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## EEOC v. Southwest Airlines Co.

Judge Jeffrey S. White

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## EEOC v. Southwest Airlines Co.

### **Keywords**

EEOC, Southwest Airlines Co., (C-06-5989 JSW), Consent Decree, Disparate Treatment, Retaliation, Hostile Work Environment, Sexual Harassment, Sex, Transportation, Employment Law, Title VII

1 WILLIAM R. TAMAYO - #084965 (CA)  
2 JONATHAN T. PECK - #123023 (VA)  
3 RAYMOND T. CHEUNG - #176086 (CA)  
4 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
5 San Francisco District Office  
6 350 The Embarcadero, Suite 500  
7 San Francisco, CA 94105  
8 Telephone: (415) 625-5646  
9 Facsimile: (415) 625-5657

10 Attorneys for Plaintiff

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 EQUAL EMPLOYMENT OPPORTUNITY  
14 COMMISSION,

15 Plaintiff,

16 v.

17 SOUTHWEST AIRLINES CO.,

18 Defendant.

CIV. NO. C-06-5989 JSW

**CONSENT DECREE**

19 1. Plaintiff U.S. Equal Employment Opportunity Commission ("Commission" or  
20 "EEOC") brought this lawsuit under Title VII of the Civil Rights Act of 1964 and Title I of the  
21 Civil Rights Act of 1991, to correct alleged unlawful employment practices on the basis of sexual  
22 harassment and to make whole Charging Party Adriana Martin and other similarly situated  
23 employees of the defendant aggrieved by the unlawful practices. Plaintiff alleged that Defendant  
24 Southwest Airlines Co. (hereinafter "Southwest" or "the Company") unlawfully subjected Ms.  
25 Martin and others to a sexually hostile work environment.

26 2. Southwest denies these allegations.

27 3. In the interest of resolving this matter, and as a result of having engaged in  
28 comprehensive settlement negotiations, the Commission and Southwest (hereinafter referred to as  
"the Parties") have agreed that this action should be finally resolved by entry of this Consent

1 Decree. This Consent Decree shall not constitute an adjudication and/or finding on the merits of  
2 the case.

3 4. The parties agree that this Consent Decree resolves all claims arising out of Ms.  
4 Martin's EEOC charge, Tira Island's and Radmilla Drca's claims as class members, and the  
5 complaint filed in this action, and constitutes a complete resolution of all claims of sexual  
6 harassment under Title VII that were made or could have been made by the Commission in this  
7 action. This Consent Decree does not, however, resolve any future charges or charges that may  
8 be pending with the EEOC other than the charge specifically referenced in this paragraph. There  
9 are no current charges pending pertaining to Southwest's Oakland station.

10 5. This Consent Decree comprises the full and exclusive agreement of the Parties  
11 with respect to the matters discussed herein. No waiver, modification or amendment of any  
12 provision of this Consent Decree shall be effective unless made in writing and approved by all the  
13 Parties to this Decree, except that any substantive change, modification or amendment of any  
14 provision of this Consent Decree shall require approval by the Court.

15 NOW, THEREFORE, in consideration of the mutual promises and agreements set forth  
16 herein, the sufficiency of which is hereby acknowledged, IT IS ORDERED, ADJUDGED AND  
17 DECREED that:

18 6. This Court has jurisdiction over the subject matter and the parties to this action.  
19 This Court will retain jurisdiction over this Decree for all purposes until the expiration of the  
20 Consent Decree.

21 7. The entry of this Consent Decree will further the objectives of Title VII and will  
22 be in the best interest of the Parties, those for whom EEOC seeks relief and the public.

23 8. This Consent Decree is final and binding upon the Parties, their successors and  
24 assigns.

25 9. Each Party shall bear its own costs and attorney fees.

26 **General Injunctive Relief**

27 10. **Harassment:** Southwest and its officers, agents, and managers in Oakland  
28 provisioning (including supervisory employees) are enjoined from discrimination against female

1 employees in Oakland provisioning pertaining to the terms and conditions of their employment  
2 based upon the female employees' sex.

3 11. **Retaliation:** Southwest and its Oakland Provisioning Department officers, agents,  
4 and/or managers (including supervisory employees) are enjoined from engaging in, implementing  
5 or permitting any action, policy or practice with the purpose of retaliating against any current or  
6 former employee who (a) testified or participated in any manner in any investigation (including,  
7 without limitation, any internal investigation undertaken by Southwest ), proceeding or hearing in  
8 connection with this case (b) was identified as a possible witness in this action; (c) asserted any  
9 rights under this Consent Decree; or (d) sought and/or received any monetary or non-monetary  
10 relief in accordance with this Consent Decree.

