

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

700 100-4 10 32

RT  
10/10/01

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

CIVIL ACTION NO.  
6:99-Cv-1625-Orl-28A

Plaintiff,

and VALERIE YERRICK,

Plaintiff-Intervenor,

vs.

DENNY'S, INC.

Defendant,

\_\_\_\_\_ /

**ORDER**

1. This Order (the "Order") is made and entered into by and between Plaintiff, the Equal Employment Opportunity Commission (hereinafter referred to as the "Commission" or "EEOC"), Plaintiff-Intervenor Valerie Yerrick (hereinafter "Valerie Yerrick" or "Plaintiff-Intervenor") and Defendant, Denny's, Inc. (hereinafter referred to as "Denny's"). The Commission, Plaintiff-Intervenor, and Denny's are collectively referred to herein as "the Parties."

2. On December 20, 1999, EEOC initiated this action by filing its Complaint against Denny's, Inc. in the United States District Court for the Middle District of Florida, Orlando Division, Civil Action No. 6:99-cv-1625-Orl-28A based upon a charge filed by Valerie Yerrick (EEOC Charge No. 150-99-2288). EEOC's Complaint alleges that Denny's violated Title VII of the Civil Rights Act of 1964, as amended, including but not limited to, amendments authorized by the Civil Rights

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Act of 1991, 42 U.S.C. Section 2000e *et seq.* ("Title VII") by subjecting a female employee, Valerie Yerrick, to unlawful sexual harassment in the form of a hostile work environment. The Complaint further alleges that Ms. Yerrick was constructively discharged. On March 9, 2000, the Plaintiff-Intervenor became a party to the lawsuit also alleging the same violations of Title VII. Denny's responded to both Complaints by denying any violations of Title VII and denying any liability for the allegations.

3. In the interest of resolving this matter and as a result of having engaged in comprehensive settlement negotiations, the Parties have agreed that this action should be finally resolved by entry of this Order. This Order is final and binding upon the Parties, their successors and assigns.

4. The Parties agree that this Order resolves all claims arising out of EEOC Charge Number 150-99-2288 and the Complaints filed in this action, and constitutes a complete resolution of all claims under Title VII that were made, or any other claims that could have been made, by the Commission and/or Plaintiff-Intervenor in this action.

5. NOW, THEREFORE, the Court having carefully examined the terms and provisions of this Order, and based on the pleadings filed by the Parties, it is **ORDERED, ADJUDGED AND DECREED THAT:**

#### **JURISDICTION**

6. This Court has jurisdiction of the subject matter of this action and over the Parties for the purposes of entering and enforcing this Order.

### **GENERAL INJUNCTIVE PROVISIONS**

7. Defendant Denny's, its officers and employees, are, consistent with Denny's policies, enjoined from engaging in conduct which violates Title VII of the Civil Rights Act of 1964, as amended, by adversely affecting the terms and conditions of any individual's employment because of the gender of that individual and/or by subjecting an individual to sexual harassment or circumstances which lead to the constructive discharge of an individual due to sexual harassment.

8. Defendant Denny's, its officers and employees, are, consistent with Denny's policies, enjoined from discriminating against any employee who opposes any of Defendant's practices which the employee in good faith believes to be a violation of Title VII; who files a charge of discrimination with the EEOC alleging violation(s) of such statute; who cooperates with the EEOC in the investigation and/or prosecution of any charge of discrimination; or who cooperated in the investigation or prosecution of this case.

### **SEXUAL HARASSMENT POLICY AND TRAINING**

9. Defendant Denny's has established a written policy against sexual harassment, which is attached as Exhibit A. Defendant Denny's agrees that all of its employees and managers in the company-owned and company-operated Unit #653 will be provided a complete copy of its policy against sexual harassment within thirty (30) days of the entry of this Order. Defendant Denny's further agrees that all new employees in the company-owned and company-operated Unit #653 will be provided a copy of its policy against sexual harassment within thirty (30) days of commencing employment with Denny's.

