

United States District Court
Southern District of Texas
FILED

FEB 8 2002

Michael N. Milby, Clerk

United States District Court
Southern District of Texas
ENTERED

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Michael N. Milby, Clerk
Laredo Division

MMM

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

PALAFOX HOSPITALITY, LTD.,
d/b/a LA POSADA HOTELS/SUITES,

Defendant.

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Civil Action No. L-01-38

CONSENT DECREE

The parties to this Consent Decree are the Plaintiff, United States Equal Employment Opportunity Commission ("EEOC"), and Defendant, Palafox Hospitality Ltd., d/b/a La Posada Hotels/Suites ("La Posada"). This Consent Decree resolves the allegations raised by the EEOC in the above-referenced Civil Action No. L-01-38. 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, specifically sexual harassment, and to provide appropriate relief to Corina Uribe, and at least one similarly situated female, who the EEOC maintains were adversely affected by these alleged practices.

The EEOC alleges that Defendant, through its General Manager, subjected Corina Uribe and at least one similarly situated female to sexual harassment on the basis of their sex, female, in violation of Section 703(a) of Title VII. The EEOC further alleges that the discriminatory conduct to which Ms. Uribe and at least one similarly situated female were subjected was severe and pervasive and created an abusive working environment. The EEOC further alleges that Ms. Uribe and at least one similarly situated female were constructively discharged as a result of the unlawful

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harassment.

Palafox Hospitality, Ltd., d/b/a La Posada, denies all allegations in the EEOC's complaint and makes no admissions of liability. The EEOC and La Posada 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 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 the EEOC's complaint in this case which includes the claims of Corina Uribe, Irma Hernandez, and all similarly situated individuals. EEOC expressly reserves its right to process and litigate any other charges that may be filed against La Posada.

SCOPE OF CONSENT DECREE

3. The duration of this Decree shall be two (2) 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. Should any disputes under this Decree remain unresolved after this two-year period, the term of the Decree shall be automatically extended, and the Court will retain jurisdiction of this matter to enforce the Consent Decree, until such time as all disputes have been resolved. It is further understood that should a violation or dispute arise during the duration of this Decree, EEOC will notify La Posada through Chuck F. Hedges, Jr., Secretary/Treasurer, Palafox Management, Inc., 303 W. Wall, Suite 1900, Midland, Texas 78701. The EEOC will allow La Posada ten (10) business days to respond and attempt to resolve the dispute or violation.

INJUNCTIVE PROVISIONS

4. **Sex.** La Posada and its officers, agents, management, successors, and assigns, are hereby enjoined from knowingly and intentionally:

- (a) Discriminating against any employees on the basis of sex in violation of Title VII, including sexual harassment and constructive discharge based upon sex;
- (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 employees through acts such as physical or verbal abuse and derogatory comments, such as offensive, insulting, or ridiculing comments, on the basis of sex.

5. **Anti-Sexual Harassment Policy.** Within ninety (90) days from the entry of this Decree, La Posada will adopt an anti-sexual harassment policy and ensure that it meets the following criteria:

- (a) States that La Posada: (i) prohibits discrimination against employees on the basis of sex 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 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 employees through acts such as physical or verbal abuse and derogatory comments based on sex 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) Promptly communicates in writing to the complaining party upon the conclusion of its investigation the results of the investigation and the remedial actions taken or proposed, if any; and
- (e) Provides for substantial and progressive discipline for violating La Posada's anti-sexual harassment policy up to and including discharge.

6. **Complaint Procedures.** La Posada shall maintain a complaint procedure in its Employee Manual that is designed to encourage employees to come forward with complaints regarding violations of its anti-sexual harassment policy regardless of the position held by the alleged harasser. La Posada's complaint procedure shall provide the following:

- (a) Reliable and confidential 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 communicating to the complaining party promptly in writing, the results of the investigation and the remedial actions taken or proposed, or not taken;
- (e) Appropriate remedial action taken to resolve the complaint to deter future incidents of sexual harassment; and
- (f) Assurances that complainants shall not be subjected to intimidation or harassment.

7. **Manager and Supervisor Accountability.** La Posada shall promote manager and supervisor accountability by providing the following:

- (a) Annual anti-sexual harassment training to all of its managerial, and/or supervisory personnel as stipulated in Paragraphs 11 through 15;

- (b) 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 supervisors and management or supervisory personnel know how to enforce La Posada's anti-sexual harassment policy;
- (c) Substantial discipline, up to and including discharge, of any supervisor or manager who violates La Posada's anti-sexual harassment policy;
- (d) Imposing on all managers and supervisory personnel a duty to actively monitor their work areas to ensure compliance with La Posada's policy on anti-sexual harassment; and
- (e) Requiring all managers and supervisors to report any incidents and/or complaints of sexual harassment of which they become aware to the person charged with handling such complaints.

