

FILED

MAY 23 2002

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

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

*Plaintiff,*

v.

PAESANOS DI SAN ANTONIO, INC.,

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Civil Action No. SA-01-CA-348-WWJ

CONSENT DECREE

The parties to this Consent Decree are the Plaintiff, United States Equal Employment Opportunity Commission ("EEOC"), and Defendant, Paesanos Di San Antonio, Inc. ("Paesanos"). This Consent Decree resolves the allegations raised by the EEOC in the above-referenced Civil Action No. SA 01-CA-348. 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 Serena Miller, Rachelle Mata, and Lonna Atkinson, a member of the class of similarly situated women, who were adversely affected by these alleged practices.

The EEOC and Paesanos 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,

18

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 this lawsuit. EEOC expressly reserves its right to process and litigate any other charges (other than EEOC Charge No. 360 99 1064 filed by Serena Miller, EEOC Charge No. 360 99 1727 filed by Rachelle Mata against Paesanos Di San Antonio, Inc., and any related claims asserted by Lonna Atkinson, a similarly situated former female employee of Paesanos, which may now be pending or may in the future be filed against Defendant Paesanos.

#### 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. Should any disputes under this Decree remain unresolved after this three-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.

#### DEFINITION

4. It is understood by the parties that the term "Paesanos Management" as referenced herein includes all officers, agents, management, including supervisory personnel, of Defendant Paesanos.

#### INJUNCTIVE PROVISIONS

5. **Sex.** Paesanos Management is hereby enjoined from:
- (a) Discriminating against any employees on the basis of sex, female in violation of Title VII, including sexual harassment;
  - (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/verbal abuse and derogatory comments, on the basis of sex.
6. **Sexual Harassment Policy.** Within ninety (90) days from the entry of this Decree, Paesanos will adopt an anti-sexual harassment policy and ensure that it meets the following criteria:
- (a) States that Paesanos: (i) prohibits discrimination against employees 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 employees 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) 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;
  - (e) Provides for substantial and progressive discipline for violating Paesanos' anti-sexual harassment policy up to and including discharge;
  - (f) Requires that all employees report incidents of sexual harassment to any supervisor or the person charged with investigating discrimination complaints;

and

- (g) Provides that Paesanos' sexual harassment policy and complaint procedures be in English and Spanish and drafted in plain and simple language.

7. **Complaint Procedures.** Paesanos shall maintain a complaint procedure in its Employee Manual 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. Paesanos' 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 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.

8. **Management Accountability.** Paesanos shall promote management accountability by providing the following:

- (a) Annual sexual harassment training to all Paesanos Management as stipulated in Paragraphs 12 through 16;  
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 Paesanos Management knows how to enforce Defendant Paesanos' sexual harassment policy;

- (b) Substantial discipline, up to and including discharge, of any individual in Paesanos Management who violates Paesanos' sexual harassment policy;
- (c) Imposing on all Paesanos Management a duty to actively monitor their work areas to ensure compliance with Paesanos' policy on sexual harassment; and
- (d) Requiring all Paesanos Management to report any incidents and/or complaints of sexual harassment of which they become aware to the person charged with handling such complaints.

9. Paesanos shall notify all of its current employees of its sexual harassment policy within sixty (60) 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

10. No later than May 15, 2002, Defendant Paesanos, in settlement of this dispute, shall pay a total sum of \$115,000.000 (ONE HUNDRED FIFTEEN THOUSAND AND 00/100 DOLLARS) which will be apportioned as follows:

- (a) Fifty-thousand dollars (\$50,000.00) to Rachelle Mata; thirty-five thousand dollars (\$35,000.00) to Serena Miller; and thirty-thousand dollars (\$30,000.00) to Lonna Atkinson, a similarly situated former female employee.
- (b) Each payment shall be made by certified check and mailed directly to each class member at the following addresses: Rachelle Mata, 4035 E. Palfrey, San Antonio, Texas 78223-3457; Serena Miller, 115 Addax, San Antonio, Texas 78213; and

Lonna Atkinson, 11717 Whisper Dew, San Antonio, Texas 78230.

11. 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

12. Defendant Paesanos will provide annual training on Title VII according to the following terms:

- (a) Paesanos shall retain and pay for Akin, Gump attorneys or individuals acceptable to the EEOC as trainers to provide three (3) training sessions within a year, lasting a combined total of no less than four (4) hours in length, each year for three (3) years, 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 Paesanos Management. All participants shall be required to sign a registry upon completion of the training; and
- (c) Paesanos shall provide the initial training session in accordance with this Paragraph within ninety (90) calendar days of the entry of this Decree.

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

14. During the first year of the Consent Decree, Paesanos 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.

15. Paesanos shall provide this same training pursuant to and in compliance with Paragraphs 12 through 14 during the subsequent years of the Decree for all new Paesanos management and for those employees who missed the initial training session.

