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SUP DEPT COURT: 14
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

PACINO'S INC.,

Defendant.

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) CIVIL ACTION NO.
) 97-1193-CIV-ORL-19B
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AMENDED CONSENT DECREE

1. This Amended Consent Decree (the "Decree") is made and entered into by and between Plaintiff, the Equal Employment Opportunity Commission ("EEOC" or the "Commission") and Defendant, Pacino's, Inc. ("Pacino's"). The Commission and Pacino's are collectively referred to herein as the "Parties".

2. On September 30, 1997, EEOC initiated this action by filing its Complaint against Pacino's. EEOC's Complaint alleged that Pacino's violated Title VII of the Civil Rights Act of 1964, as amended, including, but not limited to, amendments authorized by the Civil Rights Act of 1991, 42 U.S.C. Section 2000e *et seq.* ("Title VII"). The Commission's Complaint alleged that a female food server, Melissa Teague, was subjected to sexual harassment in the form of a hostile work environment, that Defendant failed to take effective, remedial action with respect to Ms. Teague's complaint of sexual harassment and that Defendant actively retaliated against Ms. Teague for having made such complaint. In addition, the Commission's Complaint alleged that Defendant also unlawfully retaliated against former Manager Christine Conroy by terminating her employment as

a result of her opposition to Defendant's unlawful employment practices.

3. On December 31, 1997, Pacino's filed its Answer and Affirmative Defenses to EEOC's Complaint, denying allegations contained in EEOC's Complaint that its actions were unlawful or discriminatory and raising several affirmative defenses to the Complaint.

4. In the interest of resolving this matter and as a result of having engaged in comprehensive settlement negotiations, the Parties have agreed that this action should be finally resolved by the entry of this Decree. This Decree is final and binding upon the Parties, their successors and assigns.

5. The Parties agree that this Decree resolves all claims arising out of EEOC Charge Numbers 150 94 3649 and 150 94 3746, and the Complaint filed in this action, and constitutes a complete resolution of all claims under Title VII that were made by the Commission in this action.

6. This Decree constitutes the complete agreement between the EEOC and Pacino's with respect to the matters referred to herein. No representations or inducements to compromise this action have been made, other than those recited or referenced in this Decree. 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.

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:**

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

GENERAL INJUNCTIVE PROVISIONS

7. Defendant Pacino's, its officers and employees, are enjoined from engaging in conduct which

violates Title VII of the Civil Rights Act of 1964, as amended, by adversely affecting the terms and conditions of any individual's employment on the basis of that individual's sex.

8. Defendant Pacino's, its officers and employees, are enjoined from discriminating against any employee on the basis of that employee's opposition to any of Defendant's employment practices which the employee believes to be a violation of Title VII.

TRAINING

9. Defendant Pacino's has established a written policy of compliance with Title VII, which is attached as Exhibit A. Defendant agrees that all its employees will have been provided with a complete copy of its policy within 30 days of the entry of this Decree.

10. In order to further ensure the effective implementation of Defendant Pacino's anti-discrimination policies, Pacino's will conduct training for all of its managers, supervisory personnel and employees on its anti-harassment policy and the sexual harassment and retaliation provisions of Title VII. Such training will be conducted in two-hour sessions to be held twice annually, beginning from the date of the Court's execution of this Decree through to the expiration of the Decree. Pacino's agrees to provide the EEOC, at least two weeks notice before it conducts its training session(s), with the date(s) and location of the training, copies of all training materials to be used at the training session, the name of the individual(s) who will be providing the training and a list of the names and titles of each employee who will be in attendance at the training. Additionally, Pacino's agrees that the EEOC shall, at the EEOC's discretion, be in attendance at the training session.

POSTING

11. Defendant Pacino's will post within seven (7) days from the Court's execution of this Decree

the Notice attached hereto as Exhibit B. Said Notice shall be posted at all its facilities for the duration of this Decree in a conspicuous location accessible to all employees. Specifically, the Notice will be posted on an employee bulletin board in or around the employee lounge or lunch area at each facility.

MONITORING

12. Defendant Pacino's will retain all employment records relating in any way to any complaint or allegation of sexual harassment and/or retaliation at any of Defendant's facilities for the duration of this Decree and as required by federal law.

13. Defendant Pacino's will certify to the EEOC every six (6) months 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, 2000. With each such certification, the Defendant will provide the EEOC with the name, address and phone number of any person who alleges they have been subjected to sexual harassment and/or retaliation while working at any of the Defendant's facilities during the preceding six (6) months. Defendant will also state its actions taken in response to each such allegation and provide any and all documentation associated with each such complaint.

