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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 Equal Employment
10 Opportunity Commission,
11 Plaintiff,

12 vs.

13 Independent Realty Capital Corp.,
14 a California Corporation,
15 Defendant.

CIV 04-1827 PHX SRB
CONSENT DECREE

16 The United States Equal Employment Opportunity Commission (the
17 "Commission" or "EEOC") filed this action against Independent Realty Capital
18 Corporation ("Defendant" or "Independent Realty") to enforce Title VII of the Civil
19 Rights Act of 1964, 42 U.S.C. §2000e et seq. (Title VII) and the Civil Rights Act of
20 1991, 42 U.S.C. §1981a. In the First Amended Complaint ("Complaint"), the
21 Commission alleged that Sarah Derruisseaux and Jennifer Spiller were
22 discriminated against when they were subjected to verbal and physical sexual
23 harassment and retaliatory discharge by Defendant's Branch Manager at its
24 Mesa, Arizona facility.

25 The Parties do not object to the jurisdiction of the Court over this action and
26 waive their rights to a hearing and the entry of findings of fact and conclusions of
27 law.

28 In the interest of resolving this matter, and as a result of having engaged in

1 comprehensive settlement negotiations, the Parties have agreed that this action
2 should be finally resolved by entry of this Decree.

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

4 1. This Decree resolves all claims of the Commission against
5 Independent Realty, including back pay, compensatory and punitive damages,
6 interest, injunctive relief, attorney's fees and costs arising out of the issues in this
7 lawsuit.

8 **MONETARY AND OTHER INDIVIDUAL RELIEF**

9 2. Independent Realty shall pay the total amount of \$62,500 to Sarah
10 Derruisseaux and Jennifer Spiller within thirty (30) days after Mss. Derruisseaux
11 and Spiller have delivered to Independent Realty new W-9 forms and the Court
12 has entered the Decree, to be distributed as set forth below. Independent Realty
13 will not condition the receipt of individual relief on Mss. Derruisseaux's and
14 Spiller's agreements to (a) maintain as confidential the terms of this decree, (b)
15 waive their statutory rights to file a charge with any federal or state anti-
16 discrimination agency, or (c) waive their rights to apply for a position with the
17 Defendant.

18 3. Independent Realty shall separately pay the settlement amount of
19 \$2,250 to Ms. Derruisseaux and \$2,500 to Ms. Spiller, by check, cashier's check
20 or money order. This payment represents settlement of back pay. Independent
21 Realty will issue United States Internal Revenue Service Forms 1099 to Mss.
22 Derruisseaux and Spiller for all such payments.

23 4. Independent Realty shall separately pay the settlement amount of
24 \$29,000 to Ms. Derruisseaux and \$28,750 to Ms. Spiller by check, cashier's
25 check or money order. This payment represents settlement of compensatory
26 damages. Independent Realty will issue United States Internal Revenue Service
27 Forms 1099 to Mss. Derruisseaux and Spiller for all such payments.

28 5. The checks provided for in paragraphs 2-4 of this Decree shall be

1 mailed directly by Independent Realty to Mss. Derruisseaux and Spiller at the
2 addresses supplied by the Commission and as designated by the Commission.
3 Within three business days of the issuance of the checks, Independent Realty
4 shall submit a copy of the checks and related correspondence to the United
5 States Equal Employment Opportunity Commission, Regional Attorney, 3300
6 North Central Avenue, Suite 690, Phoenix, Arizona, 85012.

7 **INJUNCTIVE RELIEF**

8 6. Independent Realty, which for purposes of this Decree includes its
9 successors, assigns and subsidiaries, current and future, are permanently
10 enjoined for the duration of the Decree from: (a) discriminating against or
11 harassing any employee on the basis of sex; or (b) retaliating against any
12 employee because he or she: (i) opposes or opposed discriminatory practices
13 made unlawful by Title VII; (ii) files or filed a charge of discrimination or is
14 assisting or has assisted or participated or is participating in the filing of a charge
15 of discrimination; or (iii) assists, assisted, participates or participated in an
16 investigation or proceeding brought under the federal or state laws prohibiting
17 discrimination or retaliation.

18 7. Should Independent Realty open an Arizona office during the term of
19 the Decree, Independent Realty will report to the Regional Attorney of the
20 Phoenix District Office, within thirty (30) days of opening such office, the nature of
21 the business activity and the location of the office, and will ensure that such office
22 complies with the terms of this Decree.

23 8. Should Independent Realty open an Arizona office in the State of
24 Arizona during the term of the decree, paragraphs 9-13 shall apply.

