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EEOC v. N-M Ventures, LLC

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EEOC v. N-M Ventures, LLC

Keywords

EEOC, N-M Ventures, 2:07-cv-01197-PMP-GWF, Consent Decree, race, Black, Retaliation, Hostile Work Environment, Extractive Industry, Employment Law, Title VII

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22 **UNITED STATES DISTRICT COURT**
23 **DISTRICT OF NEVADA**

24 U.S. EQUAL EMPLOYMENT
25 OPPORTUNITY COMMISSION,

26 Plaintiff,

27 vs.

28 N-M VENTURES, LLC d/b/a N9NE
GROUP, and DOES 1-10, Inclusive,

Defendant(s).

Case No.: CV-07-1197-PMP-GWF

**[PROPOSED] CONSENT DECREE;
ORDER**

I

INTRODUCTION

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4 Plaintiff U.S. Equal Employment Opportunity Commission (the “EEOC” or
5 “Commission”) and Defendant N-M Ventures, LLC d/b/a N9NE Group (referred
6 to as “N-M Ventures” or “Defendant”), hereby stipulate and agree to the entry of
7 this Consent Decree to resolve the EEOC’s Complaint, filed under Title VII of the
8 Civil Rights Act, as amended, 42 U.S.C. section 2000e et seq. (“Title VII”). The
9 EEOC’s complaint alleges that Melvin Lyles, Vincent Brown, Tyre Gray, Michael
10 Lee, Phelix Simmons, Davin Hill, John Okafor and Ivan May, hereafter referred to
11 as the “Claimants” and other similarly situated individuals were subject to
12 discrimination due to their race (Black), including racial harassment during their
13 employment with Defendant. The Commission’s complaint further alleges that the
14 Claimants and others were retaliated against after they complained about the racial
15 discrimination and hostile work environment. Defendant denies it engaged in any
16 harassment, discrimination or retaliation. This Consent Decree is a compromise of
17 disputed claims and nothing contained herein should be regarded as an admission
18 of any violation of the law.
19

II.

PURPOSES AND SCOPE OF THE CONSENT DECREE

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23
24 A. The Parties to this Consent Decree (“Decree”) are the EEOC and
25 Defendant. This Decree shall be binding on and enforceable against each
26 Defendant and its officers, directors, agents, successors, and assigns.
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- 1 B. The Parties have entered into the Decree for the following purposes:
- 2 1. To provide the appropriate monetary and injunctive relief;
- 3 2. To ensure that Defendant’s employment practices comply with
- 4 3. To ensure a work environment free from racial discrimination,
- 5 4. To ensure training for Defendant’s managers and employees
- 6 5. To provide an appropriate and effective mechanism for
- 7 6. To avoid expensive and protracted costs incident to this
- 8 litigation.
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III.

RELEASE OF CLAIMS

A. This Decree fully and completely resolves between Defendant and the EEOC all claims and allegations that are raised by the EEOC against Defendant in the Complaint filed in the United States District Court, District of Nevada on September 5, 2007, captioned U.S. Equal Employment Opportunity Commission v.

1 N-M Ventures, LLC d/b/a N9NE Group, Case No. CV-07-1197-PMP-GWF, (the
2 “Complaint”).

3
4 B. Nothing in this Decree shall be construed to preclude any party from
5 bringing suit to enforce this Decree in the event that any party fails to perform the
6 promises and representations contained herein.

7
8 C. Nothing in this Decree shall be construed to limit or reduce
9 Defendant’s obligation to comply fully with Title VII or any other federal
10 employment statute.

11
12 D. This Decree in no way affects the EEOC’s right to bring, investigate
13 or litigate other charges that may be in existence or may later arise against
14 Defendant in accordance with standard EEOC procedures.

15
16 **IV.**

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18 **EFFECTIVE DATE AND DURATION OF DECREE**

19 A. The provisions and agreements contained herein are effective
20 immediately upon the date which this Decree is entered by the Court (“the
21 Effective Date”).

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23 B. Except as otherwise provided herein, the Decree shall remain in effect
24 for three (3) years after the Effective Date.

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V.

MODIFICATION AND SEVERABILITY

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4 A. This Decree constitutes the complete understanding of the parties with
5 respect to the matters contained herein. No waiver, modification, or amendment of
6 any provision of this Decree will be effective unless made in writing and signed by
7 an authorized representative of each of the parties.
8

9 B. If one or more provisions of the Decree are rendered unlawful or
10 unenforceable, the Parties shall make good faith efforts to agree upon appropriate
11 amendments to this Decree to effectuate the purposes of the Decree. In any event,
12 the remaining provisions will remain in full force and effect, unless the purposes of
13 the Decree cannot be achieved despite the Parties' reasonable efforts.
14
15

16 C. By mutual agreement of the Parties, this Decree may be amended or
17 modified in writing in the interests of justice and fairness to effectuate the
18 provisions of this Decree.
19
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VI.

