discrimination within its employment;
- i. A description of the consequences, up to and including termination, that will be imposed on violators of Defendant's Policies; and
- j. A statement that any employee or prospective employee has a right to file a charge of discrimination with the Arizona Attorney General's Office, Civil Rights Division and the Equal Employment Opportunity Commission, including the address, telephone numbers, and websites of these agencies, as well as the deadline for filing charges of discrimination.

16. **Review of Policies and Procedures.** Defendant shall provide a draft of the proposed Policies and Procedures required in Paragraph 15 to the Division within sixty (60)

1 days of the effective date of this Consent Decree. The Division shall review to confirm that the
2 obligations set forth in Paragraph 15 are contained within the Policies and Procedures and will
3 submit any comments in writing by email to Defendant's counsel within fourteen (14) days of
4 receipt of the draft. Within seven (7) days from receipt of the email containing the Division's
5 comments, Defendant will incorporate the Division's revisions to meet the minimum
6 requirements set forth in Paragraph 15. Defendant will submit an email to the Division affirming
7 that the Division's revisions have been incorporated into its Policies and Procedures, along with
8 a copy of the revised Policies and Procedures.

9 17. **Dissemination of Policies and Procedures.** Defendant agrees that it will provide
10 a copy of the Policies and Procedures required in Paragraph 15 to all current officers,
11 employees, Board of Directors, managers, supervisors, and agents within fourteen (14) days
12 after incorporation of the Division's revisions. Defendant shall have all current officers,
13 employees, Board of Directors, managers, supervisors, and agents sign an Acknowledgement of
14 Receipt of the Policies and Procedures referenced in Paragraph 15. Defendant further agrees to
15 provide a copy of the Policies and Procedures referenced in Paragraph 15 to all new officers,
16 Board of Directors, employees, managers, supervisors, and agents hired, appointed, or elected
17 during the term of this Consent Decree no later than thirty (30) days after hiring, appointment, or
18 election. Defendant further agrees to have all new officers, Board of Directors, employees,
19 managers, supervisors, and agents hired, appointed, or elected sign an Acknowledgement of
20 Receipt of the Policies and Procedures. Defendant agrees to submit to the Division signed
21 copies of all Acknowledgement of Receipt forms within thirty (30) days of the receipt of
22 acknowledgement throughout the term of this Consent Decree.

23 18. **Training.** Defendant will hire or retain a qualified individual or organization,
24 approved by the Division, to provide training to Defendant's officers, employees, supervisors,
25 managers, and Board of Directors with specific training on the Policies and Procedures
26

1 referenced in Paragraph 15, and sexual harassment, hostile work environment, sex
2 discrimination, and retaliation under the Arizona Civil Rights Act and federal employment laws.
3 The résumé of the qualified training provider, all materials to be used in the training, and the
4 agenda of the training must be provided to the Division no later than fifteen (15) days before
5 training takes place. The purpose of this review is to confirm that the trainer, topics, and
6 materials meet the minimum requirements of this Consent Decree.

- 7 a. **Qualified Trainer or Organization:** For purposes of this Consent Decree,
8 a qualified trainer or organization means a trainer who is knowledgeable
9 about the legal requirements under Arizona and federal anti-discrimination
10 laws, and specifically, equal employment opportunities with a focus on
11 sexual harassment, hostile work environment, and retaliation by employees,
12 management, Board members, and third parties under federal law and the
13 Arizona Civil Rights Act. The trainer must be pre-approved by the Division
14 and must not have been involved in the matters giving rise to this lawsuit.
15 b. **Costs:** If there are costs associated with any training associated with this
16 Consent Decree, Defendant will pay for the costs.
17 c. **Current Board of Directors, Employees, Supervisors, and Managers:**
18 The training for all of Defendant's officers, Board of Directors, employees,
19 supervisors, and managers, hired, appointed, or elected must be completed
20 within one hundred and twenty (120) days of the effective date of this
21 Consent Decree. The training shall be for at least two (2) hours. The
22 training for any individuals who have supervisory or hiring or firing
23 authority shall consist of at least one (1) additional hour of instruction, for a
24 total of three (3) hours, and shall include procedures for handling,
25
26

1 reporting, and investigating workplace sexual harassment and discipline
2 requirements related to violations of Defendant's Policies or Procedures.

