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EEOC v. Scolari's Warehouse Markets, Incorporated, A Nevada Corporation, D/B/A Scolari's Food and Drug

Judge David A. Ezra

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**EEOC v. Scolari's Warehouse Markets, Incorporated, A Nevada Corporation, D/B/A
Scolari's Food and Drug**

Keywords

Jennifer Gould, Scolari's Warehouse Markets, Inc., d/b/a Scolari's Food and Drug, CV-04-0229-DAE-RAM, Consent Decree, Disparate Treatment, Subjective Decision Making, Sex, Female, Retail, Employment Law, Title VII

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15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF NEVADA**

17 EQUAL EMPLOYMENT
18 OPPORTUNITY COMMISSION,

CASE NO. CV-04-0229-DAE-
RAM

19 Plaintiff,

CONSENT
DECREE; ORDER

20 v.

21 SCOLARI'S WAREHOUSE
22 MARKETS, INCORPORATED, A
NEVADA CORPORATION, D/B/A
23 SCOLARI'S FOOD AND DRUG,

The Honorable David A. Erza
U.S. District Court Judge

24 Defendant.
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**I.
INTRODUCTION**

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3 Plaintiff U.S. Equal Employment Opportunity Commission (the "EEOC" or
4 "Commission") and Defendant Scolari's Warehouse Markets, Inc, d/b/a Scolari's
5 Food and Drug (hereinafter "Defendant") hereby stipulate and agree to entry of
6 this Consent Decree to resolve the Commission's Second Amended Complaint,
7 filed under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §
8 2000e et seq. ("Title VII"), alleging that Charging Party Jennifer Gould,
9 (hereinafter "Charging Party") and other similarly situated individuals were
10 subjected to unlawful employment practices on the basis of sex, female, in
11 violation of Section 706 (f)(1) and 3 and Section 707(f)(1) of Title VII. The
12 Defendant denies the allegations contained in Plaintiff's Second Amended
13 Complaint and maintains that no harassment took place at Defendant's place of
14 business. This agreement is a compromise of a disputed claim and payments made
15 hereunder are not to be construed as an admission of liability on the part of the
16 Defendant.

**II.
PURPOSES AND SCOPE OF THE CONSENT DECREE**

17
18 The parties to this Consent Decree ("Decree") are the EEOC and Defendant.
19 The scope of this Decree covers Defendant's facilities collectively referred to and
20 doing business as Scolari's Food and Drug, located in the State of Nevada. This
21 Decree shall be binding on and enforceable against Defendant and its officers,
22 directors, agents, successors and assigns.

- 23 B. The parties have entered into this Decree for the following purposes:
24 1. To provide appropriate monetary and injunctive relief;
25 2. To ensure that Defendant's employment practices comply with
26 federal law;
27 3. To ensure a work environment free from hostility and
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1 retaliation;

2 4. To ensure training for Defendant's managers and employees
3 with respect to their obligations under Title VII; and

4 5. To provide an appropriate and effective mechanism for
5 handling discrimination complaints in the workplace.

6 **III.**

7 **RELEASE OF CLAIMS**

8 A. This Decree fully and completely resolves all issues, claims and
9 allegations by the EEOC against Defendant that are raised in the EEOC's Second
10 Amended Complaint filed in this action in the United States District Court, District
11 of Nevada, captioned U.S. Equal Employment Opportunity Commission v.
12 Scolari's Warehouse Markets, Inc., et al.; Case No. CV-04-0229-DAE-RAM.

13 B. Nothing in this Decree shall be construed to preclude any party from
14 bringing suit to enforce this Decree in the event that any party hereto fails to
15 perform the promises and representations contained herein.

16 C. Nothing in this Decree shall be construed to limit or reduce
17 Defendant's obligation to comply fully with Title VII or any other federal
18 employment statute.

19 D. This Decree in no way affects the EEOC's right to bring, process,
20 investigate or litigate other charges that may be in existence or may later arise
21 against Defendant in accordance with standard EEOC procedures.