JURISDICTION

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23 A. The Court has jurisdiction over the Parties and the subject matter of
24 this lawsuit. The Complaint asserts claims that, if proven, would authorize the
25 Court to grant the equitable relief set forth in this Decree. The terms and
26 provisions of this Decree are fair, reasonable, and just. This Decree conforms with
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28

1 the Federal Rules of Civil Procedure and Title VII and is not in derogation of the
2 rights or privileges of any person.

3
4 B. The Court shall retain jurisdiction of this action during the duration of
5 the Decree for the purposes of monitoring and entering all orders, judgments, and
6 decrees that may be necessary to implement the relief provided herein.
7

8 **VII.**

9 **COMPLIANCE AND DISPUTE RESOLUTION**

10
11 A. The Parties agree that if the EEOC has reason to believe that
12 Defendant has failed to comply with any provision of this Consent Decree, the
13 EEOC may petition or may bring an action before this Court to enforce the Decree.
14
15 Prior to initiating such petition or action, the EEOC will notify Defendant and its
16 legal counsel of record, in writing, of the nature of the dispute. This notice shall
17 specify the particular provision(s) that the EEOC believes have been breached.
18
19 Absent a showing by either party that the delay will cause irreparable harm,
20 Defendant shall have thirty (30) days from receipt of EEOC's notice of the alleged
21 breach to attempt to resolve or cure the breach.
22

23 B. The Parties agree to cooperate with each other and use their
24 reasonable efforts to resolve any dispute referenced in the EEOC notice.
25

26 C. After thirty days have passed with no resolution or agreement to
27 extend the time further, the EEOC may petition or bring an action before this Court
28

1 for compliance with this Decree. The EEOC may seek all available relief,
2 including, but not limited to, an extension of the terms of the Decree for such
3 period of time as the Defendant is shown to be in breach of the Decree.
4

5 D. The Parties agree that any dispute over any information and/or
6 documents to be provide pursuant to this Decree shall be submitted to Magistrate
7 Judge George W. Foley for resolution, or to another magistrate judge in the District
8 of Nevada, if Magistrate Judge Foley becomes unavailable.
9

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11 **VIII.**

12 **MONETARY RELIEF**

13 A. In settlement of all monetary claims of EEOC's case, the Defendant
14 shall pay a total of Four hundred fifty-seven thousand, five hundred dollars
15 (\$457,500). Allocation of settlement monetary amounts for each Claimant and the
16 identification of who is a claimant in this case shall be at the sole discretion of the
17 EEOC.
18
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20 B. The EEOC shall provide a list identifying the individuals who are
21 Claimants, the amounts to be paid, and relevant identifying information, (hereafter
22 "distribution list"). Within ten (10) days of the Effective Date or receipt of the
23 EEOC's distribution list, the Defendant shall send a cashiers check to each of the
24 Claimants via certified mail, return receipt requested. The Claimants current
25 addresses shall be supplied by the Commission.
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1 C. Since the amount is designated as compensatory damages, no federal
2 and state withholding taxes shall be made. Defendant shall prepare and distribute
3 Form 1099 or equivalent form(s) to Claimants; and shall make the appropriate
4 reports to the Internal Revenue Service and other tax authorities.
5

6 D. On the same day as when the settlement cashier checks and 1099
7 form(s) are sent to Claimants, Defendant shall submit a copy of each check and
8 related correspondence to Anna Park, EEOC Regional Attorney at the office
9 address on the caption page of this Decree.
10
11

12 **IX.**

13 **GENERAL INJUNCTIVE RELIEF**

14 **A. Anti-Discrimination Provision**

15 Defendant, its respective officers, agents, management (including all
16 supervisory employees), successors, assigns, and all those in active concert or
17 participation with them, or any of them, hereby are enjoined:
18
19

20 1. to not discriminate or harass any person on the basis of his or
21 her race;
22

23 2. to not engage in or be a party to any action, policy, or practice
24 that is intended or is known to them to have the effect of harassing or intimidating
25 any employee on the basis of race; and
26

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1 3. to not create, facilitate, or permit the existence of a work
2 environment that is hostile to employees on the basis of race.