10. In order to further ensure the effective implementation of Defendant Denny's sexual harassment policy, Denny's will conduct annual sexual harassment training for all of its managers and supervisory personnel located in the company-owned and company-operated Unit #653. The sexual harassment training will consist of two hours of training and include training on gender discrimination with specific emphasis on recognizing sexual harassment and the proper procedure to be followed if one becomes aware of sexual harassment in the workplace or if one receives a complaint of such harassment. The training will be provided by Bruce Webber, Human Resources Manager, or, in the event he is no longer employed by Denny's, another equivalent person certified to teach the sexual harassment training. The training materials utilized to conduct the sexual harassment training will be derived from Denny's Legal Compliance and Civil Treatment® for Managers materials. The first annual training must be completed within 90 days of execution of this Order and annually thereafter for the duration of this Order.

11. All Denny's managers and supervisory personnel located in Unit #653 who have attended any of Denny's sexual harassment training seminars (i.e., Legal Compliance or Civil Treatment® for Managers), within 12 months preceding either execution of this Order or the annual training identified in paragraph 10 above, will be exempt from the annual training above, provided that Denny's substantiates same via written documentation in accordance with paragraph 14.

#### **POSTING**

12. Defendant Denny's will post a copy of the Notice, attached hereto as Exhibit B, within thirty (30) days of entry of this Order. Said notice shall be posted

in the company-owned and company-operated Unit #653 for the duration of this Order in the area designated as the employee lunch room/break room or other visible employee area, such as an employee bulletin board.

### **MONITORING**

13. Defendant Denny's will retain all records relating to any complaint or allegation of sexual harassment at the company-owned and company-operated Unit #653 for the duration of this Order and as required under federal law. Further, Defendant Denny's agrees to maintain a log recording each and every sexual harassment complaint arising out of Unit #653 that is received through the Associate Response Hotline # 1-888-662-5027, listed in Denny's Anti-Harassment Policy, Number 6.2, which is attached hereto as Exhibit A.

14. Defendant Denny's will certify to the EEOC every six months throughout the duration of this Order that it is in compliance with all aspects of this Order. The first such certification will be due no later than six months from execution of this Order. The certification will include the dates, times, location, and names of Unit #653 attendees of the sexual harassment training conducted pursuant to paragraph 10, as well as the names of all management personnel from Unit #653 that were exempt from the training. With each certification Denny's will further provide the EEOC with the name, address, and phone number of any person who alleges they have been sexually harassed while working at the company-owned and company-operated Unit #653 during the preceding six month period. If the complaint is received through the Associate Response Hotline, Denny's will further provide to the EEOC a redacted copy of the page or pages of the Hotline log that

reflect the documentation of the complaining employee's call. Defendant Denny's will also state its actions taken in response to each such allegation.

### **MONETARY RELIEF**

15. Defendant Denny's agrees to pay a total sum in the amount of \$75,000.00, within fourteen (14) calendar days from the Court's execution of this Order. The sum shall be disbursed as follows:

(a) Defendant Denny's shall pay Valerie Yerrick \$5,000.00 in back wages, less amounts required to be withheld for social security, federal, state, and local income taxes.

(b) Defendant Denny's shall pay Valerie Yerrick \$38,655.00 in compensatory damages.

(c) In consideration of the legal representation afforded to Valerie Yerrick, Defendant Denny's shall pay \$31,345.00 in attorney's fees to Mr. Jason Gunter, Esquire.

Further, Denny's will provide Ms. Yerrick an I.R.S. form W-2 and Mr. Gunter an I.R.S. form 1099, as required by law.

The payments to Ms. Yerrick shall be made by check to Valerie Yerrick in trust of Jason Gunter, Esq., The Law Office of Jason L. Gunter, and forwarded to Jason Gunter, Esq., The Law Office of Jason L. Gunter, 1625 Hendry Street, Suite 103, Fort Myers, FL 33901, by certified mail with a return receipt requested. The payment to Mr. Gunter shall also be made by check and forwarded by certified mail with a return receipt requested to Mr. Gunter's business address listed above.