22 **IV.**

23 **JURISDICTION**

24 A. The Court has jurisdiction over the parties and the subject matter of
25 this lawsuit. The EEOC asserts that its claims, if proven, would authorize the
26 Court to grant the equitable relief set forth in this Decree. The terms and
27 provisions of this Decree are fair, reasonable and just. This Decree conforms with
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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 B. The Court shall retain jurisdiction of this action during the duration of
4 the Decree for the purposes of entering all orders, judgments and decrees that may
5 be necessary to implement the relief provided herein.

6 **V.**

7 **EFFECTIVE DATE AND DURATION OF DECREE**

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

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

13 **VI.**

14 **MODIFICATION AND SEVERABILITY**

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

19 B. If one or more provisions of the Decree are rendered unlawful or
20 unenforceable, the parties shall make good faith efforts to agree upon appropriate
21 amendments to this Decree in order to effectuate the purposes of the Decree. In
22 any event, the remaining provisions will remain in full force and effect unless the
23 purposes of the Decree cannot, despite the parties’ best efforts, be achieved.

24 C. By mutual agreement of the parties, this Decree may be amended or
25 modified in the interests of justice and fairness in order to effectuate the provisions
26 of this Decree.

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VII.

COMPLIANCE AND DISPUTE RESOLUTION

A. The parties expressly agree that if the Commission has reason to believe that Defendant has failed to comply with any provision of this Consent Decree, the Commission may bring an action before this Court to enforce the Decree. Prior to initiating such action, the Commission will notify Defendant and its legal counsel of record, in writing, of the nature of the dispute. This notice shall specify the particular provision(s) that the Commission believes Defendant has breached. Absent a showing by either party that the delay will cause irreparable harm, Defendant shall have thirty (30) days to attempt to resolve or cure the breach.

B. The parties agree to cooperate with each other and use their best efforts to resolve any dispute referenced in the EEOC notice.

C. After thirty (30) days have passed with no resolution or agreement to extend the time further, the Commission may petition this Court for resolution of the dispute, seeking all available relief, including an extension of the term of the Decree for such period of time as Defendant are shown to be in breach of the Decree and any relief which the Court deems appropriate.

VIII.

MONETARY RELIEF

A. In settlement of this lawsuit, Defendant shall pay \$425,000.00 in global monetary relief of all claims of Jennifer Gould and any other similarly situated female for whom the EEOC, in its sole discretion, seeks relief.

B. Defendant's insurance carrier, or its agent, shall forward, via certified mail, a check to each individual identified by EEOC pursuant to Section VIII.A above within thirty (30) days of their receipt of EEOC's list of such individuals; provided however, that prior to the distribution of settlement funds, the individuals

1 identified by EEOC shall each complete, as required, a W-9 or other tax forms
 2 necessary. The monies shall be designated as non-wage compensation under Title
 3 VII and no tax withholding shall be made. Defendant's insurance carrier or its
 4 agent shall prepare and distribute 1099 tax reporting forms to each individual
 5 identified by EEOC. Charging Party and the Claimants are responsible for paying
 6 their share of taxes, if any.

7 C. Within ten (10) business days of the issuance of each and every
 8 settlement check and 1099 form, Defendant shall submit a copy of each check and
 9 related correspondence to the Regional Attorney, Anna Y. Park, U.S. Equal
 10 Employment Opportunity Commission, 255 East Temple Street, 4th Floor, Los
 11 Angeles, CA 90012.

12 **IX.**

13 **ADDITIONAL RELIEF TO CHARGING PARTIES AND CLASS**
 14 **MEMBERS**

15 A. For all the Charging Party, Claimants, and witnesses identified by the
 16 EEOC, Defendant shall apply its usual policy to only provide dates of
 17 employment, salary, and position.

