

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

*Rev'd*  
FILED IN CLERK'S OFFICE  
U.S.D.C. Atlanta  
JUL 2 - 2004

LUTHER D. THOMAS, Clerk  
By: *Alinet* Deputy Clerk

EQUAL EMPLOYMENT :  
OPPORTUNITY COMMISSION, :

Plaintiff, :

vs. :

BOCA CHICA, INC., d/b/a :  
LOCA LUNA RESTAURANT :

Defendant. :

Civil Action No.  
1:03-CV-2602-JTC

FILED IN CLERK'S OFFICE  
U.S.D.C. Atlanta

SEP 24 2004

*Chapman*

CONSENT DECREE

This action was instituted by the Equal Employment Opportunity Commission (hereinafter the "Commission") against Defendant Boca Chica, Inc. d/b/a Loca Luna Restaurant (hereinafter referred to as the "Defendant") pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e et seq. (hereinafter referred to as "Title VII"), and the Civil Rights Act of 1991, 42 U.S.C. § 1981(a) to remedy the alleged wrongful employment practices identified in the Complaint filed in this action. This Court has jurisdiction of the subject matter of this action and of the parties to this action.

The Commission alleged in the foregoing civil action that the Defendant acted unlawfully by failing to comply with a Mediation Settlement Agreement achieved through the Equal Employment Opportunity Commission's mediation process. In its Complaint, the Commission sought whole relief including, but not limited to, specific performance, punitive damages, and other affirmative relief. The Defendant filed its Answer denying the allegations made by the Commission. Defendant disputes and denies any liability to the Commission and/or Ms. Zangara and/or to any other person. This agreement is not to be deemed or construed to be an admission of liability or wrongdoing by Defendant but constitutes the good faith settlement of a disputed claim.

All of the parties to this action desire to avoid the additional expense, delay and uncertainty which would result from the continuance of this litigation and desire to formulate a plan to be embodied in a Consent Decree which will promote and effectuate the purposes of Title VII.

This Court has reviewed the terms of the proposed Consent Decree in light of the pleadings and the applicable law and regulations, and has approved this Consent Decree as one which will promote and effectuate the purposes of Title VII.

Now, therefore, this Court, being fully advised in the premises, it is hereby ORDERED, ADJUDGED AND DECREED:

**I. DISCLAIMER OF VIOLATION**

It is understood and agreed that the negotiation, execution and entry of this Consent Decree, and the undertakings made by Defendant hereunder, are in settlement and compromise of a disputed claim of an alleged breach of contract. Defendant disputes the validity of the claim and that its actions breached any contract. Neither the negotiation, execution nor entry of this Consent Decree shall constitute an acknowledgment or admission of any kind by the Defendant that its owners, officers, agents or employees have violated, or have not been in compliance with, Title VII or any rules and regulations issued under or pursuant to Title VII or any other applicable law, regulation or order.

**II. NON-RETALIATION AND NON-DISCRIMINATION**

Defendant shall not retaliate against any person because that person is a beneficiary of the Consent Decree, or has provided information or assistance, or has participated in any other manner in any investigation or proceeding relating to this Consent Decree.

Defendant, to ensure equal opportunity in the employment process, shall make all decisions affecting hiring, promotion, compensation, job assignment, sick and disability leave, discharge and other terms, conditions and privileges of employment, without regard to race, color, sex, religion or national origin, as required by applicable law. The Defendant shall not retaliate or take any adverse action against other persons in the future because of their opposition to practices they believe are in violation of Title VII or because of their participation in the investigation of the underlying charge or prosecution of this litigation, as required by applicable law.

### **III. NOTICES TO BE POSTED: INSTRUCTION TO MANAGEMENT**

For at least thirteen (13) months immediately following the entry of this Consent Decree, Defendant shall keep conspicuously posted a copy of the notice attached to this Consent Decree at Defendant's facilities. Within thirty (30) days from the entry of this Consent Decree, Defendant shall instruct its management and supervisory personnel regarding the full meaning of those notices and this Consent Decree. The posting required by this paragraph shall be conspicuously made on bulletin boards or locations selected so that each employee at the facility will observe at least one such posting when at the facility. Defendant shall

certify the completion of the posting and instruction to the Commission within thirty (30) days from the entry of this Consent Decree. All written certification required by this Section shall be addressed to S. Robert Royal, Regional Attorney at the Atlanta District Office, 100 Alabama Street, Suite 4R30, Atlanta, Georgia 30303.

Defendant shall not withhold the right of the Commission to enter upon Defendant's premises, with reasonable notice, to monitor compliance with this Section. Should the notice become defaced, marred, or otherwise unreadable, Defendant shall ensure that a new, readable copy of the notice is posted in the same manner as heretofore specified.