8. La Posada shall notify all of its current employees of its anti-sexual harassment policy within ninety (90) days after the entry of this Consent Decree by amending its Employee Manual to the extent that the Manual does not currently contain the current policy and providing a copy of all changes to all of its current employees.

MONETARY RELIEF

9. Within fourteen (14) days of the entry of this Decree, La Posada, in settlement of this dispute, shall pay a total sum of sixty-five thousand dollars (\$65,000.00) which will be apportioned as follows:

- (a) Fifty-thousand dollars (\$50,000.00) to Corina Uribe and her attorney Steve Spurgin. Payment of this amount will constitute a full and complete settlement of

the state court lawsuit, cause no. 2000CVQ00128D1, styled Corina Uribe v. Faskin Oil & Ranch, Ltd., d/b/a La Posada Hotel/Suites, filed in the 49th Judicial District, Webb County, Texas;

- (b) In addition to the \$50,000.00 in (a) above, La Posada will pay fifteen-thousand dollars (\$15,000.00) to Corina Uribe and Irma Hernandez (another similarly aggrieved woman), in full and complete settlement of this civil action. Of this amount, La Posada shall pay fourteen-thousand dollars (\$14,000.00) to Corina Uribe and one-thousand dollars (\$1,000.00) to Irma Hernandez. Each payment shall be made by certified check. Each such payment shall be mailed directly to Ms. Uribe at 1700 Jackson Keller, #1003, San Antonio, Texas 78213, and Ms. Hernandez at 4704 San Francisco Ave., Laredo, Texas 78041. Any amount not accepted by either aggrieved individual shall be disbursed to the other aggrieved individual.
- (c) Corina Uribe will not be responsible for indemnifying La Posada, its officers, agents, management, successors, and assigns, for any monies she receives (\$64,000.00) as a result of the settlement of this civil action.

10. 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

11. La Posada will provide annual training on Title VII according to the following terms:

- (a) La Posada shall retain and pay Bridgette Oliva, consultant or lecturer (“trainer”),

pre-approved by EEOC, to provide training, lasting no fewer than eight (8) hours in length, on the subject of the employment provisions of Title VII, including discrimination, hostile work environment, and sexual harassment;

- (b) The training will be provided to all La Posada's management, including all supervisory personnel. All participants shall be required to sign a registry upon completion of the training; and
- (c) La Posada shall provide the initial training session in accordance with this Paragraph within ninety (90) calendar days of the entry of this Decree.

12. Within twenty (20) business days prior to any proposed training pursuant to this Decree, La Posada 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 proposed contents of the topic outline. In the event that EEOC does not approve La Posada's outline, La Posada shall have ten (10) business days to submit a revised outline. In the event that EEOC does not approve La Posada's revised outline, the EEOC shall provide La Posada with the topic outline.

13. During the first year of the Consent Decree, La Posada shall provide EEOC with copies of pamphlets, brochures, outlines or other written, audio taped or videotaped material(s) provided to the participants of all training session(s) within ten (10) business days of the initial training. If during the term of the Consent Decree, the pamphlets, brochures, outlines or other written, audio taped or videotaped material(s) provided to the participants of such training session(s) are revised, supplemented, and/or otherwise amended, all such materials shall be provided to the EEOC within ten (10) days of such revisions, supplementation, and/or amendments.

14. La Posada shall provide this same training pursuant to and in compliance with

Paragraphs 11 through 13 during the subsequent year of the Decree for new employees and for those employees who missed the initial training session.

15. La Posada shall certify annually to EEOC, in writing, that the training has taken place and that required personnel attended. Such certification shall include:

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

POSTING REQUIREMENT

16. 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 facility in all conspicuous locations easily accessible to and commonly frequented by employees. The Notice shall remain posted for the duration of this Decree from the date of entry of this Decree. La Posada shall ensure that the postings are not altered, defaced or covered by any other material. La Posada shall certify to the EEOC in writing within ten (10) business days after entry of the Decree that the Notice has been properly posted. La Posada shall permit a representative of EEOC to enter La Posada's premises for purposes of verifying compliance with this Paragraph at any time during normal business hours.

