

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,**

**Plaintiff,**

**VIERGELA JEAN-FRANCOIS, CHANGOLIA  
JULIEN, CARMELIA PIERRE, LOUNDY  
SAINT-HILAIRE, and SOLANGE MARCELIN,**

**Intervenors,**

**-vs-**

**Case No. 2:05-cv-460-FtM-29SPC**

**GARGIULO, INC.,**

**Defendant.**

---

**JUDGMENT IN A CIVIL CASE**

**Decision by Court.**

**IT IS ORDERED AND ADJUDGED** that pursuant to the Court's order entered on January 22, 2007, the parties' Joint Motion for Approval of Consent Decree (Doc. #68) is **GRANTED**. Judgment is entered adopting the Consent Decree (with exhibits), with the Court retaining jurisdiction over its enforcement.

Date: January 23, 2007

SHERYL L. LOESCH, CLERK

By: /s/ Janet Skipper, Deputy Clerk

c: All parties and counsel of record

CIVIL APPEALS JURISDICTION CHECKLIST

1. **Appealable Orders:** Courts of Appeals have jurisdiction conferred and strictly limited by statute:
  - (a) **Appeals from final orders pursuant to 28 U.S.C. Section 1291:** Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C. Section 158, generally are appealable. A final decision is one that “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” Pitney Bowes, Inc. v. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983). A magistrate judge’s report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. Section 636(c).
  - (b) **In cases involving multiple parties or multiple claims,** a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b), Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). A judgment which resolves all issues except matters, such as attorneys’ fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S. 196, 201, 108 S. Ct. 1717, 1721-22, 100 L.Ed.2d 178 (1988); LaChance v. Duffy’s Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).
  - (c) **Appeals pursuant to 28 U.S.C. Section 1292(a):** Appeals are permitted from orders “granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions...” and from “[i]nterlocutory decrees...determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed.” Interlocutory appeals from orders denying temporary restraining orders are not permitted.
  - (d) **Appeals pursuant to 28 U.S.C. Section 1292(b) and Fed.R.App.P.5:** The certification specified in 28 U.S.C. Section 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court’s denial of a motion for certification is not itself appealable.
  - (e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen V. Beneficial Indus. Loan Corp., 337 U.S. 541,546,69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass’n v. Blythe Eastman Paine Webber, Inc., 890 F. 2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S. Ct. 308, 312, 13 L.Ed.2d 199 (1964).
2. **Time for Filing:** The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P.4(a) and (c) set the following time limits:
  - (a) **Fed.R.App.P. 4(a)(1):** A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD - no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.
  - (b) **Fed.R.App.P. 4(a)(3):** “If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.”
  - (c) **Fed.R.App.P.4(a)(4):** If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.
  - (d) **Fed.R.App.P.4(a)(5) and 4(a)(6):** Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.
  - (e) **Fed.R.App.P.4(c):** If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution’s internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. Section 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.
3. **Format of the notice of appeal:** Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant

4. **Effect of a notice of appeal:** A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).

Rev.: 4/04

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

UNITED STATES EQUAL EMPLOYMENT )  
 OPPORTUNITY COMMISSION, )  
 )  
 Plaintiff, )  
 )  
 VIERGELA JEAN-FRANCOIS, CHANGOLIA )  
 JULIEN, CARMELIA PIERRE, LOUNDY )  
 SAINT-HILAIRE, and SOLANGE MARCELIN )  
 )  
 Plaintiff- Intervenors, )  
 )  
 v. )  
 )  
 GARGIULO, INC., )  
 )  
 )  
 Defendant. )  
 )  
 \_\_\_\_\_/

CIVIL ACTION NO.:  
2:05-CV-460-FTM-29SPC

**CONSENT DECREE**

1. This Consent Decree (the "Decree") is made and entered into by and between Plaintiff, the Equal Employment Opportunity Commission (hereinafter referred to as the "Commission" or "EEOC"); Plaintiff-Intervenors, Viergela Jean-Francois, Changolia Julien, Carmelia Pierre, Loundy St. Hilaire and Solange Marcelin (hereinafter referred to collectively as Plaintiff-Intervenors); and Defendant, Gargiulo, Inc. (hereinafter referred to as the "Company or "Defendant"). The Commission, Plaintiff-Intervenors and Gargiulo, Inc. are collectively referred to herein as "the Parties."