11 **Monetary Relief**

12 12. For purposes of this decree, the term "Claimants" refers to Adriana Martin, Tira  
13 Island and Radmilla Drca who the EEOC determined were entitled to recover monetary relief  
14 pursuant to this Decree. It is expressly agreed by the Parties that no other individuals are entitled  
15 to any monetary relief under the terms of this decree or stemming from the complaint filed in this  
16 lawsuit.

17 13. In settlement of the EEOC's claims, Southwest will pay three claimants the gross  
18 sum of \$100,000 in non-pecuniary damages, the allocation of which to be determined by the  
19 EEOC.

20 14. The above settlement amount for the claimants shall be issued in checks drafted in  
21 their name and mailed to their address as provided by the EEOC. Southwest shall make payment  
22 in the form of a business check, cashier's check, or certified check. Southwest also will issue an  
23 IRS Form 1099 to each claimant for the above payment.

24 a. Southwest will mail a copy of each check and IRS Form 1099 to Jonathan  
25 T. Peck, Supervisory Trial Attorney for the EEOC, at 350 The Embarcadero, San Francisco, CA  
26 94105.

27 15. Payment shall be made no later than thirty (30) days after entry of the Consent  
28 Decree.

1 **Specific Injunctive Relief**

2 16. **Harassment Policy.**

3 a. Southwest shall enhance its harassment policy which currently states in  
4 part “All complaints will be investigated promptly, impartially, and discreetly and, upon  
5 completion of the investigation, the appropriate parties will be notified immediately of the  
6 findings” to provide “All complaints will be investigated promptly, impartially, and  
7 discreetly and, upon completion of the investigation, the appropriate parties including the  
8 complainant will be notified immediately of the investigation results”.

9 b. Southwest shall submit a copy of the revised harassment policy to the  
10 EEOC at the same time it submits its first report on the completion of training, as  
11 described below.

12 c. Oakland provisioning employees will be provided with a hard copy of the  
13 enhanced sexual harassment policy mailed to the address contained within their employee  
14 files within 30 days after the decree is executed. All other Southwest employees will be  
15 provided the enhanced sexual harassment policy by way of Southwest’s employee intranet  
16 within 30 days after the decree is executed. The intranet site will inform the employees  
17 when they log onto the site that the sexual harassment policy has been enhanced and  
18 provide them with the appropriate link to read and print the policy.

19 **Training**

20 17. **Training of Managers.** Within 120 days of entry of this Consent Decree,  
21 Southwest shall provide at least two (2) hours of harassment and retaliation training for all its  
22 managers and supervisors employed in the Provisioning Department located at the Oakland,  
23 California airport facility. The training shall be conducted by persons who are well-versed and  
24 experienced in the area of employment discrimination under Federal and State law. The cost of  
25 said training shall be borne by Southwest.

26 18. **Acknowledgment of Training Attendance.** All persons attending mandatory anti-  
27 harassment training pursuant to this Consent Decree shall sign an acknowledgment of their  
28

1 attendance at the training, the date thereof, and their position with the company. Southwest shall  
2 retain the originals of these acknowledgments and provide the EEOC with copies thereof.

3 **Supervisory Accountability**

4 19. Communication of Potential Discipline for Engaging in Harassment. Southwest  
5 certifies that it maintains and will continue to maintain throughout the duration of the decree is  
6 policy on "HARASSMENT OR DISCRIMINATION" and "SEXUAL HARASSMENT" which  
7 provides that "Violations of this policy may result in corrective action, up to an including  
8 termination." In addition, Southwest shall advise all managers and supervisors at the Oakland,  
9 CA Provisioning Department of their duty to actively monitor their work areas to ensure  
10 employee compliance with the company's anti-harassment policies, and to report any incidents  
11 and/or complaints of harassment and/or retaliation of which they become aware to the department  
12 charged with handling such complaints.

13 **Expungement of Records and Disclosure of Information**  
14 **Regarding Claimants' Employment**

15 20. Southwest shall not disclose any information or make references to any charges of  
16 discrimination or this lawsuit in responding to employment reference requests for information  
17 about any of the Claimants.

18 21. Southwest shall expunge from Claimants' personnel files any references to a  
19 charge of discrimination and this lawsuit.