MONETARY RELIEF

14. Defendant Pacino's will pay Melissa Teague a lump sum amount of \$31,500.00 within sixty (60) calendar days from the Court's execution of this Decree. Payments to Ms. Teague shall be made by certified check made payable to "Melissa Teague" and forwarded to the EEOC for disbursement at 501 E. Polk Street, Rm. 1020, Tampa, Florida, 33602, by certified mail with a return receipt requested.

15. Defendant Pacino's will pay Christine Conroy a lump sum amount of \$43,500.00 within sixty

(60) days from the Court's execution of this Decree. Payments to Ms. Conroy shall be made by certified check payable to "Christine Conroy" and forwarded to the EEOC for disbursement at 501 E. Polk Street, Rm. 1020, Tampa, Florida, 33602, by certified mail with a return receipt requested.

16. Defendant Pacino's agrees to simultaneously provide the EEOC with copies of the payments set forth in paragraphs 14 and 15 above. Said copies shall be forwarded to the attention of Michael J. Farrell, Trial Attorney, at the Tampa Area Office of the EEOC, 501 E. Polk Street, Rm. 1020, Tampa, Florida, 33602.

17. If the Defendant fails to tender the above-mentioned payments within the sixty-day period agreed upon, the 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.

NOTICE OF NON-COMPLIANCE

18. In the event that any of the Parties to this Decree believes that a party has failed to comply with any provision(s) of this Decree, the complaining party shall notify the alleged non-complying party in writing of such non-compliance and afford the alleged non-complying party ten (10) business days to remedy the non-compliance or satisfy the complaining party that it has complied. If the dispute is not resolved within ten (10) business days, the complaining party may apply to the Court for appropriate relief.

ENFORCEMENT OF THE DECREE

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

20. The Court will take whatever measures it deems appropriate to effectuate the enforcement

of the terms of this Decree.

COSTS

21. Each Party shall bear its own costs and attorneys' fees associated with this litigation.

DURATION OF DECREE

22. This Decree shall remain in effect for three (3) years from the date of the Court's execution of the Decree. During that time, this Court shall retain jurisdiction over this matter and the Parties for purposes of enforcing compliance with the Decree, including such orders as may be required to effectuate its purposes.

AGREED TO:
FOR THE PLAINTIFF,
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

by: *Michael J. Farrell*
Michael J. Farrell
Trial Attorney, U.S.E.E.O.C.

Date: 12/13/99

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
DEC 15 1999

AGREED TO:
FOR THE DEFENDANT,
PACINO'S, INC

by: *Gus R. Benitez*
Gus R. Benitez
BENITEZ & BUTCHER, P.A.

Date: 12/15/99

SO ORDERED, ADJUDGED AND DECREED, this 20th day of December, 1999.

Patricia C. Fawcett
PATRICIA C. FAWSETT
United States District Judge

cc: gpb

EXHIBIT A

Pacino's, Inc.'s Sexual Harassment/Retaliation Policy

SEXUAL HARASSMENT POLICY

I. POLICY

Pacino's, Inc./Key W. Kool's, Inc. will not tolerate sexual harassment in the workplace. No employee - either male or female - should be subject to unwelcome verbal or physical conduct that is sexual in nature or that shows hostility to the employee because of the employee's gender. Sexual harassment does not refer to occasional compliments of a socially acceptable nature. It refers to behavior that is not welcome, that is personally offensive, that debilitates morale, and that, therefore, interferes with work effectiveness.

Violations of this policy may result in disciplinary action up to and including dismissal.

II. COVERAGE

Pacino's, Inc./Key W. Kool's Inc. strictly prohibits sexual harassment during work, during business involving the company, or while on company property by any employee (including supervisors and managers) or by any nonemployee (including customers, visitors, and independent contractors).

III. MANAGEMENT RESPONSIBILITY

Management at all levels of the company is responsible for preventing sexual harassment in the workplace. This responsibility includes immediately reporting conduct by anyone, whether a co-worker, supervisor, or nonemployee, that may constitute sexual harassment, even if the conduct was sanctioned and regardless of how awareness of conduct was gained.

IV. SEXUAL HARASSMENT DEFINED

Sexual harassment prohibited by law and by this policy includes the following conduct:

1. unwelcome verbal or physical conduct of a sexual nature when submission to the conduct is made either an explicit or implicit term or condition of employment (such as promotion, training, timekeeping, overtime assignments, leaves of absence); or
2. unwelcome verbal or physical conduct of a sexual nature when submission to or rejection of the conduct is used as a basis for making employment decisions; effect of substantially interfering with an individual's work performance, or creating an intimidating, hostile, or offensive work environment; or
3. unwelcome verbal or physical conduct of a sexual nature when the conduct has the purpose or effect of substantially interfering with an individual's work

performance, or creating an intimidating, hostile, or offensive work environment;
or

4. unwelcome verbal or physical nonsexual conduct that denigrates or shows hostility toward a person because of his or her gender when the conduct has the purpose or effect of substantially interfering with an individual's work performance, or creating an intimidating, hostile, or offensive work environment.