2. On September 29, 2005, EEOC initiated this action by filing its Complaint in the United States District Court for the Middle District of Florida, Civil Action 2:05-CV-460-FTM-

29SPC, and an Amended Complaint, based upon charges filed by Viergela Jean- Francois (EEOC Charge No. 150-2005-01674), Changolia Julien (EEOC Charge No.150-2005-00268), Carmelia Pierre (EEOC Charge No.150-2005-00264), Loundy St. Hilaire (EEOC Charge No.150-2005-01431), and Solange Marcelin (EEOC Charge No. 150-2005-00262). EEOC's Amended Complaint alleges that Defendant violated Title VII of the Civil Rights Act of 1964, including but not limited to, amendments authorized by the Civil Rights Act of 1991, 42 U.S.C. Section 2000e *et seq.* ("Title VII") by subjecting Ms. Jean-Francois, Ms. Julien, Ms. Pierre, Ms. St. Hilaire, Ms. Marcelin and other similarly situated individuals to sexual harassment by their supervisor, and to retaliation for rejecting their supervisor's unwelcome sexual advances and/or complaining to other management about it. Defendant denies all the allegations.

3. On December 8, 2005, Ms. Jean-Francois, Ms. Julien, Ms. Pierre, Ms. St. Hilaire and Ms. Marcelin were permitted to intervene in this action and filed a Complaint on January 11, 2006 alleging claims of sexual harassment and retaliation under Title VII and under the Florida Civil Rights Act of 1992, Section 760.01 *et seq.*, Fla. Stat. (1997) ("FCRA"). On January 3, 2006, Plaintiff-Intervenors filed an Amended Complaint alleging claims of sexual harassment and retaliation under Title VII and the FCRA.

4. In the interests of resolving this matter, to avoid the costs of litigation and as a result of having engaged in comprehensive settlement negotiations, the Parties have agreed that this action should be finally resolved by entry of this Decree. This Decree is final and binding upon the Parties, their successors, affiliates and assigns. Defendant is not admitting any liability for the allegations in Plaintiff EEOC or Plaintiff Intervenors' Complaint.

5. The Parties agree that this Decree resolves all claims alleged against the Defendant

in EEOC Charge Numbers: 150-2005-01674, 150-2005-00268, 150-2005-00264, 150-2005-01431, 150-2005-00262; and the Complaints and Amended Complaints filed by Plaintiff EEOC and Plaintiff Intervenor in this action.

6. NOW, THEREFORE, the Court having carefully examined the terms and provisions of this Decree, and based on the pleadings filed by the parties, it is ORDERED, ADJUDGED AND DECREED THAT:

### **JURISDICTION**

7. This Court has jurisdiction of the subject matter of this action and over the Parties for the purposes of entering and enforcing this Decree.

8. No party shall contest jurisdiction of this federal court to enforce this Decree and its terms or the right of the EEOC to seek enforcement in the event Defendant breaches any of the terms of this Decree.

### **GENERAL PROVISIONS**

9. Defendant, its officers, employees, and its successors, affiliates and assigns agree not to engage in conduct which violates Title VII of the Civil Rights Act of 1964 by adversely affecting the terms and conditions of any individual's employment because of their gender, and agree not to retaliate against any employee who opposes any of Defendant's practices which the employee believes to be unlawful employment discrimination, who files a charge of discrimination with the EEOC alleging violation(s) of such statute; who cooperates with the EEOC in the investigation and/or prosecution of any charge of discrimination; or who cooperated in the investigation or prosecution of this case.

### **DISCRIMINATION POLICY AND TRAINING**

10. Defendant will adopt a written policy against sexual harassment and retaliation by February 28, 2007 to be submitted to the EEOC for review and approval. Such policy will include a reporting procedure that provides Haitian and Hispanic employees with a Creole and Spanish language interpreter through which employees can report any complaints they may have arising under the policy.

11. Defendant agrees that all of its employees and managers in Immokalee and Naples will be provided a complete copy of its policy against sexual harassment and retaliation within thirty (30) days of the adoption of the policy. Defendant also agrees that all new employees shall be given a copy of its policy against sexual harassment and retaliation within their first ten days after their employment.

