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14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

17 JUANITA WYNNE and DANTE BYRD,
18 on behalf of themselves and classes of
19 those similarly situated,

20 Plaintiffs,

21 v.

22 MCCORMICK & SCHMICK'S
SEAFOOD RESTAURANTS, INC. and
23 MCCORMICK & SCHMICK
RESTAURANT CORP.,

24 Defendants.

Case No. 06-3153 CW

**FIRST AMENDED COMPLAINT FOR
INJUNCTIVE, DECLARATORY RELIEF,
AND DAMAGES FOR VIOLATIONS OF
42 U.S.C. § 1981, TITLE VII, AND THE
CALIFORNIA FAIR EMPLOYMENT AND
HOUSING ACT**

CLASS ACTION

DEMAND FOR JURY TRIAL

25
26 Individual and Representative Plaintiffs Juanita Wynne and Dante Byrd
27 (collectively "Representative Plaintiffs"), on behalf of themselves and all others similarly
28 situated, allege against Defendants McCormick & Schmick's Seafood Restaurants, Inc. and

1 McCormick & Schmick Restaurant Corp. (hereinafter collectively identified as “McCormick &
2 Schmick’s,” “M&S,” or “the Company”) as follows:

3 **INTRODUCTORY STATEMENT**

4 1. Defendant McCormick & Schmick’s is a national restaurant chain that
5 discriminates against African Americans throughout the United States on the basis of race with
6 respect to hiring, job assignment, compensation, promotion to managerial positions, discipline,
7 and other terms and conditions of employment.

8 2. M&S has a nationwide corporate policy and practice of preferring white
9 employees over African American employees for “front-of-the-house” positions (i.e., prominent
10 positions such as server, hostess/host and bartender where customers can easily see and/or
11 interact with the employees), and management positions in its restaurants and offices throughout
12 the United States. M&S disproportionately hires white employees for, and assigns white
13 employees to, front-of-the-house positions and disproportionately assigns African American
14 employees to back-of-the-house positions (i.e., positions in which employees are less likely to be
15 seen by, heard by, or interact with customers). Those back-of-the-house positions include busser
16 positions, bar back positions, and certain less desirable kitchen positions. The few African
17 Americans assigned to server positions are given less desirable assignments.

18 3. M&S discourages applications from African American applicants for
19 “front-of-the-house” positions and disproportionately refuses to hire African Americans for such
20 positions. To the extent that M&S hires African Americans, M&S disproportionately channels
21 them to back-of-the-house positions.

22 4. When qualified African American applicants (both incumbents and
23 individuals from outside the Company) inquire about employment in the restaurant, managers and
24 other M&S representatives sometimes tell them that the restaurant is not hiring, even though it is.
25 When African American applicants submit applications, managers and other M&S representatives
26 acting at their direction sometimes throw them away without seriously considering them.

27 5. Furthermore, promotions are often given preferentially to white workers.
28

1 6. M&S hires, assigns, compensates, and promotes individuals using
2 subjective, arbitrary, standardless, and unvalidated criteria, without requiring a formal application
3 process.

4 7. In addition, M&S systematically takes adverse employment actions against
5 qualified, high-performing African American employees in front-of-the-house positions by giving
6 them less desirable job assignments, lower pay, fewer promotional opportunities, and more
7 frequent and harsher discipline.

8 8. Managers have been instructed by corporate headquarters to “clean up the
9 restaurant,” meaning to hire fewer African Americans , to keep the African American employees
10 away from front-of-the-house positions, and to subject African American employees to harsher
11 discipline.

12 9. This class action is brought by (a) current and former African American
13 non-management employees of M&S throughout the United States; and (b) African Americans
14 who applied to, or were deterred from applying to, M&S at its restaurants or offices in the United
15 States for “front-of-the-house” or management positions, but were not hired.

16 10. This action seeks an end to M&S’s discriminatory policies or practices, an
17 award of backpay and front pay, as well as compensatory damages, punitive damages, and
18 injunctive relief, including rightful place relief for all Class members.