17. La Posada agrees to implement the following "Zero-Tolerance Policy and Equality Objectives."

- (a) In addition to the terms of the posting required in Paragraph 16 of this Decree, La Posada affirms and will implement the following "Statement of Zero-Tolerance Policy and Equality Objectives."

La Posada maintains a zero-tolerance policy concerning sexual

harassment. La Posada responds swiftly and firmly to any acts of sexual harassment of which it becomes aware, regardless of the position held by the alleged harasser with La Posada. La Posada maintains a disciplinary system that is designed to strongly deter acts of sexual harassment and to encourage the reporting of acts of sexual harassment. Any supervisory or managerial employee who allows an act of sexual harassment to be unaddressed will be subject to disciplinary action.

- (b) La Posada shall notify its current employees of its Zero-Tolerance Policy within ten (10) days after the entry of this Decree by providing a copy of this statement to all of its current employees.
- (c) During the term of this Decree, La Posada shall notify all employees hired after the entry of this Decree of its Zero-Tolerance Policy by providing the policy to each new employee.

RECORD KEEPING

18. During the term of this Decree, La Posada shall maintain records (including name, sex, age, social security number, address and telephone number) of each person who complains, either formally or informally, of sexual harassment or hostile work environment. Additionally, La Posada shall maintain records of the investigation and resolution of each complaint.

19. During the term of this Decree, La Posada shall provide copies to the EEOC, at La Posada's expense, of all records referenced in Paragraph 18. In addition, La Posada shall present all persons within its employ whom the EEOC requests for purposes of verifying compliance with this Consent Decree and shall permit representatives of EEOC to meet with such persons on La Posada's premises or a mutually agreeable location for such purposes at the request of EEOC. Prior to meeting with La Posada employees, the EEOC shall notify La Posada of the names of the person with whom the EEOC will be meeting.

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

REPORTING

21. La Posada 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 four (4) weeks before the expiration of the Decree. Each report shall contain:

- (a) The name, sex, age, social security number, address and telephone number of all individuals who filed or made complaint(s) pursuant to Paragraph 6;
- (b) Copies of all complaints and documents relating to complaints filed or made pursuant to Paragraph 6;
- (c) All written findings relating to the complaint and investigation and remedial actions proposed pursuant to Paragraph 6;
- (d) All documents relating to resolution of the complaints and any remedial actions taken, if any; and
- (e) A certification by La Posada that the Notices required in Paragraph 16 remained posted during the entire term of this Decree.

22. During the term of this Consent Decree, La Posada shall provide all employees hired after the entry of this Decree with a copy of the La Posada's Employee Manual and policies concerning anti-sexual harassment.

MISCELLANEOUS PROVISIONS


23. La Posada shall bear all costs associated with administering and implementing the provisions of this Decree.

24. Except as provided herein, the parties to this Decree shall bear their own litigation 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.

25. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, assigns and successors of La Posada.


26. When this Consent Decree requires the submission by La Posada 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.

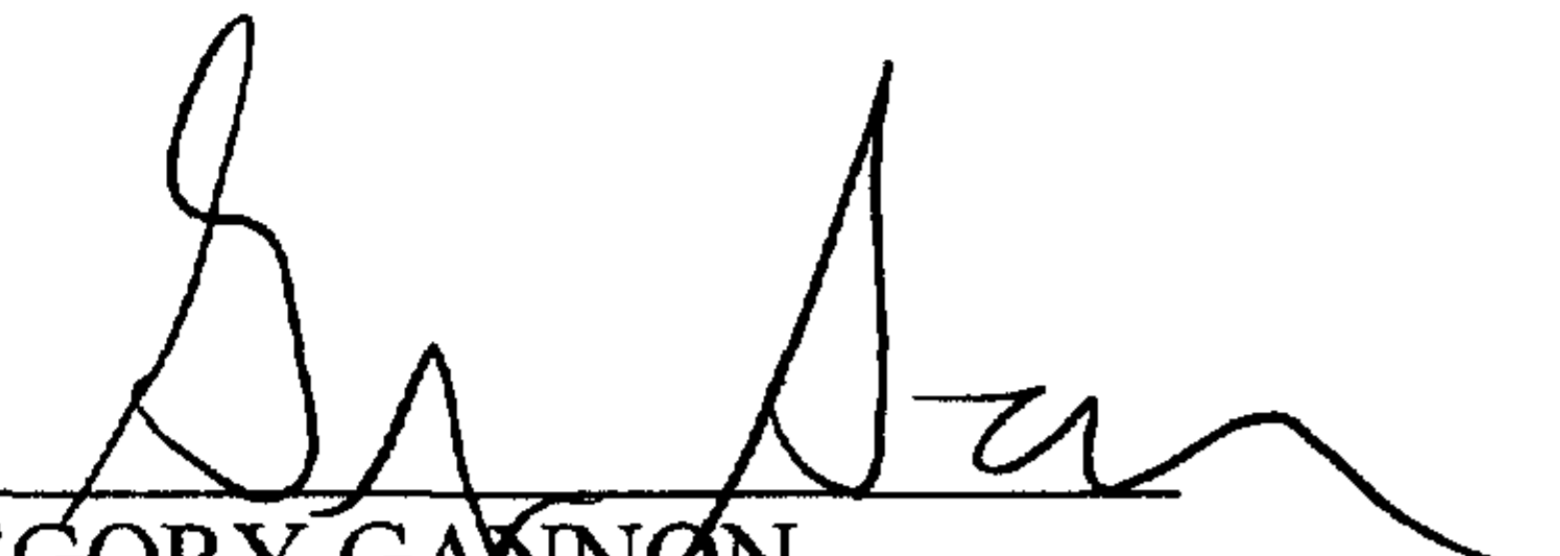
SO ORDERED AND ENTERED 8th day of February, 2002.