16. Defendant Denny's agrees to simultaneously provide the EEOC with copies of the payments set forth in paragraph 15 above. Said copies shall be forwarded to the attention of Carla Von Greiff, Trial Attorney, at the Tampa Area Office of the EEOC, 501 East Polk Street, Room 1020, Tampa, Florida, 33602.

17. If Denny's fails to tender the above-mentioned payments within the fourteen-day period agreed upon, Denny's shall pay interest on the defaulted payments at the rate calculated pursuant to 26 U.S.C. Section 6621(b) until the same is paid.

#### **ENFORCEMENT OF ORDER**

18. The Court will take whatever measures it deems appropriate to effectuate enforcement of the terms of this Order.

19. The mere existence of a complaint of sexual harassment does not constitute an act of contempt under the terms of this Order.

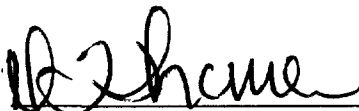
#### **COSTS**

20. Defendant Denny's and EEOC shall each bear its own costs and attorneys' fees associated with this litigation.

#### **DURATION OF ORDER**

21. This Order shall remain in effect for two (2) years from the date of the Court's execution of the Order. During that time, this Court shall retain jurisdiction over this matter and the Parties for purposes of enforcing compliance with the Order, including such orders as may be required to effectuate its purposes.

AGREED TO:  
FOR THE PLAINTIFF,  
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

by: 

Date: 8/9/01

Delner Franklin-Thomas

~~Bar No.~~ Bar No. 54205

Regional Attorney

Miami District Office

United States Equal Employment Opportunity Commission

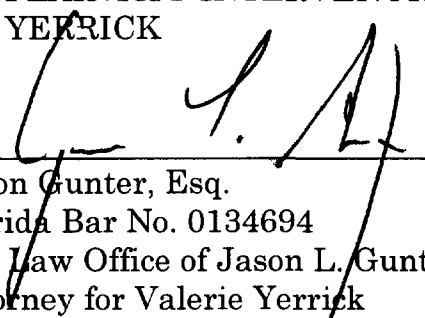
One Biscayne Tower, Suite 2700

2 South Biscayne Boulevard

Miami, Florida 33131

AGREED TO:  
FOR THE PLAINTIFF INTERVENOR,  
VALERIE YERRICK

by:

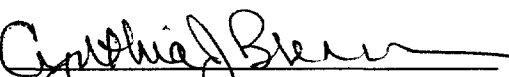
  
Jason Gunter, Esq.  
Florida Bar No. 0134694  
The Law Office of Jason L. Gunter  
Attorney for Valerie Yerrick  
1625 Hendry Street,  
Suite 103,  
Fort Myers, Florida 33901

Date:

8/10/01

AGREED TO:  
FOR THE DEFENDANT,  
DENNY'S, INC.

by:

  
Stephen T. Ball, Esq.  
Florida Bar No. 0716121  
Cynthia J. Brennan, Esq.  
Florida Bar No. 0986003  
Holland & Knight LLP

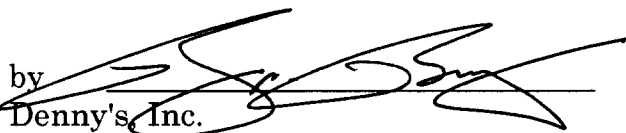
Date:

8/17/01



Attorneys for Defendant  
200 S. Orange Avenue  
Suite 2600  
Orlando, Fl 32801

by

  
Denny's, Inc.

Date:

August 15, 2001

SO ORDERED, ADJUDGED AND DECREED, this 15 day of August  
2001.

  
The Honorable John Antoon II  
United States District Judge

**EXHIBIT A**

## 6.2 -- Anti-Harassment Policy

Created By: Julie Bornmueller on 07/14/2000 at 09:44 AM  
Category: 6.0 -- Standards of Performance and Conduct

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### **I. POLICY/PURPOSE**

The Company is committed to providing a workplace which is free from all verbal, physical and visual forms of harassment so that everyone can work in a productive, respectful and professional environment. Sexual harassment and harassment for any discriminatory reason such as race, sex, sexual orientation, color, religion, national origin, disability, age or any other characteristic protected by local, state or federal law is strictly prohibited. In addition, this policy prohibits any other workplace harassment, whether or not it is specifically covered by law. Conduct by supervisors, associates and non-associates such as vendors or customers is covered by this policy. Associates who violate this policy are subject to discipline, up to and including termination.

