

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

**FILED**

UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

MAR 1 - 2006

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

PAND ENTERPRISES, INC.,  
d/b/a McDONALD'S RESTAURANT,

Defendant.

MATTHEW J. DYKMAN  
CLERK

No. CIV-05-204 WJ/RLP

The United States Equal Employment Opportunity Commission (the "Commission" or "EEOC") filed this action against Pand Enterprises, Inc., d/b/a Pand Restaurant ("Pand" or "Defendant") to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* ("Title VII") and the Civil Rights Act of 1991, 42 U.S.C. § 1981a. In the Complaint, the Commission alleged Erick Herrera and Gerardo Reyes and a class of similarly situated male employees were subjected to sexual harassment at Pand. The Commission further alleged that after Gerardo Reyes reported the harassment to Pand management officials, he was retaliated against for making the complaint.

The parties do not object to the jurisdiction of the Court over this action and waive their rights to a hearing and the entry of findings of fact and conclusions of law. This decree does not constitute an admission of liability by the defendant, nor an adjudication on the merits of the allegations of the complaint.

14

It is hereby **ORDERED, ADJUDGED AND DECREED:**

1. This decree resolves all claims of the Commission against defendant, including claims for back pay, compensatory and punitive damages, interest, injunctive relief, attorney's fees and costs arising out of the issues in this lawsuit.

**INJUNCTION**

2. Defendant, its managers, agents, officers, employees, successors and assigns and all persons in active concert or participation with it, is enjoined for the duration of the decree from discriminating against any employee because of his or her sex, including sexual harassment. In addition, defendant, its managers, agents, officers, employees, successors and assigns and all persons in active concert or participation with it, are permanently enjoined from retaliating against any employee who: (a) opposes practices made unlawful by Title VII or a state equal employment opportunity statute; (b) makes a charge of discrimination or assists or participates in an investigation or proceeding under Title VII or a state equal employment opportunity statute; or (c) files an internal complaint of discrimination. This injunction will remain in effect for the duration of the decree at any facility operated by defendant.

**RELIEF TO CHARGING PARTY AND CLASS MEMBERS**

3. In accordance with this decree, defendant shall pay the total amount of ninety thousand dollars and zero cents (\$90,000.00) (the "Settlement Amount") to resolve this lawsuit. The Settlement Amount shall be distributed to the aggrieved persons as listed in Exhibit B. Pand shall issue all claimants a Form 1099 for their respective amounts.

4. Within five (5) days of entry of the decree, Pand shall separately mail checks, via certified mail to the aggrieved persons listed in Exhibit B. Within five days of the issuance of

the checks, Pand will submit a copy of the checks and related correspondence to the Regional Attorney, Equal Employment Opportunity Commission, 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189.

5. In response to any employment inquiries or reference checks concerning charging party Erick Herrera and Gerardo Reyes or the class members, defendant shall provide only a neutral reference, which defendant asserts is consistent with its usual practice. This provision shall remain in force for so long as Erick Herrera and Gerardo Reyes or the class members use Pand as a reference and is not limited to the three-year duration of this decree.

6. Defendant shall not take any action against charging party Erick Herrera, Gerardo Reyes, class members, or any witness in this case in retaliation for filing a charge of employment discrimination or for participating, assisting or testifying in this action.

**DEFENDANT'S CORRECTIVE POLICIES AND PRACTICES**

7. Defendant shall institute and carry out policies and practices at all facilities operated by defendant that will promote a work environment free from sex discrimination, including policies and practices to prevent sexual harassment of its employees and other individuals, and that allow employees and other individuals to raise concerns or complaints about matters made unlawful by Title VII, whether alleged, perceived or actual without retaliation. To assist defendant in its effort to promote a work environment free of sex discrimination, sexual harassment and retaliation, defendant shall take the actions provided for in Paragraphs 8 through 9.

8. Within thirty (30) days of entry of the decree, defendant shall review its existing policies on sex discrimination, including sexual harassment and retaliation, and make

any changes necessary so that its policies comply with Title VII. Defendant shall ensure its written policies include a statement that employees have the right to complain directly to EEOC or any state equal opportunity agency. After reviewing and making any necessary revisions to its policies, defendant shall distribute a copy of its policy on sex discrimination to each of its current full and part-time employees within 15 days of the revision, and to each new employee hired for the duration of this decree within 15 days of their hire.