V. EXAMPLES OF PROHIBITED CONDUCT

Examples of conduct prohibited by this policy include:

- Offering or implying an employment-related action (such as a promotion or raise) in exchange for sexual favors or submission to sexual conduct.
- Threatening or taking of a negative employment action (such as termination, demotion, denial of a leave of absence) if sexual conduct is rejected.
- Unwelcome sexual advances or repeated flirtations.
- Unwelcome intentional touching of another person or other unwanted intentional physical contact (including patting, pinching, or brushing against another person's body).
- Asking unwelcome questions or making unwelcome comments about another person's sexual activities, dating, personal or intimate relationships, or appearance.
- Unwelcome whistling, staring, or leering at another person.
- Unwelcome sexually suggestive or flirtatious gifts.
- Unwelcome sexually suggestive or flirtatious letters, notes, e-mail, or voice mail.
- Conduct or remarks that are sexually suggestive or that demean or show hostility to a person because of the person's gender (including jokes, pranks, teasing, obscenities, obscene or rude gestures or noises, slurs, epithets, taunts, negative stereotyping, threats, blocking of physical movement).
- Displaying or circulating pictures, objects, or written materials (including graffiti, cartoons, photographs, pinups, calendars, magazines, figurines, novelty items) that are sexually suggestive or that demean or show hostility to a person because of the person's gender.

VI. PROCEDURE

A. EMPLOYEES

1. An employee who believes that he or she has been subjected to sexual harassment by anyone is encouraged - but not required - to promptly tell the person that the conduct is unwelcome and ask the person to stop the conduct. A person who receives such a request must immediately comply with it and must not retaliate against the employee for rejecting the conduct.
2. Complaints of sexual harassment should be brought to the attention of any of the following:
 - (1) Director of Operations for Pacino's Italian Restaurant
 - (2) General Manager for Key W. Kool's Open Pit Grill
 - (3) Rosario Poma owner of both restaurants.
3. The employee may also choose to raise the complaint through his or her immediate supervisor, who will in turn contact any of the officials listed above. If the employee feels uncomfortable about discussing the complaint with the immediate supervisor or one of the above officials, the employee should feel free to bypass the supervisor or official and take the complaint to any other supervisor or one of the other listed officials.

B. SUPERVISORS

After receiving any employee's complaint of sexual harassment, the supervisor will immediately contact any of the officers listed above.

If a supervisor has not received a complaint but suspects that conduct might constitute sexual harassment, the supervisor will immediately contact any of the officials listed above, regardless of how the supervisor became aware of the conduct. Even if the suspected sexual harassment was sanctioned or involves persons who work in a department other than the supervisor's, the supervisor will report it.

C. INVESTIGATION AND RESOLUTION

1. After notification of the employee's complaint, an investigation by one of the above listed officials will immediately be initiated to gather all facts about the complaint.
2. After the investigation has been completed, a determination will be made by appropriate management regarding the resolution of the case. If warranted, disciplinary action up to and including involuntary termination

will be imposed. Other appropriate actions will be taken to correct problems caused by the conduct.

D. CONFIDENTIALITY

All complaints will be handled as confidentially as possible.

VII. RETALIATION

This policy also prohibits retaliation against employees who bring sexual harassment charges or assist in investigating charges. Retaliation in violation of this policy may result in discipline up to and including termination. Any employee bring a sexual harassment complaint or assisting in the investigation of such a complaint will not be adversely affected in terms and conditions of employment, nor discriminated against or discharged because of the complaint.

PLEASE SIGN BELOW AND RETURN THIS PART BACK TO YOUR GENERAL MANAGER AND/OR MANAGER:

I have read and understand the procedures in the Sexual Harassment Policy.

Signature of Employee

Date

Signature of G.M./Manager

Date

EXHIBIT B

NOTICE TO ALL EMPLOYEES

Title VII of the Civil Rights Act of 1964 ("Title VII") protects individuals from employment discrimination because of their race, religion, color, sex (including sexual harassment and pregnancy) and national origin. Title VII also protects individuals from retaliation for having complained of an unlawful employment practice. Pacino's, Inc. will not condone discrimination of any kind as set forth in federal laws, including, but not limited to, sexual harassment.

Furthermore, Pacino's, 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 Equal Employment Opportunity Commission, or the City of Orlando Human Relations Commission.

Appropriate corrective action, up to and including termination, shall be taken against any employee (including management personnel) found to violate the policies regarding discrimination, based upon the circumstances involved.

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 or (305) 536-4491.

Signed this _____ day of December, 1999