18 B. Defendant shall remove and purge all documents contained in
 19 personnel files or personnel related materials that negatively reflect on the job
 20 performances of the following individuals:

Class Member	Effective Commence Date Purging Personnel File of Negative Information
1. Jennifer Gould	October 1, 2002
2. Natasha McGuire	November 1, 2002

3. Donna Park	August 1, 2004
4. Katie Jacobs	January 1, 2003
5. Lisa Ricci	January 1, 2003

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1. Documents contained in the personnel files of the foregoing individuals from the date set forth above to the last date of her employment shall be purged and removed from the personnel files and personnel related documents maintained by the defendant. The documents to be removed and purged shall consist of reprimands, counseling memorandums, disciplinary actions, negative complaints, negative performance documents, reports, criticisms, termination and resignation documents, references to the EEOC charge or lawsuit, investigations, and any other documents that reflect negatively on their performance during the timeframe in question. The EEOC shall be notified within three days of the foregoing obligations being met by Defendant.

C. Defendant also agrees to change any termination for the identified individuals in IX(B) to a voluntary resignation.

X.

GENERAL INJUNCTIVE RELIEF

Defendant agrees to comply with all of Title VII's requirements which state:

A. Non-Discrimination

1. Discrimination Based on Sex

Defendant, its officers, agents, management (including all supervisory employees), successors, assigns, and all those in active concert or participation with them, or any of them, hereby agree not to: (a) discriminate against persons on the basis of sex in the terms and conditions of employment; (b) engage in or be a party to any action, policy or practice that is intended or is known to them to have the effect of harassing or intimidating any employee on the basis of sex; and (c)

1 create, facilitate or permit the existence of a work environment that is hostile to
2 female employees.

3 2. Retaliation

4 Defendant, its officers, agents, management (including all supervisory
5 employees), successors, assigns, and all those in active concert or participation
6 with them, or any of them, hereby agree not to engage in, implement or permit any
7 action, policy or practice with the purpose of retaliating against any current or
8 former employee or applicant of Defendant, or either of them, because he or she
9 has in the past, or during the term of this Decree: (a) opposed any practice made
10 unlawful under Title VII; (b) filed a charge of discrimination alleging such
11 practice; (c) testified or participated in any manner in any investigation (including
12 without limitation, any internal investigation undertaken by Defendant),
13 proceeding in connection with this case and/or relating to any claim of a Title VII
14 violation; (d) was identified as a possible witness or claimant in this action; (e)
15 asserted any rights under this Decree; or (f) sought and/or received any relief in
16 accordance with this Decree.

17 B. Posting

18 Within ten (10) business days after the Effective Date and throughout the
19 term of this Decree, Defendant shall post notice (attached as Exhibit "A") of the
20 terms of this Decree, in its corporate headquarters.

21 C. Equal Employment Opportunity Consultant

22 Within thirty days (30) after the Effective Date, Defendant shall retain an
23 outside Equal Employment Opportunity Consultant ("Consultant") with
24 demonstrated experience in the area of employment discrimination and sexual
25 harassment issues, to implement and monitor Defendant's compliance with Title
26 VII and the provisions of this Decree. The Consultant shall be subject to the
27 Commission's approval, which shall not be unreasonably withheld. If the
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1 Commission does not approve Defendant's proposed Consultant, the Commission
2 shall provide Defendant with a list of at least three suggested candidates acceptable
3 to the Commission. Defendant shall bear all costs associated with the selection
4 and retention of the Consultant and the performance of his/her/its duties. The
5 Consultant shall assist Defendant in the following:

6 1. Developing procedures to handle complaints of discrimination,
7 harassment and retaliation;

8 2. Training employees on their rights and responsibilities under
9 Title VII, including but not limited to the responsibilities to provide a workplace
10 free of discrimination;

11 3. Monitoring and assuring the adequate investigation of all
12 complaints of sexual discrimination/harassment and retaliation;

13 4. Ensuring that all reports required by this Decree are accurately
14 compiled and timely submitted;

15 5. Creating appropriate and consistent disciplinary policies to hold
16 employees and managers accountable for failing to take appropriate action and/or
17 for engaging in conduct prohibited under this Decree;