12. In order to further ensure the effective implementation of Defendant's anti-discrimination policy, Defendant agrees to conduct a training session for all of its employees at the Immokalee and Naples packinghouse annually for the duration of this Decree. During this training session, Defendant agrees that it will describe and explain to Defendant's employees for that season the laws covered by Defendant's policy against sexual harassment and retaliation and the reporting procedure established under the policy. The training will be conducted by an individual selected by Defendant's counsel, who will notify to the EEOC the name of the person selected to do the training.

13. In order to further ensure the effective implementation of Defendant's anti-discrimination policy, Defendant will also conduct a two (2) hour annual training for all of its Immokalee and Naples packinghouse managers and supervisory personnel with specific emphasis on recognizing harassment, on acts that could constitute retaliation, and on the proper procedure to be followed if they become aware of harassment in the workplace or if they receive complaints of

discrimination. Defendant agrees to provide the EEOC, at least two weeks notice before it conducts its training session(s), with the date(s) and location(s) of the training and the identification of the training materials to be used at the training session. The training will be conducted by an individual selected by Defendant's counsel, who will notify to the EEOC the name of the person selected to do the training.

14. Defendant agrees that the training described in paragraph 13 shall be conducted within sixty (60) days of the entry of this Decree. The training should thereafter take place annually in the same format, by December 30, for the duration of this Decree. Defendant further agrees that the discrimination policy and training materials utilized for the training described in paragraph 13 shall be presented to and explained to all new managers and supervisors in Immokalee and Naples packinghouse, who did not attend the annual training, within thirty (30) days of being placed in a management or supervisory position.

#### **POSTING**

15. Defendant will post a laminated 11 x 14 copy of the Notice, attached as Exhibit A, in Immokalee and Naples packinghouse, no later than thirty (30) days after the entry of this Decree. Specifically, the Defendant will post copies of Exhibit A in both an English (attached), Spanish and Creole version. Said notice shall be posted for the duration of this Decree in a conspicuous location accessible to all employees such as an employee bulletin board or break/lunch room.

#### **MONITORING**

16. Defendant will retain all employment and/or investigative records relating in any way to any complaint or allegation of harassment for the duration of this Decree and as required under federal law.



17. Defendant will certify to the EEOC semi-annually throughout the duration of this Decree that it is in compliance with all aspects of this Decree. The first such certification will be due no later than June 30, 2007. With each certification Defendant will further provide the EEOC with the name, address, and phone number of any person who alleges they have been harassed while working for Defendant during the preceding six month period. Defendant will also state the actions taken in response to each such allegation and provide any and all documentation associated with such complaint. The certifications required to be submitted to the EEOC pursuant to this Consent Decree shall be mailed with the notation GARGIULO, INC. MONITORING to: United States Equal Employment Opportunity Commission, Attention: Office of the Regional Attorney, 1 Biscayne Tower, Suite 2700, 2 South Biscayne Boulevard, Miami, Fl 33131.

#### **MONETARY RELIEF**

18. Defendant agrees to pay a total amount of \$ 215,000.00 to resolve this litigation. The payments referenced herein shall issue within fifteen (15) calendar days of the Court's execution of this Decree and be distributed as set forth below in Exhibit B attached hereto.

19. If Defendant fails to tender the above-mentioned payments as set forth in paragraph 18 above and Exhibit B, then Defendant shall pay interest on the defaulted payment at the rate calculated pursuant to 26 U.S.C. Section 6621(b) until the same is paid, and bear any additional costs incurred by the EEOC caused by the non-compliance or delay of the Defendant.

#### **ENFORCEMENT OF DECREE**

20. The Commission shall have independent authority to seek the judicial enforcement of any aspect, term or provision of this Decree.

**COSTS**

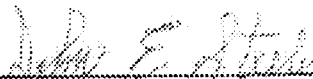
21. Each Party shall bear its own costs associated with this litigation.