20 22. Southwest shall not disclose in response to inquiries from potential employers any  
21 information regarding any Claimants' employment with Southwest except as follows:

- 22 a. In response to a specific inquiry, Southwest may disclose the Claimant's  
23 dates of employment, position held and rates of pay as requested;
- 24 b. Southwest may report any information as required to state or federal  
25 authorities;
- 26 c. Southwest may disclose any information under Court order;
- 27 d. Reference requests shall be handled by calling a Southwest verification  
28 specialist in Dallas at 1-800-764-0059.

1 **Report to the Commission**

2 23. **Training Report:** Within thirty (30) days of completion of the training required  
3 by this Consent Decree, Southwest will send the EEOC verification of its completion of  
4 harassment training for its managers and supervisors, including a copy of the course syllabus,  
5 outline or Power Point slides for the training and any materials distributed.

6 24. **Sexual Harassment Complaint Reports:** Six (6) months after entry of this  
7 Decree, and thirty (30) days before the expiration of the Decree, Southwest will mail to Jonathan  
8 T. Peck, Supervisory Trial Attorney for the EEOC, at 350 The Embarcadero, San Francisco, CA  
9 94105 a report containing the following information and documentation covering the period:

10 a. Copies of all sexual harassment complaints made during the reporting period at the  
11 Oakland Provisioning Department, and a statement as to each regarding the investigation of such  
12 complaints. Additionally, Southwest will identify the name, address and telephone number of the  
13 complainant and identify the person to whom the initial complaint was made.

14 b. Southwest also will detail the results of any investigation into sexual harassment in  
15 the Oakland Provisioning Department that it has undertaken including any discipline issued. A  
16 copy of all records, documents and other writings relevant to such complaints and investigations  
17 shall be maintained by Southwest during the period of the Consent Decree and will be made  
18 available to the Commission, except documents protected by the attorney client or attorney work  
19 product privilege within ten (10) days following a written request from the Commission to  
20 Southwest's counsel.

21 **Retention of Jurisdiction and Expiration of Consent Decree**

22 25. This Consent Decree shall terminate twelve (12) months from the date of entry by  
23 the court, unless the Commission petitions this court for an extension of the Decree because of  
24 noncompliance by Southwest. Once terminated, this matter will be fully resolved in all aspects.  
25 If the Commission determines that Southwest has not complied with the Consent Decree, the  
26 Commission will provide written notification of the alleged breach to Southwest and will not  
27 petition the court for enforcement sooner than thirty (30) days after providing written notification.  
28 The thirty-day period following written notice shall be used by the parties for good faith efforts to



1 resolve the issue. If the Commission petitions the court and the court finds Southwest to be in  
2 substantial violation of the terms of the Decree, the court may extend this Consent Decree.

3 26. Except as provided in the preceding paragraph, twelve (12) months after the entry  
4 of this Consent Decree, this lawsuit will automatically expire, provided that Southwest has  
5 complied substantially with the terms of this Consent Decree. Southwest will be deemed to have  
6 complied substantially if the Court has not made any findings or orders during the term of the  
7 Decree that Southwest has failed to comply with any of the terms of this Decree.

8 Respectfully submitted,

9 RONALD S. COOPER, General Counsel,  
10 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
11 1801 L Street, N.W.  
12 Washington, D.C. 20507

13 WILLIAM R. TAMAYO  
14 JONATHAN T. PECK  
15 RAYMOND T. CHEUNG  
16 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
17 San Francisco District Office  
18 350 The Embarcadero, Suite 500  
19 San Francisco, CA 94105

16 Dated: 3/12/07

17 /s/  
\_\_\_\_\_  
WILLIAM R. TAMAYO  
Regional Attorney

18 Dated: 3/9/07

19 /s/  
\_\_\_\_\_  
JONATHAN T. PECK  
Supervisory Trial Attorney

21 Dated: 3/12/07

22 /s/  
\_\_\_\_\_  
RAYMOND T. CHEUNG  
Senior Trial Attorney

23 ANGELA E. DOTSON  
24 MORRISON & FOERSTER, LLP

25 Dated: 3/15/07

26 /s/  
\_\_\_\_\_  
ANGELA E. DOTSON  
27 Attorneys for Southwest Airlines Co.  
28

This case shall be terminated and will only be re-opened in compliance with the provisions of this Consent Decree.

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IT IS SO ORDERED:

March 16, 2007

Dated: \_\_\_\_\_



\_\_\_\_\_  
United States District Judge