### **II. ASSOCIATES COVERED BY THE POLICY**

All associates of the Company are covered by this policy.

### **III. EXAMPLES OF HARASSMENT**

**A. Sexual Harassment:** Sexual harassment is generally defined as unwelcome sexual advances, requests for sexual favors, or other visual, verbal or physical conduct of a sexual nature when:

- The conduct interferes with an associate's work or creates an intimidating, hostile or offensive work environment;
- Submission to the conduct is made either an express or implied term or condition of employment; *or*
- Submission to or rejection of the conduct is used as the basis for employment decisions affecting the individual.

Sexual harassment includes harassment based on another person's gender or harassment based upon pregnancy, childbirth, or related medical conditions. It also includes harassment of another associate of the same gender as the harasser.

Examples of sexual harassment include, but are not limited to, the following

types of behavior:

- Unwelcome sexual advances, like propositions for sexual favors;
- Excessive, one-sided, romantic attention in the form of love letters, telephone calls, e-mails or gifts;
- Offering or conditioning an employment benefit, like a raise, a promotion or a preferred work schedule, in exchange for sexual favors;
- Making or threatening reprisals, or changing performance expectations after an associate has turned down a sexual advance;
- Visual conduct, such as leering, making indecent gestures, or displaying sexual objects, pictures, cartoons, calendars or posters in the workplace;
- Verbal conduct, such as making sexual comments, using demeaning terms such as "Babe," using crude and offensive language, and telling off-color jokes;
- Verbal or written comments about an individual's sex life or body, and suggestive or obscene letters, e-mails, notes, graffiti or invitations;
- Unwelcome or unnecessary physical contact, including pats, hugs, kisses, brushes, touches, shoulder rubs, assaults, bumping or blocking movements; and
- Sexually charged or crude behavior, banter, teasing or horseplay with other associates, even if consensual.

This policy is also violated if an associate is fired, denied a job, or denied some other employment benefit because the associate refused to grant sexual favors, complained about harassment, or participated in an investigation or complaint proceeding.

**B. Other Workplace Harassment:** Examples of harassment based on race, sex, color, religion, national origin, age, disability or other protected characteristic can include, but are not limited to:

- Cartoons, calendars, posters or other visual displays of objects, text, pictures or graphics that depict any protected group or individual in a derogatory way;
- Physical or verbal conduct, including making or using derogatory comments, gestures, epithets, slurs and jokes towards such groups or individuals.

The Company also expects all associates to exercise good judgment and avoid any action which could arguably be construed as harassment. Associates must

conduct themselves in a professional and courteous manner towards others at all times regardless of sex, race or other protected status. Examples of prohibited conduct include but are not limited to:

- Physical aggression, threatening gestures or other hostile behavior;
- Any behavior that is cruel, vindictive or intended to humiliate and/or degrade;
- Openly insulting, berating or yelling at other persons; or
- Other boorish, rude, childish or discourteous behavior.

#### **IV. Procedures if Harassment Occurs**

The Company is committed to taking reasonable steps to prevent harassment from occurring and will take immediate and appropriate action when we have determined that harassment has occurred. To do this, however, we need the cooperation of all associates at all levels. Each associate is responsible for supporting and adhering to this policy.