3
4 B. Anti-Retaliation Provision

5 Defendant, its respective officers, agents, management (including all
6 managerial employees), successors, assigns, and all those in active concert or
7 participation with them, or any of them, hereby are enjoined not to engage in,
8 implement or permit any action, policy, or practice with the purpose of retaliating
9 against any current or former employee or applicant because he or she has in the
10 past or in the course of this action:
11
12

13 1. opposed racial discrimination, harassment and any subsequent
14 retaliation made unlawful under Title VII;
15

16 2. filed a charge of racial discrimination, harassment and / or
17 retaliation alleging such practice;
18

19 3. testified or participated in any manner in any investigation
20 (including without limitation, any internal investigation undertaken by Defendant)
21 or proceeding in connection with this case and/or relating to any claim against
22 Defendant of racial discrimination, harassment and any subsequent retaliation;
23

24 4. was identified as a possible witness or claimant in this action;
25

26 or;

27 5. sought and/or received relief in accordance with this Decree.
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C. Posting of Notice of Consent Decree

Within ten (10) days after the Effective Date and throughout the term of this Decree, Defendant shall post a full-sized copy of the Notice of Consent Decree, attached to the Decree as Attachment A, in a clearly visible location frequented by employees (i.e. break rooms or bulletin boards with other employee notices) in its facilities that are operational during the term of the Decree in Las Vegas, Nevada.

D. Equal Employment Opportunity Consultant

1. Defendant has agreed to retain Phil Fortino, SPHR, CHRE as Equal Employment Opportunity Consultant (“Consultant”) for the term of this Decree.

2. The EEO Consultant’s responsibilities shall include:

a. ensuring that Defendant’s policy against and complaint procedure for racial discrimination, harassment and any subsequent retaliation effectively carries out its obligations under this Decree in compliance with Title VII;

b. ensuring that Defendant trains its employees on its policy against and complaint procedure for racial discrimination, harassment and any subsequent retaliation and effectively carries out its obligations under this Decree in compliance with Title VII;

///

1 c. ensuring that Defendant develops a centralized record-
2 keeping and reporting system of complaints of racial discrimination, harassment
3 and any subsequent retaliation in compliance with the Consent Decree.
4

5 d. providing a report within thirty (30) days of each
6 calendar quarter starting from the Effective Date to the completion of his work to
7 the attention of Anna Park, Regional Attorney of the EEOC at the office address on
8 the caption page of this Decree the following: (1) summary for each three-month
9 period of the Consultant's consultation with Defendant and the Defendant's
10 response to the Consultant's advice; and (2) all documents received from
11 Defendant and sent to Defendant by the Consultant. The documents include any
12 policies against and complaint procedure for racial discrimination, harassment and
13 retaliation; and any training materials reviewed or proposed.
14
15
16
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18 E. Revision of Policy and Complaint Procedure for Racial
19 Discrimination, Harassment and Any Subsequent Retaliation.

20 1. Within sixty (60) days of the Effective Date, Defendant, with
21 the assistance of its Consultant, shall review and, if necessary, revise its policy
22 against and complaint procedure for racial discrimination, harassment and any
23 subsequent retaliation. The policy and complaint procedure shall include:
24
25

26 a. a clear explanation of prohibited conduct; racial
27 discrimination, harassment and any subsequent retaliation;
28

1 b. an assurance that employees who make complaints of
2 racial discrimination, harassment or provide information related to such complaints
3 will be protected from retaliation;
4

5 c. a clearly described complaint process for racial
6 discrimination, harassment and any subsequent retaliation that provides accessible
7 avenues of complaint against co-workers, including the complainant's supervisors;
8

9 d. an assurance that Defendant will protect the
10 confidentiality of harassment complaints to the extent possible from being
11 disclosed to those who do not need to know;
12

13 e. a complaint process that provides a prompt, thorough,
14 and impartial investigation;
15

16 f. a procedure for communicating with the complainant in
17 writing regarding the status of the complaint / investigation, results of the
18 investigation, and if any remedial action was taken; and
19

20 g. assurance that Defendant will take immediate and
21 appropriate corrective action when it determines that racial discrimination,
22 harassment or any subsequent retaliation has occurred.
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24 2. Defendant further agrees that its policy and complaint
25 procedure shall state how its staff will handle complaints of racial discrimination,
26 harassment and any subsequent retaliation made by employees of its clients.
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3. Performance Evaluations

Defendant shall hold its managers, supervisors, and human resources personnel accountable for engaging in discrimination, or for failing to comply with Defendant's discrimination and anti-retaliation policies and procedures in such supervisory employee's annual performance evaluation.