3 d. **Training Update for Substantive Changes:** Within twelve (12) months
4 after the effective date of this Consent Decree, all Board of Directors,
5 supervisors, and managers who have completed training referenced in
6 Paragraph 18(c) or (e) shall complete additional training on Defendant's
7 Policies and Procedures included in this Consent Decree, and Arizona and
8 federal employment laws, to the extent there are substantive changes.

9 e. **Other Board of Directors, Employees, Supervisors, and Managers, and**
10 **Agents:** Defendant agrees that any officers, Board of Directors, employees,
11 supervisors, or managers hired, appointed, or elected during the term of
12 this Consent Decree, but after the training described in Paragraph 18(c),
13 shall receive the training described in Paragraph 18(c) within sixty (60)
14 days of hire, appointment, or election. The training must be provided by a
15 qualified individual or training organization. If there has been any
16 substantive changes made to the training in Paragraph 18(c), such changes
17 shall be submitted to the Division for review no later than fifteen (15) days
18 before training takes place.

19 f. **Notice:** Defendant shall provide written notice to the State that it has
20 complied with each training requirement set forth in Paragraph 18 within
21 ten (10) days of completing the training. Defendant agrees that the written
22 notice will contain the following: 1) confirmation that the training occurred;
23 2) the date, time and location of the training; 3) the name of the agency or
24 individual providing the training and the résumé or curriculum vitae of the
25 trainer; 4) a list of the names and positions of those persons who completed
26

1 the training, and 5) all handouts and materials provided to the training
2 participants. Defendant may satisfy the requirement of identifying the
3 attendees, requirement (4), by attaching a copy of a registration list
4 containing the date of the training and the name and position of each person
5 in attendance.

6 19. **Human Resources Management.** Within sixty (60) days of the effective date of
7 this Consent Decree, Defendant will hire or retain an independent qualified human resources
8 management individual or organization to oversee Defendant's employment related decisions,
9 including decisions based on alleged violations of the Policies and Procedures referenced in this
10 Consent Decree and allegations of sexual harassment, hostile work environment, sex
11 discrimination, and retaliation. The independent qualified human resources management
12 individual or organization will have authority to receive, evaluate, investigate, and issue
13 determinations about employment related complaints in compliance with federal and state law
14 including the Arizona Civil Rights Act. The independent qualified human resources
15 management individual or organization will report directly to the entire Board of Directors and
16 will be available to Defendant's employees, contractors, managers, officers, supervisors, and
17 Board of Directors who wish to make anonymous complaints regarding alleged unlawful
18 employment practices. The independent qualified human resources management individual or
19 organization must be approved by the Division prior Defendant hiring or retaining. Defendant
20 will maintain the services of the independent qualified human resource management individual
21 or organization through at minimum the Court retaining jurisdiction over this Consent Decree.

22 20. **Compliance.** Six (6) months after the effective date of this Consent Decree and
23 twelve (12) months after the effective date of this Consent Decree Defendant shall send written
24 reports to the Arizona Civil Rights Division, Attention: Assistant Attorney General Daniel Nies
25
26

1 (or his successor), 2005 North Central, Phoenix, AZ 85004, or Daniel.Nies@azag.gov,
2 regarding any report of alleged sex discrimination, including any written or verbal complaint of
3 sexual harassment, hostile work environment, sex-based discrimination, and/or retaliation. The
4 reports shall include: (a) the name of each person making a complaint to Defendant or to any
5 federal, state, or local government agency; (b) the address, email address, and telephone number
6 of each person making a complaint, if known, and (c) a brief summary of each complaint,
7 including but not limited to the date of the complaint, the name of the individual(s) who
8 allegedly engaged in discriminatory conduct, Defendant's investigation and response to the
9 complaint, and the name of the person who investigated or responded to the complaint, and
10 what, if any resolution was reached. If there are no reports of sexual harassment, hostile work
11 environment, sex-based discrimination and/or retaliation, the written report shall so state.