9. Within thirty (30) days of entry of the decree, defendant shall provide its employees at all facilities operated by defendant with revised written policy statements and procedures regarding reporting and prevention of sexual harassment and retaliation. The policy and procedure statements that are provided to defendant's employees should be designed to present easily understood, convenient, confidential and reliable procedures for reporting incidents of sexual harassment and retaliation in all of defendant's facilities. These procedures, at a minimum, shall provide as follows:

- A. At least one employee in a supervisory or managerial position at each facility shall be designated to serve as investigative officer for sexual harassment issues;
- B. The names, responsibilities, work locations, and telephone numbers of the investigative officers will routinely and continuously be posted and provided to all employees;
- C. All complaints of sexual harassment or retaliation, whether written or oral, including anonymous complaints, will be taken seriously and investigated;
- D. Only those who have an immediate need to know, including the investigative officer, the alleged target of harassment or retaliation, the alleged harasser(s) or

- retaliator(s) and any witnesses, may find out the identity of the complainant;
- E. All parties contacted in the course of an investigation will be advised that any retaliation or reprisal against an individual who is an alleged target of harassment or retaliation, who has made a complaint, or who has provided evidence in connection with a complaint will not be tolerated and could result in disciplinary action;
  - F. Each investigative officer will receive thorough training about sexual harassment and will have the responsibility for expeditiously investigating all complaints. This training shall consist of at least six hours in addition to that provided under paragraph 11;
  - G. The investigative officer will recommend remedial measures, if appropriate, based upon the results of the investigation, and defendant will promptly consider and act upon such recommendation;
  - H. The investigative officer will maintain a file on the original complaint(s) and any follow-up investigation;
  - I. Defendant's managers, officials, agents or employees who engage in sexual harassment or retaliation, who fail to cooperate with company-sponsored investigations of sexual harassment or retaliation, or who refuse to implement remedial measures will be advised that they may be sanctioned severely by suspension or dismissal.
10. Within thirty (30) days of entry of the decree, defendant shall post continuously for a period of thirty six (36) months, in prominent places frequented by employees in all

defendant's facilities, the Notice attached to this decree as Exhibit A. This Notice shall be the same type, style and size as in Exhibit A. This Notice shall also be made available to employees at a minimum in both English and Spanish.

11. Defendant shall provide training on sex discrimination, including sexual harassment and retaliation, according to the following terms:

- A. Defendant shall provide at least four (4) training sessions during the term of this decree. Two sessions shall be conducted in year one of the decree, and one session each shall be conducted in years two and three of the decree. All managers, supervisors and employees at all of defendant's facilities shall attend the training. Duplicative sessions may be held to accommodate staffing needs. Defendant shall be responsible for all costs associated with this training.
- B. During the first year of the decree, the first training session shall be conducted within three months of the entry of this decree and the second training session shall be conducted within nine months of the entry of this decree. During the second and third years of the decree, at least one training session shall be conducted each year.
- C. Defendant shall select a qualified trainer and shall submit the trainer's name, resume, training agenda and the date(s) of the proposed training to the Regional Attorney of the Albuquerque Area Office of the Equal Employment Opportunity Commission within forty-five days of the entry of this decree for the first session of the first year and 45 days prior to the second session of the first year. During the second and third years of the decree, the above information shall be submitted

to the Regional Attorney at least ninety days prior to the seminar-training session. The Commission shall have thirty days from the date of receipt of the information described above to accept or reject the proposed consultant/lecturer and/or the contents of the seminar. In the event the Commission does not approve defendant's designated consultant/lecturer, the Commission shall designate the consultant/lecturer at a cost not to exceed \$1,000.00 per seminar-training session which shall be paid by defendant.

- D. The training shall include a minimum of one (1) hour of instruction. All personnel designated in Paragraph A shall both register and attend the training. The registry of attendance shall be retained by defendant at least for the duration of the decree.
- E. The training, at a minimum, shall include the subjects of: what constitutes sex discrimination, including sexual harassment, harassment based on gender, and retaliation; that sex discrimination in the hiring, firing, compensation, assignment or other terms, conditions or privileges of employment and retaliation violates Title VII; how to prevent sex discrimination and retaliation; how to provide a work environment free from sex discrimination, sexual harassment and retaliation; and to whom and by what means employees may complain if they feel they have been subjected to sex discrimination, sexual harassment and retaliation in the workplace.
- F. Immediately following the training sessions, defendant's highest ranking managerial official shall speak to the employees about: (1) potential discipline that

can be taken against supervisors, managers and employees who commit acts of sex discrimination or retaliation, or who allow sex discrimination or retaliation to occur in the workplace; (2) the importance of maintaining an environment free of sex discrimination and retaliation; and (3) the employer's policies regarding sex discrimination, sexual harassment and retaliation. This time shall not be counted toward the one-hour minimum training required in paragraph 11.D.

- G. For the duration of this decree, at or around the time of hire, employees hired after the annual training is presented, shall view a videotape of the training and/or a professional training tape which covers the topics set forth in paragraph 11.E. and shall be given any written material disseminated at the training.

12. The Commission, at its discretion, may designate Commission representatives to attend and participate in the training sessions described above.

**REPORTING BY DEFENDANT AND ACCESS BY EEOC**

13. Defendant shall report in writing and in affidavit form to the Regional Attorney of the Commission's Albuquerque Area Office at 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189, beginning six months from the date of the entry of this decree, and thereafter every six months for the duration of the decree the following information, unless otherwise specified:

- A. Any changes, modifications, revocations, or revisions to its policies and procedures which concern or affect the subject of sex discrimination, including sexual harassment and retaliation.
- B. The name, address, position, social security number and telephone number of any



employee who, during the six months preceding the report, has brought allegations of sex discrimination, harassment, or retaliation arising from activities in defendant's facilities against defendant or its personnel, including, but not limited to, management officials, vendors, agents, or employees. The nature of the complaint, investigatory efforts made by defendant and the corrective action taken, if any, shall be specified.