Associates should never tolerate inappropriate behavior, but should tell anyone harassing them that the conduct is unwelcome. In addition, associates must promptly report (as set forth below) any offending behavior, whether such behavior is directed towards them personally or to other associates of the Company. **Do not allow an inappropriate situation to continue by not reporting it, regardless of who is creating the situation.**

##### **A. Reporting Harassment:**

- \* **Employee Response Hotline.** If an associate believes he or she is being harassed or observes a possible violation of this policy, he or she must immediately report the conduct by calling the "Employee Response Hotline" at: **1-888-662-5027**

The Hotline is available 24 hours a day, seven days a week. Associates are encouraged to call this Hotline before the conduct becomes severe or pervasive. The associate is not required to first tell his or her supervisor. However, in addition to, but not instead of calling the Hotline, the associate may also report the incident to his or her supervisor.

- \* **Human Resources or Higher Level Management.** The Hotline is designed to enable the associate to report a harassing situation directly to the Company. The Company believes the Hotline best ensures that it knows about the conduct so it can immediately investigate the complaint and take appropriate corrective action. If, however, for any reason an associate is not

satisfied with the response he or she got from using the Hotline, he or she may also directly contact Human Resources, the Area Manager or any higher level manager.

**B. Supervisor's Responsibilities:** Each supervisor is responsible for maintaining a workplace free of harassment. Any supervisor who is notified of a complaint of harassment, or observes or is notified of a possible violation of his policy must:

- \* **Report** the incident to the Guest Assurance and Employee Response Department by leaving a voice mail on the "Manager's Reporting Line," at: **1-877-888-9362**
- \* **Record** the specifics of the complaint on an "AGA/ER Incident Report Form" (included at the bottom of this policy...please type directly into form) and fax it to **864-597-8089** or send it via interoffice mail to Employee Response, P-6-9.

The supervisor must also take appropriate steps to protect the associate from continued harassment or retaliation. The supervisor should also remind the complainant to immediately call the Associate Response Hotline at **1-888-662-5027**. No supervisor shall threaten or insinuate, either explicitly or implicitly, that an associate's complaint will adversely affect the associate's terms and conditions of employment in any way.

**C. Investigating/Corrective Action:** In response to every complaint, the Company will take prompt and impartial investigatory action, and take appropriate corrective and/or preventive action where necessary. Confidentiality will be maintained to the extent possible; however information about the allegations of harassment will be shared with those who have a need to know about it.

If harassment is found to have occurred, the Company will make every effort to ensure that no further harassment occurs and to correct its effects on the associate. Any associate who is found to have engaged in any form of harassment or otherwise violated this policy will be subject to appropriate disciplinary action up to and including termination. If an individual outside the employ of the Company has harassed an associate, the Company will take appropriate action to address the situation and to prevent its recurrence.

**D. Reporting Retaliation:** All associates will be protected against retaliation should they complain about harassment, participate in an investigation or complaint proceeding, or engage in other protected activity. Associates who believe they have been retaliated against should immediately call the "Associate Response Hotline" at **1-888-662-5027** so that their concerns can be

investigated. Appropriate remedial action will be taken if retaliation is found to have occurred.



Denny's Incident Rep

DATE OF LAST REVIEW: AUGUST, 2000

DATE ISSUED: MARCH 3, 2000

SUPERSEDES: AUGUST 1, 1999

INITIATED BY: LINDA TRAYLOR

APPROVED BY: PHYLLIS CALVERT

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Unit # \_\_\_\_\_

City/State \_\_\_\_\_

Please TYPE all information.

## Guest Assurance and Employee Response Incident Report

Denny's REQUIRES that all incidents or allegations of discrimination on the basis of race, color or national origin involving customers or harassment, discrimination, or retaliation involving associates MUST BE reported to Advantica Guest Assurance (AGA).

**CATEGORY:**

<input type="checkbox"/> Rude Treatment	<input type="checkbox"/> Racial or Ethnic Comments/Slurs
<input type="checkbox"/> Inferior Service	<input type="checkbox"/> Refusal of Service
<input type="checkbox"/> Selective Seating	<input type="checkbox"/> Out of Turn Service
<input type="checkbox"/> Delay in Service	<input type="checkbox"/> Ejection
<input type="checkbox"/> Associate Sexual Harassment	<input type="checkbox"/> Associate Retaliation
<input type="checkbox"/> Associate Discrimination - Type of discrimination _____	
<input type="checkbox"/> Other _____	

Reported by Guest? ☐ yes ☐ noReported by Associate? ☐ yes ☐ no

Guest Name: \_\_\_\_\_

Associate Name: \_\_\_\_\_

Address: \_\_\_\_\_

Others Present: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

List additional witness information (name, address, and telephone number). Use a second page if necessary.

