

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

OCT 29 2003

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

DEPUTY CLERK

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
VS.)
)
TIL MAR, INC. d/b/a PO PO FAMILY)
RESTAURANT,)
)
Defendant.)

Civil Action No: SA-02-CA-0938-XR

ORDER

On this date, the Court considered Defendant Til Mar's Motion to Compel, filed October 28, 2003. Til Mar informs the Court that this case is scheduled for mediation on November 4, 2003. Defendant requested that Ms. Liddell and Ms. Oesterreicher, who filed the charges of discrimination against Defendant, be present at the mediation. According to Defendant, counsel for Plaintiff, the EEOC, has refused to have the charging parties attend the mediation because they are not parties and the EEOC can settle the lawsuit without their consent. Defendant contends that the charging parties are necessary to the mediation, because "[o]nly with the Charging Parties present at the mediation will the mediator have the opportunity to persuade both sides to adjust and settle their disputes." Defendant asserts that it intends to mediate "with the hopes of settling this matter without the future necessity of this Court's involvement," but that it will not mediate without the charging parties' presence. Accordingly, Defendant asks the Court to compel the charging parties to attend the mediation.

After careful consideration, the Court will DENY Til Mar's Motion to Compel (docket no. 16). Under Local Rule CV-88, "party representatives with authority to negotiate a settlement, and all other persons necessary to negotiate a settlement, including insurance carriers, must attend the ADR session." The charging parties have not intervened and are not parties to this suit. The EEOC, as the sole Plaintiff, may

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settle the case without the charging parties' presence or consent. Accordingly, Til Mar has not demonstrated that the charging parties are necessary parties as contemplated by the rule. Although the Court denies Til Mar's motion to compel, the Court encourages the EEOC to obtain the charging parties' voluntary attendance if doing so would facilitate settlement. Pursuant to Local Rule CV-88, the Court further ORDERS the parties to attend the previously scheduled mediation on November 4, whether or not the charging parties attend.

SIGNED this 29th day of October, 2003.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE