

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
MAY 19 2004
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EQUAL EMPLOYMENT OPPORTUNITY §
COMMISSION, §
§
Plaintiff, §
§
v. §
§
LOS COMALES, INC. D/B/A LOS COMALES §
RESTAURANT, §
§
Defendant. §

Civil No. A-03-CA-688-SS

CONSENT DECREE

The parties to this Consent Decree are the Plaintiff, United States Equal Employment Opportunity Commission (“EEOC”), and Defendant, Los Comales, Inc. d/b/a Los Comales Restaurant (“Los Comales”). This Consent Decree resolves the allegations raised by the EEOC in the above-referenced Civil Action No. A-03-CA-688-SS. The EEOC initiated this lawsuit under Title VII of the Civil Rights Act of 1964, as amended, and Title I of the Civil Rights Act of 1991, to correct alleged unlawful employment practices on the basis of sex, female, and to provide appropriate relief to Patricia Suarez and a class of similarly situated females who were adversely affected by these alleged practices. Specifically, the EEOC alleged that Ms. Suarez and a class of similarly situated females were subjected to sexual harassment to the point of being constructively discharged.

The EEOC and Los Comales wish to settle this action, without the risks, uncertainties and expenses of continued litigation, under the terms in the Decree.

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction of the subject matter of this action and the parties, venue is proper, and all administrative prerequisites to the EEOC’s filing of this action have

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been met. The parties stipulate to the Court's jurisdiction.

2. This Decree is entered in full and complete settlement of all claims contained in this lawsuit. EEOC expressly reserves its right to process and litigate any other charges (other than EEOC Charge No. 36A-2003-00024) against Los Comales, which may now be pending or may in the future be filed against Los Comales.

SCOPE OF CONSENT DECREE

3. The duration of this Decree shall be three (3) years from the date of its filing with the Court. This Court shall retain jurisdiction of this action during the period of this Decree and may enter further orders or modifications as may be appropriate. Any violation of the Consent Decree by Los Comales or its agents or assigns shall toll the running of this three-year period as of the date of the violation. If the Court determines this Consent Decree was violated, the three-year period shall recommence and continue from the date of entry of an Order setting out such a violation or until such time as ordered by the Court. Should the Court find that this Consent Decree was not violated, the three-year period shall recommence, retroactive to the date of the filing of the pleading alleging that a violation occurred.

INJUNCTIVE PROVISIONS

4. Los Comales is hereby enjoined from:
- (a) Discriminating against any employee on the basis of sex, female, including but not limited to sexual harassment, in violation of Title VII;
 - (b) Engaging in or being a party to any action, policy or practice that has the effect of harassing or intimidating any employee on the basis of sex; and
 - (c) Creating, facilitating or permitting the existence of a work environment that is hostile to any employee through acts such as physical/verbal abuse and derogatory comments that rise to the level of a sexually hostile work environment and which could lead to constructive discharge, on the basis of sex.

5. **Sexual Harassment Policy.** Within ninety (90) days from the entry of this Decree, Los Comales will adopt a sexual harassment policy specifically adapted to a small restaurant business and ensure that it meets the following criteria:

- (a) States that Los Comales: (i) prohibits discrimination against any employee on the basis of sex, female, in violation of Title VII; (ii) prohibits any act, policy or practice that has the effect of harassing or intimidating any employee on the basis of sex, female, in violation of Title VII; and, (iii) prohibits any act, policy or practice that has the effect of creating, facilitating or permitting the existence of a work environment that is hostile to any employee through acts such as physical/verbal abuse and derogatory comments based on sex, female, in violation of Title VII;
- (b) Defines and provides examples of sexual harassment;
- (c) Provides for prompt investigation of sexual harassment complaints and for prompt action, which is appropriate and effective, to remedy the discrimination;
- (d) Upon the conclusion of Los Comales' investigation, the results of the investigation and the remedial actions taken or proposed will be promptly communicated in writing to the complaining party;
- (e) Provides for substantial and progressive discipline for violating Los Comales' sexual harassment policy up to and including discharge;
- (f) Requires that all employees report incidents of sexual harassment to the person(s) identified by Los Comales as the person(s) charged with the responsibility for investigating discrimination complaints; and
- (g) Provides that Los Comales' sexual harassment policy and complaint procedures be in drafted in English and Spanish.