### Disciplinary Action:

☐ Notification to Associate of Complaint

☐ Verbal Counseling

☐ Memo for Record

☐ Employee Performance Record

☐ Suspension Pending Results of Investigation

☐ Termination

☐ Obtain Memos for Record from all Witness/Associates

☐ Contact Area Manager

☐ Contact Human Resources Manager (if applicable)

☐ Report to AGA at (877) 888-9362

Reported by: \_\_\_\_\_

Date/Time: \_\_\_\_\_

☐ Record Incident and Date/Time Reported to AGA in Manager's Log

☐ Fax this Incident Report and All Statements to AGA at (864) 597-8089 or mail to:

Advantica Guest Assurance  
Mail Station P-6-8  
203 East Main Street  
Spartanburg, SC 29319

Describe any additional follow up needed: \_\_\_\_\_

### Brief description of incident and action taken:

Date of Incident: \_\_\_\_\_ Time of Incident: \_\_\_\_\_ Manager on Duty: \_\_\_\_\_

Name \_\_\_\_\_

Title/Position \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_



**EXHIBIT B**

### NOTICE TO ALL EMPLOYEES

This notice is being posted pursuant to an Order entered by the Court in Equal Employment Opportunity Commission v Denny's, Inc. Denny's, Inc. has agreed that it will not discriminate against employees in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). Title VII protects individuals from employment discrimination because of their race, religion, color, sex (including sexual harassment and pregnancy) and/or national origin. Title VII also protects individuals from retaliation for having complained of an unlawful employment practice. Denny's, Inc. will not condone discrimination of any kind as set forth in federal laws, including, but not limited to, sexual harassment.

Furthermore, Denny's, Inc. assures its employees that it supports Title VII and will not take any action against an individual because he/she has exercised his/her rights under the law to oppose discriminatory acts or to file charges with the EEOC.

Appropriate corrective action, up to and including termination, shall be taken against any employee (including management personnel) found to violate the policies regarding discrimination, based upon the circumstances involved.

Employees or applicants for employment who have questions about their rights, may contact the EEOC at #800-669-4000. Employees or applicants for employment who believe they may have been subjected to sexual harassment or discrimination are encouraged to call Denny's Associate Response Hotline at #1-888-662-5027.

This notice shall remain posted for two (2) years from the date signed.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

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For Denny's, Inc.  
Vice President of Human Resources  
Phyllis J. Calvert

Date Printed: 09/04/2001

WB

Notice sent to:

✓ [ Carla J. Von Greiff, Esq.  
Equal Employment Opportunity Commission  
Tampa Area Office  
501 E. Polk St. 10th Floor  
Timberlake Federal Building Annex  
Tampa, FL 33602

✓ [ Delner Franklin-Thomas, Esq.  
Equal Employment Opportunity Commission  
Miami District Office  
One Biscayne Tower  
2 S. Biscayne Blvd., Suite 2700  
Miami, FL 33131

[ Michael J. Farrell, Esq.  
Equal Employment Opportunity Commission  
Miami District Office  
One Biscayne Tower  
2 S. Biscayne Blvd., Suite 2700  
Miami, FL 33131

✓ [ Stephen Thomas Ball, Esq.  
Holland & Knight, LLP  
200 S. Orange Ave., Suite 2600  
P.O. Box 1526  
Orlando, FL 32802-1526

[ Cynthia J. Brennan, Esq.  
Holland & Knight, LLP  
200 S. Orange Ave., Suite 2600  
P.O. Box 1526  
Orlando, FL 32802-1526

✓ [ Jason L. Gunter, Esq.  
Law Office of Jason L. Gunter  
1625 Hendry St.  
Suite 103  
Ft. Myers, FL 33901