25 9. Should Independent Realty open an Arizona office during the term of
26 the Decree, within thirty days of opening an Arizona office, Independent Realty
27 will review and revise its written policies concerning discrimination and retaliation
28 to conform with the law. Written policies must include, at a minimum:

1 A. A clear and strong commitment to a workplace free of sex-
2 based discrimination, harassment and retaliation;

3 B. A clear and strong message of encouragement to persons
4 who believe they have been discriminated against to come forward and report the
5 discrimination to the company;

6 C. A description of the consequences, up to and including
7 termination, that will be imposed upon violators of the policy;

8 D. An assurance of non-retaliation for persons who believe they
9 have been discriminated against and for witnesses;

10 E. That discrimination on the basis of sex by anyone, including
11 management officials, supervisors, vendors, suppliers, third parties and
12 customers, is prohibited and will not be tolerated;

13 F. The identification of specific alternative individuals, including
14 managers with their telephone numbers and mailing addresses, to whom
15 employees who have been subjected to sex-based discrimination, harassment
16 and retaliation can report the discrimination and who have the authority to
17 investigate allegations of discrimination in a neutral and confidential manner;

18 G. A written statement that an employee may report the
19 harassment to a designated person outside of his or her chain of management
20 should the complainant believe managers in the chain of command have a
21 conflict of interest, are implicated in the allegations, or may not adequately
22 investigate the complaint;

23 H. Assurances that Independent Realty will investigate allegations
24 of sex- based discrimination, harassment and retaliation promptly, fairly,
25 reasonably, effectively and as confidentially as possible under the circumstances,
26 by appropriate investigators and that appropriate corrective action and follow-up
27 will be taken to make victims whole and to eradicate the discrimination;

28 I. Information regarding the employee's right to file a charge of

1 discrimination with the Commission, including local contact telephone numbers,
2 TDY/TDD and addresses for the EEOC.

3 10. Independent Realty, its successors, or assigns will not hire or enter
4 into a contract with Mark Scarlett for the duration of this Decree.

5 11. Independent Realty shall post a notice of the Decree, from the time
6 it becomes effective and for its duration, in a prominent place frequented by its
7 employees at its facilities located within the state of Arizona.

8 12. Independent Realty shall provide training in the state of Arizona on
9 sex-based discrimination, harassment and retaliation according to the following
10 terms:

11 A. Independent Realty shall retain and pay for a
12 consultant/lecturer who shall provide consultation and training to its employees
13 located within the state of Arizona during the term of the Decree. During the term
14 of the decree, the consultant/lecturer shall conduct one live seminar training
15 session. All employees shall attend the live session or the videotaped showing of
16 the live session one time for the duration of this Decree. Independent Realty
17 may at its election have duplicative videotaped sessions to accommodate staffing
18 needs. It shall be responsible for any additional costs to provide such duplicative
19 sessions.

20 B. The seminar-training session shall be conducted within four
21 months after Independent Realty opens an Arizona office.

22 C. The seminar shall include the subject of what constitutes sex-
23 based discrimination, harassment and retaliation; how sex-based discrimination
24 and harassment in hiring, firing, compensation, assignment or other terms,
25 conditions or privileges of employment violates Title VII; and how to prevent sex-
26 based discrimination and harassment.

27 13. The Commission, at its discretion, may designate Commission
28 representatives to attend the seminar-training sessions, and the representatives

1 shall have the right to attend the sessions. The EEOC will provide Independent
2 Realty reasonable notice of its intent to attend the training session.

3 **REPORTING BY DEFENDANT AND ACCESS BY EEOC**

4 14. The Commission shall have the right to enter and inspect
5 Independent Realty's premises located within the State of Arizona, upon ten (10)
6 days written notice to Independent Realty's counsel, to ensure compliance with
7 this Decree and Title VII's prohibition of sex discrimination.

8 **COSTS AND DURATION**

9 15. Each Party shall bear its costs and attorney's fees incurred as a
10 result of this action through the filing of this Decree.

11 16. The duration of this Decree shall be two years (24 months) from its
12 entry. This Court shall retain jurisdiction over this action for the duration of the
13 Decree, during which the Commission may petition this Court for compliance with
14 this Decree. Should the Court determine that defendant has not complied with
15 this Decree, appropriate relief, including extension of this Decree for such period
16 as may be necessary to remedy its non-compliance, may be ordered. This
17 Decree shall expire by its own terms at the end of 24 months from the date of
18 entry, without further action by the Parties or the Court.

19 17. The Parties agree to entry of this Decree and judgment subject to
20 final approval by the Court.

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22 DATED this 2nd day of February, 2006.

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25 _____
26 Susan R. Bolton
27 United States District Judge
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1 APPROVED AND CONSENTED TO:

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3
4 /s/ Scott W. Rodgers

5 Scott W. Rodgers, Esq.
6 Darrin J. Mollett, Esq.
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