- C. An affidavit by defendant stating the training required in paragraph 12 of this decree was conducted. The affidavit shall be provided within thirty (30) days after each training session has been conducted.
- D. Within thirty (30) days after training session has been conducted, a copy of the registries of persons attending each of the seminar-training sessions required in paragraph 12 of this decree and a list of current employees on the day of the seminar-training session.
- E. An affidavit by defendant stating the Notice required in paragraph 10 of this decree was posted and the locations where it was posted.

14. The Commission, upon reasonable notice, shall have the right to enter and inspect the premises of defendant's facilities to ensure compliance with this decree and federal anti-discrimination laws.

#### **COSTS AND DURATION**

15. Each party shall bear its costs and attorney's fees incurred as a result of this action through the entry of this decree.

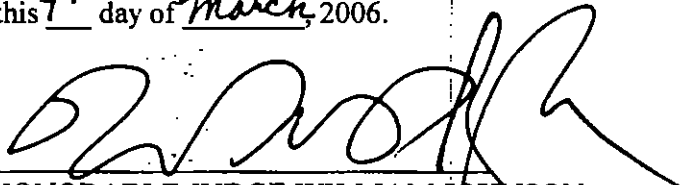
16. The duration of this decree shall be three (3) years from its entry. This Court shall

retain jurisdiction of this action for the duration of the decree, during which the Commission may petition this Court for compliance with this decree. Should the Court determine that defendant has not complied with this decree, appropriate relief, including extension of this decree for such period as may be necessary to remedy its non-compliance, may be ordered.

17. This decree shall expire by its own terms at the end of three (3) years after entry, without further action by the parties.

18. The parties agree to entry of this decree and judgment subject to final approval by the Court.

ENTERED AND ORDERED this 7<sup>th</sup> day of March, 2006.



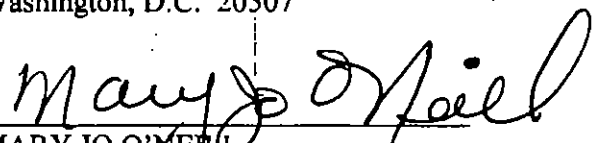
HONORABLE JUDGE WILLIAM JOHNSON  
UNITED STATES DISTRICT COURT JUDGE

APPROVED AND CONSENTED TO:

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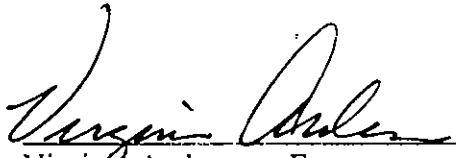


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**NOTICE TO ALL EMPLOYEES**  
**OF PAND ENTERPRISES, INC., D/B/A**  
**McDONALD'S RESTAURANT**

This Notice is posted pursuant to a Consent Decree entered into between Pand Enterprises, Inc., d/b/a Pand Restaurant ("Pand") and the Equal Employment Opportunity Commission (EEOC).

It is unlawful under the federal law (Title VII of the Civil Rights Act) and state law to discriminate against an employee on the basis of sex in hiring, firing, compensation or other terms, and conditions or privileges of employment, including sexual harassment.

Pand prohibits all forms of sexual harassment. Prohibited sexual harassment includes, but is not limited to, the following conduct:

1. unwelcome touching of a sexual nature;
2. unwelcome discussion of sexual jokes and sexual behavior;
3. unwelcome requests for dates, sexual favors and propositions; and
4. unwelcome distribution in the workplace of cartoons, pictures or drawings of a sexual nature.

Pand shall not discriminate on the basis of sex and shall not retaliate against any employee who opposes a practice made unlawful under federal law, files, assists or participates in the filing of a charge of discrimination or participates in any investigation under Title VII, or who files a grievance alleging discrimination.

If you believe you are being sexually harassed, discriminated against or retaliated against you should report this to your manager or the designated investigative officer at your workplace.

If you believe you have been discriminated against by Pand you have the right to seek assistance from:

- 1) Equal Employment Opportunity Commission (EEOC), 505 Marquette, Suite 900, Albuquerque, New Mexico 87102, 1-800-669-4000.  
or
- 2) The New Mexico Department of Labor, Human Rights Division, 1596 Pacheco St., Suite 103, Santa Fe, New Mexico 87505, (505) 827-6838.

You have the right to file a charge with the EEOC or the Department of Labor if you believe you are being discriminated against.

**EXHIBIT A**

**DISTRIBUTION OF SETTLEMENT AMOUNT**

Erick D. Herrera	Compensatory damages in the amount of thirty-three thousand dollars and zero cents (\$33,000.00)
Gerardo Reyes	Compensatory damages in the amount of thirty-one thousand dollars and zero cents (\$31,000.00)
Edgar E. Hernandez	Compensatory damages in the amount of nineteen thousand dollars and zero cents (\$19,000.00)
Phillip Apodaca	Compensatory damages in the amount of seven thousand dollars and zero cents (\$7,000.00)

**EXHIBIT B**