18 6. Creating a centralized system of tracking discrimination,
19 harassment, and retaliation complaints; and

20 D. Training

21 Within one hundred and twenty (120) days after the Effective Date or thirty
22 (30) days after hiring the Consultant, whichever is later, all of the following
23 employees in "Category A" shall be required to attend a training program of at
24 least two (2) hours. Category A is defined to include all Directors, Managers and
25 Supervisors at the corporate level; all Managers, Supervisors and Lead Persons in
26 the warehouse; and all Store Directors, Co-Managers, Assistant Managers,
27 Department Managers, and Head Clerks at the store level. Training for

1 staff/hourly employees (hereafter referred to as "Category B") will be at least one
2 (1) hour in length. The training shall be mandatory and occur every year for the
3 term of this Decree.

4 1. All employees' training shall include coverage of the subjects
5 of equal employment opportunity rights and responsibilities, racial discrimination/
6 harassment, gender discrimination/harassment, retaliation, and Defendant's revised
7 policies and procedures for reporting and handling complaints of discrimination,
8 harassment and retaliation.

9 2. The training of Category A employees shall additionally
10 include training on how to properly handle and investigate complaints of
11 discrimination and/or harassment in a neutral manner, how to take preventive and
12 corrective measures against discrimination and/or retaliation, and how to recognize
13 and prevent discrimination and/or retaliation.

14 3. For the remainder of the term of this Decree, all employees
15 recently promoted from Category B to Category A shall receive the same training
16 given to Category A employees, as appropriate, within thirty (30) days of
17 promotion. All new hires in Categories A and B shall receive the training for their
18 category, as appropriate, within thirty (30) days of hire. The training under this
19 paragraph may be done by videotape.

20 4. After the initial training as specified above, all employees shall
21 receive the training at least annually thereafter for the remainder of the term of this
22 Decree.

23 5. All employees required to attend such training shall verify their
24 annual attendance in writing.

25 Within forty-five (45) days before the first training, Defendant shall submit
26 to the EEOC a description of the training to be provided and an outline of the
27 curriculum developed for the trainees. Defendant shall give the EEOC a minimum
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1 of ten (10) business days' advance written notice of the date, time and location of
2 the first training program provided pursuant to this Decree. Defendant agrees that
3 an EEOC representative may attend any of the annual training provided under this
4 decree, including the first one.

5 Defendant claims that it has provided training for Category B employees in
6 2008, prior to the entering of this Decree. The Consultant will consider in good
7 faith whether this training is sufficient to meet the obligation for Category B
8 employees for the first year of the decree and notify the EEOC accordingly.

9
10 E. Performance Evaluations

11 Defendant will include in each Category A employee's annual performance
12 evaluation a category on compliance with Defendant's discrimination and anti-
13 retaliation policies and procedures, and a statement acknowledging that non-
14 compliance could subject the supervisory employee to discipline.

15 **XI.**

16 **RECORD KEEPING AND REPORTING**

17 A. Record Keeping

18 Defendant shall work with the Consultant to establish a record-keeping
19 procedure that provides for the centralized tracking of discrimination complaints
20 and the monitoring of such complaints to prevent retaliation. The records to be
21 maintained shall include:

22 1. All documents generated in connection with any complaint,
23 investigation into, or resolution of every complaint of discrimination or retaliation
24 for the duration of the Decree and the identities of the parties involved;

25 2. All forms acknowledging employees' receipt of Defendant's
26 revised anti-discrimination and anti-retaliation policy; and

27 3. All documents verifying the occurrence of all training sessions

1 and names and positions of all attendees for each session as required under this
2 Decree.

3 Defendant shall make the aforementioned records available to the EEOC
4 within ten (10) business days following a written request by the EEOC.