6. **Complaint Procedures.** Los Comales shall maintain a complaint procedure that is designed to encourage employees to come forward with complaints regarding violations of its sexual harassment policy regardless of the position held by the alleged harasser. Los Comales' complaint procedure shall provide the following:

- (a) Simple, convenient, confidential and reliable mechanisms for reporting incidents of sexual harassment;
- (b) Prompt investigation of complaints of sexual harassment;
- (c) Written findings of the results of any investigation of a discrimination complaint and the remedial actions proposed, if any;
- (d) An effective means of promptly communicating to the complaining party, in writing, the results of the investigation and the remedial actions taken or proposed, or not taken;
- (e) Appropriate remedial action to resolve the complaint and to deter future incidents of sexual harassment; and
- (f) Assurances that complainants shall not be subjected to intimidation, harassment and/or retaliation.

7. **Management Accountability.** Los Comales shall promote accountability by providing the following:

- (a) Annual sexual harassment training to all officers, managers and supervisory personnel of Los Comales as stipulated in Paragraphs 10 through 11;
The training shall (i) explain that sexual harassment is unlawful; (ii) instruct what conduct may constitute sexual harassment; (iii) explain the damaging effects of sexual harassment on its victims, their families, their co-workers, and the workplace environment; and (iv) ensure that Los Comales knows how to enforce Los Comales's sexual harassment policy;

- (b) Substantial discipline, up to and including discharge, of any Los Comales employee who violates Los Comales' sexual harassment policy;
- (c) Imposing on all Los Comales officers, managers, and supervisory personnel a duty to actively monitor all work areas to ensure compliance with Los Comales' sexual harassment policy; and
- (d) Requiring all Los Comales employees to report any incident and/or complaint of sexual harassment of which they become aware to the person(s) responsible for handling such complaints.

MONETARY RELIEF

8. Defendant Los Comales, in settlement of this dispute, shall pay a total sum of \$32,000.00 (THIRTY-TWO THOUSAND DOLLARS AND 00/100) which will be apportioned as follows:

- (a) No later than thirty (30) days after the entry of this Decree, or by June 1, 2004, whichever comes first, Defendant shall pay it's first installment of \$8,000.00 (EIGHT THOUSAND DOLLARS AND NO/100) to be apportioned as follows:
 - (1) \$6,000.00 to Patricia Suarez on or before June 1, 2004;
 - (2) \$1,000.00 to Alejandra Ortega on or before June 1, 2004;
 - (3) \$1,000.00 to Eloisa Fuentes on or before June 1, 2004.
- (b) The remaining \$24,000.00 (TWENTY-FOUR THOUSAND AND NO/100) shall be paid over the next three (3) years, in quarterly installments equaling \$2,000.00 (TWO THOUSAND DOLLARS AND NO/1000), with the first of the quarterly payments due on or before September 1, 2004, and payments due thereafter on or before the first day of December, March, June and September, until full payment of the outstanding balance, with the last of the quarterly installments to be paid on or before June 1, 2007.

Eleven (11) quarterly payments due on or before September 1, 2004; December 1, 2004; March 1, 2005; June 1, 2005; September 1, 2005; December 1, 2005; March 1, 2006; June 1, 2006; September 1, 2006; December 1, 2006; and March 1, 2007, shall be apportioned as follows:

- (1) \$1,166.66 to Patricia Suarez;
- (2) \$416.66 to Alejandra Ortega; and
- (3) \$416.66 to Eloisa Fuentes.

Final quarterly payment, due on or before June 1, 2007, shall be apportioned as follows:

- (1) \$1,166.74 to Patricia Suarez
- (2) \$416.74 to Alejandra Ortega; and
- (3) \$416.74 to Eloisa Fuentes.

- (c) Payments shall be made by certified check and mailed directly to each class member at the following addresses:

- (1) Patricia Suarez
1007 N. Oxaka Street
Roma, Texas 78584
- (2) Alejandra Ortega
1906 E. 9th Street #B
Austin, Texas 78702
- (3) Eloisa Fuentes
5701 Johnny Morris #174
Austin, Texas 78724

- (d) The balance due under subparagraph (b) hereto, may be paid in full prior to the date(s) due, with no penalty, and the term of the Consent Decree shall expire upon full payment of the outstanding balance.