F. Distribution of Defendant's Policies Against and Complaint

Procedures for Racial Discrimination, Harassment and Any Subsequent Retaliation

1. Within sixty (60) days of the Effective Date, Defendant shall post for the duration of the Decree a full-sized copy of its policy against and complaint procedure for racial discrimination, harassment and any subsequent retaliation in a clearly visible location frequented by employees (i.e. break rooms or bulletin boards with other employee notices) at its facilities that are operational during the term of the Decree in Las Vegas, Nevada.

2. Within sixty (60) days of the Effective Date, Defendant shall distribute its policy against and complaint procedure for racial discrimination, harassment and any subsequent retaliation to all of its employees at its facilities that are operational during the term of the Decree in Las Vegas, Nevada.

3. For the remainder of the term of this Decree, all new employees hired shall receive within thirty days of hire Defendant's policy against and complaint procedure for racial discrimination, harassment and any subsequent retaliation; and shall be provided with an in-person overview of the policy and

1 procedures with a member of Defendant's human resources department at its
2 facilities that are operational during the term of the Decree in Las Vegas, Nevada.

3
4 4. For the remainder of the term of this Decree, all employees
5 promoted from non-managerial to managerial positions shall receive within thirty
6 days of promotion any additional policy of Defendant against and procedures about
7 racial discrimination, harassment and any subsequent harassment applicable to
8 managerial employees; and shall be provided with an in-person overview of the
9 additional policy and procedures with a member of Defendant's human resources
10 department at its facilities that are operational during the term of the Decree in Las
11 Vegas, Nevada.
12
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15 G. Training

16 1. Within sixty (60) days of the Effective Date, each Defendant
17 shall review with the EEO Consultant and revise its training of its policy against
18 and complaint procedure for racial discrimination, harassment and any subsequent
19 retaliation.
20

21
22 2. Within sixty (60) days after the Effective Date, each Defendant,
23 with the assistance of the Consultant, if necessary, shall provide training(s) of at
24 least 1 ½ hours in duration about its policy against and complaint procedure for
25 racial discrimination, harassment and any retaliation to its managerial and human
26 resources employees and a separate training of at least 1 hour in duration for its
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1 non-managerial employees. The employees to be trained are those who work at all
2 of its corporate office(s) and other facilities where its employees work that are
3 operational during the term of the Decree in Las Vegas, Nevada.
4

5 3. The training of managerial employees shall additionally include
6 training on how to receive, investigate, or report to designated officials complaints
7 of racial discrimination, harassment and any subsequent retaliation; and how to
8 take preventive and corrective measures against racial discrimination, harassment
9 and any subsequent retaliation.
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12 4. After the initial training Defendant shall conduct annual
13 training every twelve (12) months thereafter for the term this Decree on EEO laws,
14 obligations of managers and supervisors on EEO compliance, its policy against and
15 complaint procedure for racial discrimination, harassment and any subsequent
16 retaliation for its managerial employees and separate refresher training for its
17 employees. The employees to be trained are those who work at all of its corporate
18 office(s) and facilities that are operational during the term of the Decree in Las
19 Vegas, Nevada.
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23 5. For any employees who miss the scheduled training described
24 in this section, the Defendant shall show a videotape of the scheduled training to
25 these employees within thirty (30) days of the scheduled training.
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1 **X.**

2 **EEOC's Request for Additional Information on Defendant's**
3 **Investigation of Complaints of Racial Discrimination, Harassment and /or**
4 **Any Subsequent Retaliation**

5 1. Within thirty (30) days of receipt of Defendant's Report, the
6 EEOC may request in writing additional information and/or the investigative file of
7 the complaints and investigation reported in the Quarterly Investigation Report;
8 and to provide reasons for its request.

9
10 2. Within thirty (30) days of the receipt of the EEOC's request for
11 additional information and/or the investigative file(s), Defendant is to provide the
12 requested information and investigative file(s) or to provide its reasons for not
13 disclosing the information and / or investigative file.

14
15 3. Any dispute over the disclosure of the requested information
16 will be resolved in accordance with section VII.D.

17 **XI.**

18 **RECORD KEEPING AND REPORTING**

19 **A. Record Keeping**

20
21 Each Defendant shall work with the Consultant to establish a record-keeping
22 procedure that provides for the centralized tracking of complaints about racial
23 discrimination, harassment and any subsequent retaliation. The records to be
24 maintained shall include:
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1 1. All documents generated in connection with any complaint,
2 investigation into, or resolution of every complaint of racial discrimination,
3 harassment and any subsequent retaliation for the duration of the Decree and the
4 identities of the parties involved;

6 2. All forms acknowledging each employees' receipt of
7 Defendant's discrimination policy and complaint procedure; and

9 3. A list of the dates of the training required under this Decree that
10 shows the names and positions of all attendees for each one.