JURISDICTION AND VENUE

20 11. This Court has jurisdiction over the First and Second Claims for Relief
21 pursuant to 28 U.S.C. §§ 1331 and 1343, 42 U.S.C. § 1981, and 42 U.S.C. §§ 2000e-5(f)(3).

22 12. This Court also has jurisdiction over the First , Second, and Third Claims
23 for Relief under the Class Action Fairness Act, 28 U.S.C. § 1332(d), because this is a class action
24 in which: (1) there are 100 or more individuals in each proposed Class; (2) at least some
25 individuals in each proposed Class have different state citizenship from at least one Defendant;
26 and (3) the claims of the proposed Class members exceed \$5,000,000 in the aggregate.

1 13. In addition, this Court has supplemental jurisdiction under 28 U.S.C.
2 § 1367 over the Third Claim for Relief, because that claim and Plaintiffs' First and Second
3 Claims for Relief arise from a common nucleus of operative fact.

4 14. This Court is empowered to issue a declaratory judgment pursuant to 28
5 U.S.C. §§ 2201 and 2202.

6 15. The Northern District of California has personal jurisdiction over
7 Defendants because they have qualified with the California Secretary of State to do business and
8 are doing business in California, and in this district, and because many of the acts complained of
9 occurred in this State and this District and gave rise to the claims alleged herein.

10 16. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because
11 M&S resides in this district and because a substantial part of the events giving rise to the claims
12 alleged herein occurred in this District. M&S operates restaurants in San Francisco, Berkeley,
13 and San Jose.

14 17. Pursuant to N.D. Cal. Local Rule 3-2(c) and (d), intradistrict assignment to
15 the San Francisco / Oakland Division is proper because a substantial part of the events giving rise
16 to the claims presented in this Complaint occurred in Alameda County.

17 **PARTIES**

18 18. Plaintiff Juanita Wynne is an African American resident of Berkeley,
19 California. She has repeatedly been denied desirable shifts and work stations, inappropriately
20 disciplined for insignificant infractions, and had her number of shifts (and, as a result, pay) cut
21 approximately in half at Spenger's Fresh Fish Grotto restaurant in Berkeley, California, owned
22 and operated by M&S, when similarly situated whites were treated more fairly.

23 19. Plaintiff Dante Byrd is an African American resident of Oakland,
24 California. He twice applied for and was denied a position as a bartender at Spenger's Fresh Fish
25 Grotto restaurant in Berkeley, California, owned and operated by M&S, despite having a diploma
26 from a bartending school and more than seven years of bartending experience, and whites who
27 were not more qualified were hired.

1 20. Defendant McCormick & Schmick’s Seafood Restaurants, Inc. is
2 headquartered in Portland, Oregon, and is incorporated in Delaware.

3 21. Defendant McCormick & Schmick Restaurant Corp. is a subsidiary of
4 McCormick & Schmick’s Seafood Restaurants, Inc.

5 22. McCormick & Schmick’s is a nationwide restaurant company that owns
6 and operates approximately 61 upscale casual-dining restaurants. McCormick & Schmick’s
7 operates its restaurants under various names, including McCormick & Schmick’s Seafood
8 Restaurant, McCormick’s Fish House & Bar, M&S Grill, Spenger’s Fresh Fish Grotto, The
9 Heathman Restaurant, Jake’s Famous Crayfish, and Jake’s Grill. Although each restaurant may
10 use different menus, different layouts, and/or different marketing approaches, they all follow the
11 same human resources policies and practices, participate in the same discrimination, and are run
12 by the same corporate management. African American applicants to and employees of each
13 restaurant owned or operated by M&S in the United States, however denominated, are included in
14 the proposed Classes.

15 **CLASS ACTION ALLEGATIONS**

16 23. The Representative Plaintiffs bring this Class Action pursuant to Fed. R.
17 Civ. P. 23(a), (b)(2), and (b)(3) on behalf of the following two Classes:

18 (a) All African Americans who since May 11, 2002 have been
19 employed by, are employed by, or will in the future be
20 employed by McCormick & Schmick’s in non-management
positions (“**Employee Class**”); and

21 (b) All African Americans who since May 11, 2004 have
22 applied for, or been deterred from applying for, server,
23 host/hostess, bartender, or management positions (including
24 chef/sous chef) with McCormick & Schmick’s and were not
25 hired for those positions (“**Applicant Class**”).