9. A copy of all the settlement checks, and any accompanying transmittal documents shall be forwarded to Robert Harwin, Regional Attorney, San Antonio District Office, United States Equal Employment Opportunity Commission, 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229.

TRAINING

10. During the terms of this Consent Decree, Los Comales will provide annual training on Title VII according to the following terms:

- (a) Los Comales shall retain and pay the Law Offices of Mack Ray Hernandez, or other attorneys acceptable to the EEOC, to provide a day's training of no less than six (6) hours to all of Los Comales's owners, officers, managers, supervisors and employees on the subject of the employment provisions of Title VII, including sex based discrimination, hostile work environment, and sexual harassment;
- (b) All participants shall be required to sign a registry upon completion of the training; and Los Comales shall provide the initial training session in accordance with this Paragraph within ninety (90) calendar days of the entry of this Decree;
- (c) Within thirty (30) days after the anniversary of the entry of this Decree, Los Comales shall provide this same training pursuant to and in compliance with this Paragraph for all new Los Comales employees; and
- (d) Within twenty (20) business days prior to any proposed training pursuant to this Decree, Los Comales shall submit the date(s) of the proposed training session and a topic outline of the contents of the training to EEOC. EEOC shall then have ten (10) business days from the date of receipt of the information to accept or reject the contents of the topic outline. In the event that EEOC does not approve Los Comales's topic outline, Los Comales shall have ten (10) business days to submit a revised outline.

11. Within ten (10) days after the completion of each required training session, Los Comales shall certify to EEOC, in writing, that the required training has taken place and that required personnel attended. Such certification shall include:

- (a) The date, location and duration of the training; and
- (b) A copy of the registry of attendance which shall include the name and position or title of each person in attendance.

POSTING REQUIREMENT

12. Within ten (10) business days after entry of this Decree, Defendant shall post copies of the Notice (11 in. x 17 in.) attached as **Exhibit "A"** to this Decree at its Los Comales Restaurant in a conspicuous location easily accessible to and commonly frequented by employees. The Notice shall remain posted for the duration of this Decree. Los Comales shall ensure that the posting is not altered, defaced or covered by any other material. Los Comales shall certify to the EEOC in writing within ten (10) business days after entry of the Decree that the Notice has been properly posted. Los Comales shall permit a representative of EEOC to enter Los Comales's premises for purposes of verifying compliance with this Paragraph at any time during normal business hours.

RECORD KEEPING

13. During the term of this Decree, Los Comales shall maintain records (including name, sex, age, social security number, address and telephone number) of each person who complains, either orally or in writing, of sexual harassment or hostile work environment. Additionally, Los Comales shall maintain records of the investigation and resolution of each complaint.

14. During the term of this Decree, Los Comales shall provide to the EEOC, at Los Comales's expense, copies of complaints and documents relating to complaints filed or made pursuant to Paragraphs 5 and 6, investigations, findings, and remedial actions undertaken by Los Comales pursuant to Paragraphs 5, 6, and 13.

15. Nothing contained in this Decree shall be construed to limit any obligation Los Comales may otherwise have to maintain records under Title VII or any other law or regulation.

REPORTING

16. Los Comales shall furnish to EEOC the following written reports semiannually

for the term of this Decree. The first report shall be due six (6) months after entry of the Decree. The final report shall be due six months after the expiration of the Decree. Each report shall contain:

- (a) Copies of all complaints and documents relating to complaints filed or made pursuant to Paragraphs 5 and 6;
- (b) All written findings relating to the complaint and investigation and remedial actions proposed pursuant to Paragraphs 5 and 6;
- (c) All documents relating to resolution of the complaints and any remedial actions taken, if any; and
- (d) A certification by Los Comales that the Notices required in Paragraph 12 remained posted during the entire term of this Decree.

17. During the term of this Consent Decree, Los Comales shall provide all employees hired after the entry of this Decree with a copy of the Los Comales's Employee Manual and policies concerning sexual harassment.