#### **IV. INSTRUCTION TO MANAGEMENT**

Within thirty (30) days from the entry of this Consent Decree, Defendant shall certify, in writing, to the Commission that all management and supervisory personnel who are currently employed at its facility or facilities have been instructed as to the terms of this Consent Decree (other than the monetary amount of the settlement), and the full meaning of the provisions of the Notice to be posted, and that Defendant has reaffirmed with these employees that employment decisions are not to be made on any basis that is prohibited by Title VII. All

written certification required by this Section shall be addressed to the Regional Attorney at the EEOC's Atlanta District Office at the above-referenced address.

**V. CHARGING PARTY'S INDIVIDUAL RELIEF:**  
**MONETARY RELIEF**

Defendants, in settlement of all alleged claims of injuries sustained due to alleged discriminatory employment practices and in exchange for a general release of claims and other agreements, shall provide Natalie Zangara the total amount of Fifty Thousand Dollars (\$50,000.00). An initial payment of Twenty Five Thousand Dollars (\$25,000.00) will be paid to Zangara and her attorneys upon her execution of a general release. Thereafter, twelve monthly installment payments of Two Thousand Eighty-Three Dollars and Thirty-Three Cents (\$2,083.33) will be mailed to Natalie Zangara, at 2024 Oak Park Circle, Atlanta, Georgia 30324. A copy of said checks will be mailed within five working days of the initial mailing to Ms. Zangara to the EEOC's Regional Attorney in the Atlanta District Office, whose address is 100 Alabama Street, Suite 4R30, Atlanta, Georgia 30303. The parties recognize that such payment will be without admission of liability on the part of the Defendant.

## **VI. REFERENCES**

Defendant agrees that, if it receives inquiries from persons or prospective employers seeking a reference or other employment related information regarding Ms. Zangara, it shall provide no less than a neutral reference, citing the dates of employment and the position(s) held. Defendant will make no mention to persons or prospective employers seeking a reference of the fact that Ms. Zangara filed a charge of discrimination or that the instant lawsuit was filed.

## **VII. PROCEDURE FOR ENFORCING COMPLIANCE**

The Commission will attempt to resolve any dispute regarding the enforcement of this Consent Decree by informal mediation and consultation before seeking enforcement through the judicial process. The Commission will notify Defendant in writing by certified mail to Alisa Pittman, Elarbee, Thompson, Sapp & Wilson, LLP, 800 International Tower, 229 Peachtree Street, NE, Atlanta, Georgia 30303, if it has any reason to believe that any action or omission by Defendant is in violation of the Consent Decree. Defendant shall have thirty (30) days after the receipt of such notification to cure any such alleged deficiency, and to notify the Commission, by written report addressed to the Regional Attorney for the EEOC's Atlanta District Office, of the measures taken

to cure the alleged deficiencies. If upon receipt of Defendant's report the Commission concludes that the deficiency has not been satisfactorily cured by the Defendant, the Commission shall seek to resolve the alleged deficiency through good faith conciliation or mediation. If the alleged deficiency is not resolved within thirty (30) days after the initiation of such good faith conciliation or mediation process, then the Commission may seek enforcement of this Consent Decree through the judicial process. Notwithstanding any of the foregoing, nothing in this agreement shall be deemed to prohibit any matter which occurred during the term of this Consent Decree and which constitutes a dispute as contemplated by Section IX from being fully and completely processed in the manner described in Section IX, even though the dispute is not resolved within thirty (30) days of the termination of this Consent Decree.

#### **VIII. COMPLIANCE OFFICIAL**

Defendant shall designate a compliance official who shall be responsible for compliance with this Consent Decree, and also responsible for coordinating and overseeing Defendant's compliance with this Consent Decree.



## **IX. TERMS OF DECREE - PERIOD OF JURISDICTION**

This Consent Decree shall continue to be effective and binding upon the parties to this action for a period of thirteen (13) calendar months immediately following the entry of the Consent Decree, provided that all remedial benefits required hereby have been received or offered prior to its expiration and provided further, that all required reports and certifications are submitted at least thirty (30) days before the expiration date of the Consent Decree. If required reports are not submitted within thirty (30) days of the expiration date or if the remedial benefits are not received or offered, the Consent Decree will be automatically extended until these provisions are completed.