5 B. Reporting

6 In addition to the notices to the EEOC specified above, Defendant shall
7 provide the following reports to the EEOC in writing, by mail or facsimile:

8 1. Within one hundred and twenty (120) days after the Effective
9 Date, Defendant shall submit to the EEOC an initial report which contains:

10 (a) A copy of its discrimination and anti-retaliation policy;
11 (b) A summary of the procedures and record-keeping
12 methods developed with the Consultant for centralized tracking of discrimination
13 complaints and the monitoring of such complaints;

14 (c) A statement confirming that the required notices
15 pertaining to this Decree and the revised discrimination and anti-retaliation
16 policies, if any, have been posted and disseminated; and

17 (d) Confirmation that the terms under Section IX were
18 completed.

19 2. Defendant shall also provide the following reports semiannually
20 throughout the term of this Decree:

21 (a) The attendance lists of all attendees for all training
22 sessions required under this Decree that took place during the previous six months;

23 (b) Acknowledgments of receipt of the discrimination and
24 harassment policy for all employees hired during the previous six months; and

25 (c) A description of all discrimination and/or retaliation
26 complaints made since the submission of the immediately preceding report
27 hereunder. This description shall include the names of the individuals alleging
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1 harassment or retaliation, the nature of the harassment or retaliation, the names of
2 the alleged perpetrators of harassment or retaliation, the dates of the alleged
3 harassment or retaliation, a brief summary of how each complaint was resolved,
4 and the identity of the person(s) who investigated or resolved each complaint. If
5 no results have been reached as of the time of the report, the result shall be
6 included in the next report.

7 3. Defendant shall provide a report to the EEOC detailing any
8 changes of the procedures or record-keeping methods for centralized tracking of
9 discrimination complaints and the monitoring of such complaints within thirty (30)
10 days before implementing such changes.

11 **XII.**

12 **COSTS OF ADMINISTRATION AND IMPLEMENTATION**
13 **OF CONSENT DECREE**

14 Defendant shall bear all costs associated with its administration and
15 implementation of its obligations under this Consent Decree.

16 **XIII.**

17 **COSTS AND ATTORNEYS' FEES**

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

19 **XIV.**

20 **MISCELLANEOUS PROVISIONS**

21 A. During the term of this Consent Decree, Defendant shall provide any
22 potential successor-in-interest with a copy of this Consent Decree within a
23 reasonable time of not less than thirty (30) days prior to the execution of any
24 agreement for acquisition or assumption of control of any or all of Defendant's
25 facilities, or any other material change in corporate structure, and shall
26 simultaneously inform the EEOC of same.

27 B. During the term of this Consent Decree, Defendant and its successors
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1 shall assure that each of its officers, managers and supervisors is aware of any
2 term(s) of this Decree which may be related to his/her job duties.

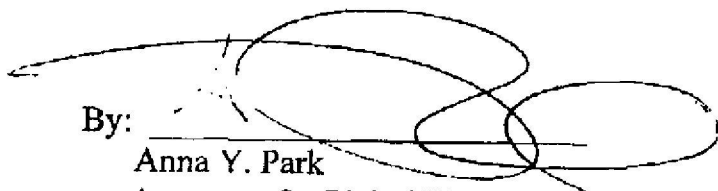
3 C. Unless otherwise stated, all notices, reports and correspondence
4 required under this Decree shall be delivered to the attention of the Regional
5 Attorney, Anna Y. Park, U.S. Equal Employment Opportunity Commission, Los
6 Angeles District Office, 255 E. Temple St., 4th Fl., Los Angeles, CA 90012.

7 D. The parties agree to entry of this Decree and judgment subject to final
8 approval by the Court.

9 All parties, through the undersigned, respectfully apply for and consent to
10 the entry of this Consent Decree Order.

11 U.S. EQUAL EMPLOYMENT
12 OPPORTUNITY COMMISSION
13 Anna Y Park, Regional Attorney
14 Derek Li, Supervisory Trial Attorney
15 Gregory L. McClinton, Senior Trial Attorney
16 Victor Viramontes, Trial Attorney

17
18 Dated: August 27 2008

19 By: 
20 Anna Y. Park
21 Attorneys for Plaintiff EEOC

22 *STUT, ARTIANO SHINOFF & HOLTZ*
23 A Professional Corporation
24 Ray J. Artiano, Esquire
25 Ljubisa Kostic, Esquire

26 Dated: _____, 2008

27 By: _____
28 Ray J. Artiano, Esquire
Attorneys for Defendant

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2 term(s) of this Decree which may be related to his/her job duties.