~~ADRIANA ARCE FLORES~~ KEITH P. ELLISOR
UNITED STATES MAGISTRATE JUDGE
DISTRICT

Respectfully submitted,

GWENDOLYN YOUNG REAMS
Associate General Counsel



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



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Attorney-In-Charge

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COMMISSION
San Antonio District Office
5410 Fredericksburg Rd., Suite 200
San Antonio, Texas 78229-3555
Telephone: (210) 281-7679
Telecopier: (210) 281-7669

ATTORNEYS FOR PLAINTIFF

Exhibit A

NOTICE TO ALL EMPLOYEES

PALAFox HOSPITALITY LTD., D/B/A LA POSADA HOTEL/SUITES, IS FIRMLY COMMITTED TO A WORKING ENVIRONMENT FREE FROM ALL FORMS OF DISCRIMINATION AND HARASSMENT, WHETHER BECAUSE OF HIS OR HER RACE, COLOR, SEX, NATIONAL ORIGIN, RELIGION, AGE OR DISABILITY, OR FOR HAVING ENGAGED IN ACTIVITY PROTECTED BY TITLE VII OF THE CIVIL RIGHTS ACT OF 1964. LA POSADA'S POLICY APPLIES TO ALL EMPLOYMENT DECISIONS, INCLUDING HIRING, RETENTION, PROMOTION, TRANSFER, LAYOFF AND/OR TERMINATION. THIS INCLUDES A STRICT POLICY AGAINST ANY FORM OF SEXUAL HARASSMENT, INCLUDING BUT NOT LIMITED TO DEROGATORY COMMENTS AND PHYSICAL ABUSE.

PALAFox HOSPITALITY LTD., D/B/A LA POSADA HOTEL/SUITES, WILL NOT DISCRIMINATE AGAINST ANY EMPLOYEE FOR OPPOSING EMPLOYMENT DISCRIMINATION OR FOR FILING OR PARTICIPATING IN A CHARGE OF EMPLOYMENT DISCRIMINATION.

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, AGE, OR DISABILITY, OR THAT YOU ARE BEING SUBJECTED TO HARASSMENT AND CONSTRUCTIVE DISCHARGE 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 UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, 5410 FREDERICKSBURG ROAD, SUITE 200, SAN ANTONIO, TEXAS

78229-3550, (210) 281-7600 OR 1-800-669-4000.

NO RETALIATORY ACTION MAY BE TAKEN AGAINST YOU FOR SEEKING ASSISTANCE, FILING A CHARGE, OR COMMUNICATING WITH THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

EEOC ENFORCES TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, WHICH PROHIBITS EMPLOYMENT DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX OR NATIONAL ORIGIN; THE AGE DISCRIMINATION IN EMPLOYMENT ACT; THE EQUAL PAY ACT; PROHIBITIONS AGAINST DISCRIMINATION AFFECTING INDIVIDUALS WITH DISABILITIES; SECTIONS OF THE CIVIL RIGHTS ACT OF 1991, AND TITLE I OF THE AMERICANS WITH DISABILITIES ACT, WHICH PROHIBITS DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES IN THE PRIVATE SECTOR AND STATE AND LOCAL GOVERNMENTS.