

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

**FILED**

NOV - 9 2000

  
CLERK

Civil Action No. 98-4195

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

and

ELIZABETH FAWKES,

Plaintiff-Intervenor,

v.

G & N ENTERPRISES, INC.  
(d/b/a Western Way Warehouse)

Defendant.

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**CONSENT DECREE**

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**RECITALS**

1. This matter was instituted by plaintiff, Equal Employment Opportunity Commission (hereinafter "the COMMISSION"), an agency of the United States Government, alleging violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (hereinafter Title VII) to the effect that the Defendant, G & N ENTERPRISES, INC. d/b/a Western Way Warehouse (hereinafter "G & N ENTERPRISES") discriminated against ELIZABETH FAWKES ("FAWKES") on the basis of sex and in retaliation for FAWKES having complained about sex discrimination. Such unlawful employment practices included the subjecting of FAWKES and other females to sexually hostile work

environment and the discharging of FAWKES when she complained of the sexual harassment.

2. The COMMISSION and G & N ENTERPRISES, being desirous of settling this action by an appropriate Consent Decree ("Decree"), agree to the jurisdiction of this Court over the parties and the subject matter of this action.
3. A judgement being entered against G & N ENTERPRISES on May 10, 2000, this Decree is being voluntarily entered into by the COMMISSION and G & N ENTERPRISES, to resolve all pending motions for injunctive relief and costs.
4. This Decree is final and binding upon the COMMISSION and G & N ENTERPRISES as to the issues resolved, as well as upon their successors and assigns. Furthermore, the COMMISSION and G & N ENTERPRISES agree to defend this consent decree should it be challenged.
5. Solely for the purpose of amicably resolving remaining claims, G & N ENTERPRISES joins with the COMMISSION in requesting this Court to adjudge as follows:

IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

#### **JURISDICTION**

6. The COMMISSION and G & N ENTERPRISES stipulate to the jurisdiction of the Court over the respective parties and subject matter of this action.
7. The term of this Decree will be for three years from the date of signing by the court, subject to the reporting provisions in paragraphs 16 through 17.

### ISSUES RESOLVED

8. This Decree resolves all claims for back pay, compensatory and punitive damages, injunctive and any other kind of relief arising out of the issues and claims between the COMMISSION and G & N ENTERPRISES as set forth in Civil Action No. 98-4195.
9. G & N ENTERPRISES, its officers, agents, employees, successors, and all other persons in active concert or participation with any of them will not interfere with the relief herein ordered, but will cooperate in the implementation of this Decree.

### SEXUAL HARASSMENT POLICY

10. G & N ENTERPRISES AGREES to maintain a work environment free of sexual harassment and to implement a sexual harassment policy to address allegations of sexual harassment in the workplace. G & N ENTERPRISES 's sexual harassment policy is attached as Attachment A, and is incorporated into this Decree by reference.

### COMPLIANCE

11. In order to be adjudged in compliance with the terms of this decree, within (20) days from the date of signing of the Decree, G & N ENTERPRISES must make whole FAWKES, by issuing a check payable to FAWKES constituting her back pay and all other damages arising out of this action.
12. Within ninety (90) days of the signing of the Consent Decree, <sup>G & N Enterprises</sup> shall provide the commission an affidavit attesting that it has provided training on sex sexual harassment to its employees at all South Dakota locations attaching to said affidavit a list of attendees and all course outlines and materials.

### **COMPENSATION PROCEDURES**

13. G & N ENTERPRISES will pay FAWKES an agreed upon amount of damages as outlined in the Settlement Agreement, Waiver and Release ("Waiver and Release") executed by FAWKES and G & N ENTERPRISES. Said Waiver and Release is incorporated and made a part of this agreement, and is attached hereto as Attachment C.

### **COSTS AND ATTORNEY'S FEES**

14. Other than as specified herein, each party will be responsible for and will pay its own costs and attorney's fees, unless otherwise ordered by the Court. G. & N. ENTERPRISES agrees to pay the Commission its costs in the amount of \$4505.80 by submitting to the Commission a check payable to the United States Treasury within twenty (20) days of the signing of the Consent Decree.

### **POSTING PROVISIONS**

15. G & N ENTERPRISES will post and keep posted in a conspicuous place in all its stores *where* notices to employees and applicants for employment are customarily kept or posted, the Notice, attached to the Decree as Attachment B.