**DURATION OF CONSENT DECREE**

22. The duration of this Decree shall be three (3) years from the date of entry of the Decree.

23. The Court will take whatever measures necessary to effectuate the terms of this Decree.

**SO ORDERED, ADJUDGED AND DECREED** at Fort Myers, Florida, this 22nd day of January 2007.

  
\_\_\_\_\_  
**JOHN E. STEELE**  
United States District Judge

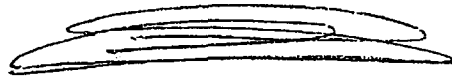
**EXHIBIT A**  
**NOTICE TO ALL EMPLOYEES**  
**POSTED PURSUANT TO A CONSENT DECREE BETWEEN THE**  
**UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND**  
**GARGIULO, INC.**

This notice is being posted pursuant to a Consent Decree entered by the Court in U.S. EEOC et al. v. Gargiulo, Inc., Civil Action 2:05-CV-460-FTM-29SPC. Pursuant to the Consent Decree, Gargiulo, Inc. has agreed that it will not discriminate against employees in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). Title VII protects individuals from employment discrimination because of their race, religion, color, national origin, or sex. Gargiulo, Inc. will not condone employment discrimination of any kind as set forth in federal anti-discrimination laws.

Furthermore, Gargiulo, Inc. assures its employees that it supports Title VII and will not take any action against an individual because he/she has exercised his/her rights under the law to oppose discriminatory acts or to file charges with the EEOC.

This notice shall remain posted for three (3) years from the date signed. Employees or applicants for employment who have questions about their rights under Title VII or any other federal anti-discrimination law may telephone the Miami District Office of the Equal Employment Opportunity Commission at 1-800-669-4000.

Signed this 19<sup>th</sup> day of January, 2007.



\_\_\_\_\_  
PRESIDENT, GARGIULO, INC

DO NOT REMOVE BEFORE FEBRUARY 2010

**EXHIBIT B  
MONETARY DISTRIBUTION**

In order to resolve EEOC et al. v. Gargiulo, Inc., Civil Action 2:05-CV-460-FTM-29SPC, Gargiulo, Inc. shall pay the total amount of \$ 215,000.00 to be distributed as follows:

(A) Defendant will pay Viegela Jean Francois \$33,000.00, representing compensatory damages and punitive damages and will issue an I.R.S. form 1099 itemizing same.

(B) Defendant will pay Changolia Julien \$33,000.00, representing compensatory damages and punitive damages and will issue an I.R.S. form 1099 itemizing same.

(C) Defendant will pay Carmelia Pierre \$33,000.00, representing compensatory damages and punitive damages and will issue an I.R.S. form 1099 itemizing same.

(D) Defendant will pay Loundy St. Hilaire \$33,000.00, representing compensatory damages and punitive damages and will issue an I.R.S. form 1099 itemizing same.

(E) Defendant will pay Solange Marcelin \$33,000.00, representing compensatory damages and punitive damages and will issue an I.R.S. form 1099 itemizing same.

(F) Defendant will pay Marie Enet Louis \$ 10,000.00, representing compensatory damages and punitive damages and will issue an I.R.S. form 1099 itemizing same.

(G) Defendant will pay Marie Nerostyl \$2,500.00, representing compensatory damages and punitive damages and will issue an I.R.S. form 1099 itemizing same.

(H) Defendant will pay Marie Casseus \$2,500.00, representing compensatory damages and punitive damages and will issue an I.R.S. form 1099 itemizing same.

(I) Defendant will pay the Southern Poverty Law Center \$ 35,000.00, representing the Intervenor's attorneys fees and will issue an I.R.S. form 1099 itemizing same.

(J) The payments to the Plaintiff-Intervenor shall be made by check in their individual name and forwarded to Monica Ann Ramirez, Esq., Southern Poverty Law Center, Immigrant Justice Project, 400 Washington Ave., Montgomery, AL 36104 by certified mail with a return receipt requested.

(K) The payment to Marie Enet Louis, Marie Nerostyl and Marie Casseus shall be made by check in her individual name and forwarded to by certified mail with a return receipt requested to their last known addresses.

(L) A copy of the checks referenced above shall be forwarded to the attention of Carla Von Greiff, Senior Trial Attorney, U.S. Equal Employment Opportunity Commission, 501 East Polk Street, Suite 1000, Tampa, Florida 33611.