This Court shall retain jurisdiction over this action for the purposes of clarifying and enforcing this Consent Decree and for any other appropriate or equitable purposes for thirteen (13) calendar months from the date of entry of this Consent Decree, unless the Court acts or the Commission has, prior to the expiration of said thirteen (13) month period, moved to enforce compliance with the Consent Decree. If this Court acts or the Commission has moved to enforce compliance with this Consent Decree within this period, this Court shall retain jurisdiction of this action until all issues relating to all such motions which are

made during the thirteen (13) month period have been resolved. Thereafter, this Court shall dissolve this Consent Decree and shall dismiss this cause with prejudice.

#### **X. OTHER ACTIONS**

The Commission shall not commence or prosecute against Defendant any action or other proceeding, on behalf of Zangara or any person, based upon any claims, demands, causes of action, obligations, damages or liabilities which arise out of EEOC Charge Number 110-2003-30638, the investigation of the charge, the mediation of the charge, or this lawsuit. This Consent Decree in no way affects the EEOC's right to process any pending or future charges that may be filed against Defendant or its owners in accordance with standard EEOC procedures, and to commence civil actions pursuant to Section 706 (f) of Title VII on any such charge. Nothing in this Consent Decree shall be construed to limit or reduce Defendant's obligation to fully comply with Title VII of the Civil Rights Act of 1964, as amended; the Equal Pay Act of 1963, as amended; the Age Discrimination in Employment Act of 1967, as amended; or the Americans with Disabilities Act of 1990. Nothing herein shall preclude the EEOC from bringing an action to enforce the provisions of this Consent Decree.

**XI. COSTS AND ATTORNEY FEES**

The Commission and Defendant shall each bear their own respective costs and attorneys' fees for this action.

The parties hereto and undersigned attorneys of record for the Commission and Defendant in the above-styled action hereby consent to the entry of the foregoing Consent Decree.

**BY CONSENT:**

Counsel for Plaintiff:



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S. Robert Royal, Esq.

Regional Attorney

Georgia Bar No. 617505

Marcus G. Keegan

Trial Attorney

Georgia Bar No. 410424

EQUAL EMPLOYMENT

OPPORTUNITY COMMISSION

ATLANTA DISTRICT OFFICE -

LEGAL UNIT

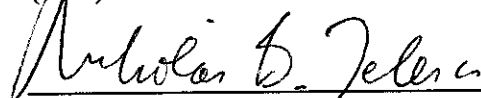
100 Alabama Street, SW

Suite 4R30

Atlanta, Georgia 30303

(404) 562-6818

Defendant:



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Nicholas R. Telesca

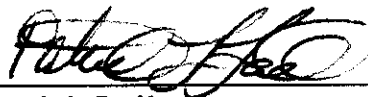
Boca Chica, Inc.

400 Colony Square

Suite 1630

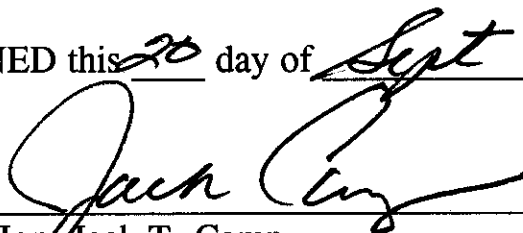
Atlanta, Georgia 30361

Counsel for Defendant:



Patrick Lail  
Georgia Bar No. 431101  
ELARBEE, THOMPSON, SAPP &  
WILSON, LLP  
800 International Tower  
229 Peachtree Street, NE  
Atlanta, Georgia 30303  
(404) 659-6700

APPROVED, DONE, and SIGNED this 20 day of Sept, 2004.



Hon. Jack T. Camp  
District Judge  
U.S. District Court of Georgia  
Northern District of Georgia, Atlanta Division

[Defendant letterhead]

NOTICE

1. This notice to all employees of Boca Chica, Inc. d/b/a Loca Luna Restaurant (hereinafter the "Company") is being posted as part of the remedy agreed to between the Defendant and the Equal Employment Opportunity Commission in a consent decree filed in the U. S. Federal District Court.
2. Federal Law requires, in general, that there be no discrimination against any employee or applicant for employment because of the person's race, color, religion, sex, pregnant condition, national origin, disability or age with respect to hiring, firing, compensation or other terms, conditions or privileges of employment.
3. The Company supports, has complied, and will comply with such Federal Law in all respects and will not take any action against employees because of their sex, pregnant condition, race, color, religion, national origin, disability or age or because they have exercised their rights under the law.
4. The Company has taken and will continue such remedial action as is required by the consent order entered by the United States District Court.
5. This notice will remain posted for thirteen (13) months, until August 1, 2005.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Boca Chica, Inc. d/b/a Loca Luna Restaurant

**DO NOT REMOVE THIS NOTICE UNTIL**

**August 1, 2005**