### **REPORTING PROVISIONS**

16. G & N ENTERPRISES will provide a total of six reports, one for each six month period following the date the court signs the decree. G & N ENTERPRISES will file a final report six months after the expiration of the Decree. The reports will be due thirty (30) days following the end of the six-month period. The COMMISSION must notify G & N ENTERPRISES within twenty days of receipt of any report of any objections or questions

regarding the content of said reports. All reports that are not objected to or questioned will be deemed accepted.

17. Each report will provide the following information:
- a. regarding claims of sexual harassment, the names of all person filing internal claims of sexual harassment at any of its facilities and G & N ENTERPRISES'  resolution of the complaint along with copies of any and all written correspondence or reports regarding the resolution of such internal complaints.
  - b. the dates, time, notices, and list of persons in attendance of all sexual harassment training conducted for employees at its store.

#### **RETENTION OF JURISDICTION AND FILING OF DECREE**

18. This Court will retain jurisdiction of this cause for purposes of compliance with this Decree and entry of such further orders or modification as may be necessary or appropriate to effectuate equal employment opportunities without regard to sex or to avoid unnecessary hardship to G & N ENTERPRISES. Upon compliance with the terms of this Decree or at any time following the final report, G & N ENTERPRISES and/or the COMMISSION may move this Court, on due notice to the other party and the Court, for the dissolution of this Decree and this Decree will be dissolved upon showing by G & N ENTERPRISES that it has substantially complied with the terms and objectives of this Consent Decree.

### ENFORCEMENT

19. There is no private right of action to enforce G & N ENTERPRISES's obligations under the Decree and only the COMMISSION and G & N ENTERPRISES, or their successors may enforce compliance herewith.
20. Enforcement may be had by either the COMMISSION or G & N ENTERPRISES petitioning the court for enforcement of the terms of this Decree.

### COMMISSION AUTHORITY

21. With respect to matters or charges outside the scope of this Decree, this Decree will in no way limit the powers of the COMMISSION in seeking to eliminate unlawful employment practices pursuant to Title VII.

### NOTICE

22. Any notice, report, or communication required under the provisions of this Decree will be sent by certified mail, postage prepaid, to the appropriate party as follows:

THE COMMISSION  
Regional Attorney  
Denver District Office  
Equal Employment Opportunity Commission  
303 E. 17th Avenue, Suite 510  
Denver, Colorado 80203

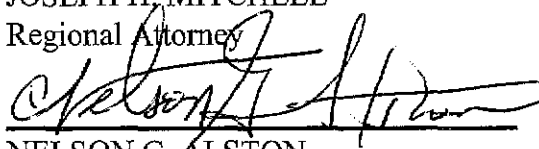
G & N ENTERPRISES  
C/O Harvey Greenfield  
Western Way Work Warehouse  
Rapid City, South Dakota 57701

SO ORDERED THIS 8<sup>th</sup> DAY OF November, 2000.

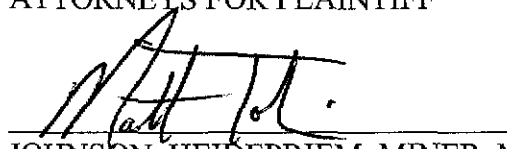
  
LAWRENCE J. PEIRSOL  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM

JOSEPH H. MITCHELL  
Regional Attorney

  
NELSON G. ALSTON  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
Denver District Office  
303 E. 17th Avenue, Suite 510  
Denver, CO 80203  
Telephone: (303) 866-1378

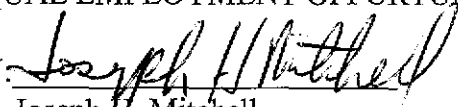
ATTORNEYS FOR PLAINTIFF

  
JOHNSON, HEIDPRIEM, MINER, MARLOW &  
JANKLOW, LLP  
431 N. Phillips Ave. Suite 400  
Sioux Falls, SD 57104-5933  
Telephone (605) 338-4304

ATTORNEYS FOR DEFENDANT

BY CONSENT:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

BY:  9/11/00  
Joseph H. Mitchell Date  
Regional Attorney

G & N ENTERPRISES

BY:  10-18-2000  
Date