12 **21. Richard Mitten**

- 13 a. All supervisory authority shall be removed from Richard Mitten until
14 Richard Mitten completes the training in Paragraph 18 of this Consent
15 Decree and signs and submits an acknowledgment of the policies and
16 procedures implemented in accordance with this Consent Decree.
17
18 b. Defendant agrees to remove any and all supervisory authority over the
19 Office Manager and Office Assistant from Richard Mitten at the signing of
20 this Consent Decree.
21
22 c. Richard Mitten shall be enjoined from training any employees regarding
23 Defendant's Policies.

24 **VI. MONETARY RELIEF**

25 22. As part of its resolution of the Lawsuit, Defendant has entered into a separate
26 settlement agreement with Brown (the "Brown Settlement"), the terms of which provide for

1 payment to Brown of \$50,000.00. Such monetary settlement shall be delivered to Timothy
2 Ducar, counsel for Brown, for transmittal to Brown pursuant to the terms in the Brown
3 Settlement. Defendant shall provide the State with proof of payment to Brown on the same date
4 that the settlement payment is delivered to Timothy Ducar.

5 **VII. GENERAL PROVISIONS**

6 23. This Consent Decree may be signed in counterparts, including facsimile copies,
7 and when so signed, each counterpart shall be deemed an original and all counterparts shall
8 constitute one instrument. The Parties agree, however, that they will also execute original
9 documents and promptly send them to the Division so that it may have an entire set of original
10 documents.

11 24. This Consent Decree is final and binding on the present and future officers, Board
12 of Directors, directors, managers, supervisors, agents, heirs, assigns, successors, successors-in-
13 interest, receivers, trustees in bankruptcy, and personal representatives of Defendant. Defendant
14 has a duty to inform any successor in interest of the obligations of this Consent Decree during its
15 duration. During the term of this Consent Decree, the Defendant, and any successors of the
16 Defendant, shall provide a copy of this Consent Decree to any organization or person who
17 proposes to acquire or merge with the Defendant during the term of this Consent Decree, or any
18 successor of the Defendant, prior to the effectiveness of any such asset sale, acquisition, or
19 merger. This paragraph shall not be deemed to limit any remedies available in the event of any
20 finding by the Court regarding violation of this Consent Decree.

21 25. Nothing in this Consent Decree prevents Brown from individually seeking
22 monetary relief under the ACRA.

23 26. If any term of this Consent Decree is determined by any court to be unenforceable,
24 the other terms of this Consent Decree shall nonetheless remain in full force and effect.
25
26

1 27. Failure by any party to seek enforcement of this Consent Decree pursuant to its
2 terms with respect to any provision or instance shall not be construed as a waiver to such
3 enforcement with regard to other instances or provisions.

4 28. The Parties represent that they have read this Consent Decree in its entirety, have
5 had an opportunity to consult with counsel of their own choice, are satisfied that they understand
6 and agree to all of its provisions, and have freely signed this Consent Decree without coercion.

7 29. A signatory to this document in a representative capacity for each party represents
8 that he or she is authorized to bind that party to this Consent Decree.

9 30. This Consent Decree constitutes the entire agreement between the State and
10 Defendant on the matters raised in the Complaint and no other statement, promise or agreement,
11 either written or oral, made by any party or agents of any party, that is not contained in this
12 written agreement, including its attachments, shall be enforceable.

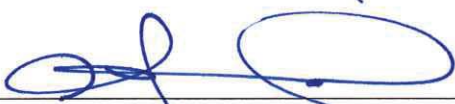
13 31. This Consent Decree is not intended to remedy any other potential violations of
14 the ACRA or any other law that is not specifically addressed in this Consent Decree.

15 32. This Consent Decree does not negate or otherwise minimize Defendant's
16 continuing responsibility to comply with all aspects of the ACRA.

17 **VIII. EFFECTUATING CONSENT DECREE**

18 33. The Parties agree to the entry of this Consent Decree upon final approval by the
19 Court. The effective date of this Consent Decree will be the date that it is entered by this Court.

20 ENTERED AND ORDERED this 4th day of January, 2020.

21
22
23 
24 HONORABLE ANDREW RUSSELL
25 JUDGE OF THE SUPERIOR COURT
26