12 4. The Defendant shall provide to the Commission upon request
13 all documents generated in connection with any Title VII complaint,
14 investigations, and resolutions. The Commission shall give Defendant 30 days
15 notice of any request for documents pursuant to this paragraph.

17
18 B. Reporting

19 Each Defendant shall provide the following reports to the
20 Commission in writing, by mail, or by facsimile:

22 1. Within ninety (90) days after the Effective Date and annually
23 thereafter for the term of the Decree, each Defendant shall submit to the
24 Commission the following:

26 a. verification that the Notice of Consent Decree
27 (Attachment A) has been posted in compliance with the Consent Decree;
28

1 b. its policy against and complaint procedure for
2 racial discrimination, harassment and any subsequent retaliation after consultation
3 with the EEO Consultant in compliance with the Consent Decree;
4

5 c. verification that its current or revised policy and
6 complaint procedure for racial discrimination, harassment and retaliation have
7 been posted in compliance with the Consent Decree;
8

9 d. verification of the distribution to Defendant's
10 employees of its policy against and complaint procedure for racial discrimination,
11 harassment and retaliation in compliance with the Consent Decree; and the
12 employee's acknowledgments of the receipt of the policy and complaint procedure;
13
14

15 e. a copy of Defendant's training materials and
16 schedule of training;
17

18 f. verification that all applicable managerial and non-
19 managerial employees have been trained in compliance with the Consent Decree;
20

21 g. the signed acknowledgments of the employees
22 who have been trained in compliance with the Consent Decree;
23

24 i. verification that a record keeping system has been
25 established for the tracking of racial discrimination, harassment complaints, the
26 employees' acknowledgment of the receipt of Defendant's policy and complaint
27 procedure for racial discrimination, harassment and retaliation, and for the
28

1 attendance / completion of all of its employees in training concerning its policy and
2 complaint on racial discrimination, harassment and retaliation in compliance with
3 the Consent Decree; and
4

5 j. a summary report of their investigation into any
6 complaint about racial discrimination harassment and/or retaliation for
7 complaining about racial discrimination and/or harassment. The
8 quarterly investigation report shall include the following for each
9 complaint during the quarter:
10
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- 12 (1). the name and race of the complaining
13 party(ies);
- 14 (2). the date of the complaint;
- 15 (3). the name and race of the alleged harasser(s)
16 of the alleged harasser;
- 17 (4) the name, race and title of the person(s) who
18 conducted the investigation into the
19 complaint;
- 20 (5) nature of the complaint (i.e. comments,
21 nooses, pictures, etc.)
- 22 (6) the date of the commencement and
23 completion of the investigation;
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- (7) a brief description of the investigation (i.e. number of persons interviewed, materials reviewed);
- (8) the outcome of the investigation and any action taken; and.
- (9) whether previous racial discrimination, harassment complaints had been made regarding the alleged harasser(s). If so, the outcome of the prior investigations.

2. All reports under this Paragraph shall be directed to:

U.S. Equal Employment Opportunity Commission, Attn. Regional Attorney, 255 E. Temple Street, 4th Floor, Los Angeles, CA 90012.

XII.

COSTS OF ADMINISTRATION AND IMPLEMENTATION OF THE CONSENT DECREE

Defendant shall bear all costs associated with its administration and implementation of its obligations under this Decree, including the costs of the Consultant.

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XIII.

COSTS AND ATTORNEYS' FEES

Each party shall bear its own costs of suit and attorneys' fees.

March 10
Dated: ~~February~~ __, 2009

**U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
ANNA Y. PARK
DEREK W. LI
GREGORY L. McCLINTON**

By _____
Anna Y. Park
Regional Attorney
U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

MARCH 7
Dated: ~~February~~ __, 2009

**DEFENDANTS N-M VENTURES, LLC,
N9NE GROUP
SCOTT M. MAHONEY
FISHER & PHILLIPS, LLP**

By _____
Scott M. Mahoney
Attorney for Defendant M-M Ventures, LLC
dba N9NE Group

[PROPOSED] ORDER

GOOD CAUSE APPEARING,

The provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is HEREBY ORDERED.

IT IS SO ORDERED.

Date: February __, 2009

By _____
HONORABLE PHILLIP M. PRO
United States District Court Judge