16. Paesanos 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 Paesanos management as of the date of training.

#### POSTING REQUIREMENT

17. 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 be in both English and Spanish and remain posted for the duration of this Decree from the date of entry of this Decree. Paesanos shall ensure that the postings are not altered, defaced or covered by any other material. Paesanos shall certify to the EEOC in writing within ten (10)

business days after entry of the Decree that the Notice has been properly posted. Paesanos shall permit a representative of EEOC to enter Paesanos' premises for purposes of verifying compliance with this Paragraph at any time during normal business hours.

18. Paesanos agrees to implement the following "Sexual Harassment Policy and Equality Objectives."

- (a) In addition to the terms of the posting required in Paragraph 16 of this Decree, Paesanos affirms and will implement the following "Sexual Harassment Policy and Equality Objectives."

Paesanos maintains a Policy against Sexual Harassment. Paesanos 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 Paesanos. Paesanos 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) Paesanos shall notify its current employees of its Sexual Harassment and Equality Objectives 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, Paesanos shall notify all employees hired after the entry of this Decree of its Sexual Harassment and Equality Objectives Policy by providing the policy to each new employee.

#### RECORD KEEPING

19. During the term of this Decree, Paesanos 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, Paesanos shall maintain records of the investigation and resolution of each complaint.



20. During the term of this Decree, Paesanos shall provide to the EEOC, at Paesanos' expense, copies of complaints and documents relating to complaints filed or made pursuant to Paragraphs 6 and 7, investigations, findings, and remedial actions undertaken by Paesanos pursuant to Paragraphs 6, 7, and 19. It is understood by the parties that any copies of complaints or other documents provided to the EEOC pursuant to this Paragraph, will not contain any information which would reveal the identity of any of the individuals involved. It is further understood by the parties that for purposes of verifying compliance with this Consent Decree, Paesanos shall make available the identity and contact information for all individuals, within its employ whom the EEOC requests, and shall permit representatives of the EEOC to meet with such persons on off-work hours.

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

#### REPORTING

22. Paesanos 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 upon the expiration of the Decree. Each report shall contain:

- (a) Copies of all complaints and documents relating to complaints filed or made pursuant to Paragraph 6 and 7;
- (b) All written findings relating to the complaint and investigation and remedial actions proposed pursuant to Paragraph 6 and 7;
- (c) All documents relating to resolution of the complaints and any remedial actions taken, if any; and
- (d) A certification by Paesanos that the Notices required in Paragraph 17 remained

posted during the entire term of this Decree.

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

MISCELLANEOUS PROVISIONS

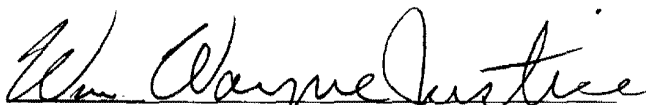
24. Paesanos shall bear the costs associated with administering and implementing the provisions of this Decree.

25. 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.

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


27. When this Consent Decree requires the submission by Paesanos 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** 22<sup>nd</sup> day of May, 2002.

  
WILLIAM WAYNE JUSTICE  
SENIOR UNITED STATES DISTRICT JUDGE

Respectfully submitted,

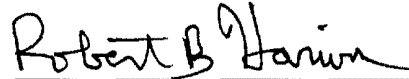
Gwendolyn Young Reams  
Associate General Counsel


  
Shelton E. Padgett  
State Bar No. 15405400

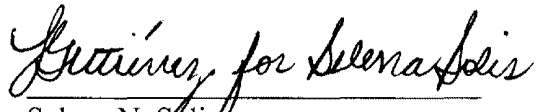
  
Ruben Cantu  
State Bar No. 00787198

AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.  
300 Convent Street, Suite 1500  
San Antonio, Texas 78205  
(210) 281-7000  
(210) 224-2035 (Fax)

**ATTORNEYS FOR DEFENDANT**

  
Robert B. Harwin  
Regional Attorney  
District of Columbia Bar No. 076083

  
Linda Gutierrez  
Supervisory Trial Attorney  
Texas State Bar No. 08642750

  
Selena N. Solis  
Trial Attorney  
Texas State Bar No. 00797471

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
San Antonio District Office  
5410 Fredericksburg Road, Suite 200  
San Antonio, TX 78229-3555  
(210) 281-7679  
(210) 281-7669 (Fax)

**ATTORNEYS FOR PLAINTIFF**

# **Exhibit “A”**



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**San Antonio District Office**

5410 Fredericksburg Road, Suite 200  
San Antonio, TX 78229-3555  
(210) 281-7600  
TTY (210) 281-7610  
FAX (210) 281-7669

**EXHIBIT A**

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

1. This NOTICE to all employees of Paesano's di San Antonio, Inc. is being posted as part of an agreement between Paesano's di San Antonio, 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. Paesano's di San Antonio, 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 \_\_\_\_\_, by direction of the U.S. Equal Employment Opportunity Commission.

SIGNED \_\_\_\_\_ day of \_\_\_\_\_, 2002

---

**DO NOT REMOVE THIS NOTICE UNTIL  
THREE YEARS FROM THE DATE THIS NOTICE WAS SIGNED**