3 C. Unless otherwise stated, all notices, reports and correspondence
4 required under this Decree shall be delivered to the attention of the Regional
5 Attorney, Anna Y. Park, U.S. Equal Employment Opportunity Commission, Los
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12 OPPORTUNITY COMMISSION
13 Anna Y Park, Regional Attorney
14 Derek Li, Supervisory Trial Attorney
15 Gregory L. McClinton, Senior Trial Attorney
16 Victor Viramontes, Trial Attorney

17
18 Dated: _____, 2008

By: _____
Anna Y. Park
Attorneys for Plaintiff EEOC

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20
21 *STUT, ARTIANO SHINOFF & HOLTZ*
22 A Professional Corporation
23 Ray J. Artiano, Esquire
24 Ljubisa Kostic, Esquire


25
26 Dated: August 22, 2008

By: 
Ray J. Artiano, Esquire
Attorneys for Defendant

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MCDONALD CARANO WILSON LLP
Pat Lundvall, Esquire
Miranda Du, Esquire

Dated: August 22, 2008

By: 

Miranda Du, Esquire
Attorneys for Defendant
| ORDER

GOOD CAUSE APPEARING:

The provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is **HEREBY ORDERED**. The Court shall retain jurisdiction as set forth in this Decree.

IT IS SO ORDERED.

Date: September 5, 2008



The Honorable David A. Erza
United States District Court Judge

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APPENDIX A



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Las Vegas Local Office**

NOTICE OF ENTRY OF CONSENT DECREE

TO: ALL EMPLOYEES OF SCOLARI'S WAREHOUSE MARKETS, INC.:

The U.S. Equal Employment Opportunity Commission ("EEOC") filed a lawsuit in the United States District Court for the District of Nevada entitled *EEOC v. Scolari's Warehouse Markets, Inc.*, Case Number CV 04-0229. The EEOC's lawsuit alleged that Scolari's Warehouse Markets, Inc., conducted a pattern and practice of sexual harassment and retaliation against a class of female employees across its Nevada stores. Scolari's Warehouse Markets, Inc. denies liability. Scolari's Warehouse Markets, Inc. does not tolerate harassment or retaliation.

The parties mutually resolved the matter by entering into a three (3) year Consent Decree. Under the Consent Decree, Scolari's Warehouse Markets, Inc. is to pay monetary relief and to implement injunctive relief. Some of the injunctive relief includes: (1) EEO training, (2) hiring an EEO Consultant, (3) reviewing EEO policies and procedures, (4) preventing retaliation and (5) reviewing EEO complaint procedures.

The EEOC enforces the federal laws against discrimination in employment on the basis of disability, race, color, religion, national origin, sex, and age. The EEOC charges no fees and has employees who speak languages other than English. You may contact the EEOC at:

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
333 Las Vegas Blvd. South, Suite 8112
Las Vegas, NV 89101
TELEPHONE NUMBER: (702) 388-5013 or (800) 669-4000

No action may be taken against any employee or by any management official of Scolari's Warehouse Markets, Inc. for: (1) opposing discriminatory practices made unlawful by federal law, (2) filing a charge or assisting or participating in the filing of a charge of discrimination, or (3) assisting or participating in an investigation brought under Title VII. Any such retaliatory action should be reported to the EEOC.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for 3 years from Sept. 5, 2008, and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to: EEOC Legal Unit, 255 East Temple Street, 4th Floor, Los Angeles, CA 90012.

It is so ORDERED this 5th day of Sept., 2008.

A handwritten signature in black ink, appearing to read "David A. Ezra".

Honorable David A. Ezra
UNITED STATES DISTRICT JUDGE