MISCELLANEOUS PROVISIONS

18. Los Comales shall bear the costs associated with administering and implementing the provisions of this Decree.

19. Except as provided herein, the parties to this Decree shall bear their own costs and attorney's fees. Furthermore, the parties agree that pursuant to Section 706(k) of Title VII, 42 U.S.C. § 2000e-5(k), there is no "prevailing party" in this action or proceeding.

20. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, assigns and successors of Los Comales and the EEOC.

21. When this Consent Decree requires the submission by Los Comales of documents or other materials to EEOC, such documents or other materials shall be mailed to Robert B. Harwin, Regional Attorney, 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229. The Clerk shall furnish a copy hereof to each attorney of record.

SO ORDERED AND ENTERED this 19th day of May, 2004.



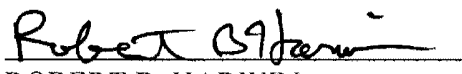
SAM SPARKS
UNITED STATES DISTRICT JUDGE

Respectfully submitted,

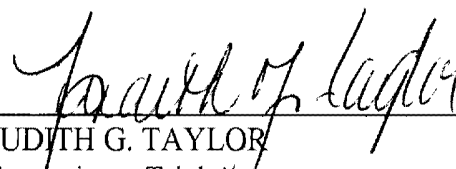
ERIC S. DREIBAND
General Counsel

JAMES L. LEE
Deputy General Counsel

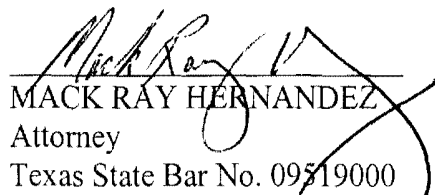
GWENDOLYN YOUNG REAMS
Associate General Counsel



ROBERT B. HARWIN
Regional Attorney
District of Columbia Bar No. 076083

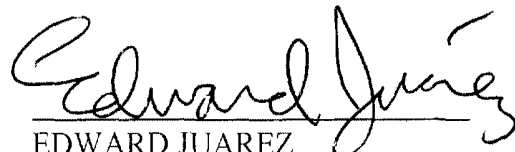


JUDITH G. TAYLOR
Supervisory Trial Attorney
Texas State Bar No. 19708300


MACK RAY HERNANDEZ
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ATTORNEY FOR DEFENDANT


EDWARD JUAREZ
Trial Attorney
Texas State Bar No. 24014498

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
5410 Fredericksburg Road, Suite 200
San Antonio, Texas 78229
Telephone: (210) 281-7613
Telecopier: (210) 281-7669

ATTORNEYS FOR PLAINTIFF

EXHIBIT A

**NOTICE AS REQUIRED UNDER TITLE VII OF
THE CIVIL RIGHTS ACT OF 1964**

1. This NOTICE to all employees of Los Comales, Inc. d/b/a Los Comales Restaurant is being posted as part of an agreement between Los Comales, Inc. and the U.S. Equal Employment Opportunity Commission.
2. Federal law requires that there be no discrimination against any employee or applicant for employment because of that person's race, color, religion, sex, national origin, or age with respect to hiring, compensation, promotion, discharge, or other terms, conditions or privileges of employment.
3. Los Comales, Inc. strongly supports and will comply with such Federal law in all aspects and it will not take any action against employees because they have exercised their rights under the law by filing charges with the U.S. Equal Employment Opportunity Commission.
4. If you believe you are being discriminated against in any term or condition of your employment because of your race, religion, color, national origin, sex, or disability, or that you are being subjected to harassment because of your sex or because of having engaged in Title VII-protected activity, you are encouraged to seek assistance from supervisory personnel, or from the U.S. Equal Employment Opportunity Commission, 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229-3555, (210) 281-7600 or 1-800-669-4000.
5. No retaliatory action may be taken against you for seeking assistance, filing a charge, or communicating with the U.S. Equal Employment Opportunity Commission.
6. Basing employment actions on the gender of an employee may also constitute a violation of Title VII of the Civil Rights Act of 1964, as amended, and any such conduct is a violation of company policy. Any employee found to be in violation of this company policy will be subject to written reprimand, suspension, and/or discharge.
7. This NOTICE will remain posted until June 1, 2007, by direction of the U.S. Equal Employment Opportunity Commission.