26 24. Plaintiff Wynne is a member of, and seeks to represent, the Employee
27 Class. Plaintiff Byrd is a member of, and seeks to represent, the Applicant Class.

28 25. The members of each Class identified herein are so numerous that joinder
of all members is impracticable. The number of Class members is currently indeterminate, but,
on information and belief, is larger than can be addressed through joinder. As of December 2005,

1 McCormick & Schmick's employed approximately 5,401 employees. Each of McCormick &
2 Schmick's roughly 61 restaurants employs very few African American employees in front -of-the-
3 house positions, but each restaurant, on average, annually receives numerous applications from
4 qualified African Americans who are potential front -of-the-house employees. Furthermore, as a
5 result of McCormick & Schmick's systematic discriminatory hiring and job assignment practices,
6 on information and belief, a significant number of qualified African American applicants have
7 also been deterred from applying for front -of-the-house and management positions. Thus,
8 although the precise number of qualified African American applicants who are not hired and/or
9 who are fired or otherwise discriminated against is currently unknown, it is far greater than can be
10 feasibly addressed through joinder.

11 26. There are questions of law and fact common to the Classes. Common
12 questions include, among others:

- 13 a. whether McCormick & Schmick's policies or practices result in
14 disparate impact adverse to African American employees and applicants;
- 15 b. whether McCormick & Schmick's discriminatory policies and
16 practices are intentional;
- 17 c. whether McCormick & Schmick's policies or practices violate 42
18 U.S.C. § 1981;
- 19 d. whether McCormick & Schmick's policy and practice violates
20 FEHA, as to Class Members who have been employed by M&S in, or who reside in, California;
21 and
- 22 e. whether compensatory and punitive damages, injunctive relief, and
23 other equitable remedies (including backpay and front pay) for the Classes are warranted.

24 27. The Representative Plaintiffs' claims are typical of the Classes' claims.

25 28. The Representative Plaintiffs will fairly and adequately represent and
26 protect the interests of the members of the Classes. The Representative Plaintiffs have retained
27 counsel competent and experienced in complex class actions and employment discrimination
28 litigation.

1 29. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2)
2 because McCormick & Schmick’s has acted and/or refused to act on grounds generally applicable
3 to the Classes, making appropriate declaratory and injunctive relief with respect to the
4 Representative Plaintiffs and the class as a whole. The Class members are entitled to injunctive
5 relief to end McCormick & Schmick’s common, uniform, and unfair racially discriminatory
6 employment policies and practices.

7 30. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(3)
8 because common questions of fact and law predominate over any questions affecting only
9 individual members of the Class, and because a class action is superior to other available methods
10 for the fair and efficient adjudication of this litigation. The Class members have been damaged
11 and are entitled to recovery as a result of McCormick & Schmick’s common, uniform, and unfair
12 racially discriminatory employment policies and practices. McCormick & Schmick’s has
13 computerized payroll and personnel data that will make calculation of backpay and punitive
14 damages for specific Class members relatively simple.

15 **CLAIMS OF THE REPRESENTATIVE PLAINTIFFS**

16 **Juanita Wynne**

17 31. Plaintiff Juanita Wynne is an African American resident of Berkeley,
18 California, and current employee of McCormick & Schmick’s. She has been employed as a
19 server at Spenger’s Fish Grotto in Berkeley, California, since approximately November 1999.
20 During approximately 2002-03, her shifts and pay were cut approximately in half, whereas the
21 shifts and pay of white servers were not so cut. Ms. Wynne has been also denied desirable shifts
22 and stations, and she was disciplined for insignificant infractions, while white employees were
23 not so disciplined.

24 32. Ms. Wynne is currently the only African American server on staff at the
25 restaurant.

26 33. Ms. Wynne has observed that McCormick & Schmick’s tends to seat
27 African American customers at the back of the restaurant, where they are less visible to the rest of
28 the public.

1 34. On or about May 3, 2005, Ms. Wynne filed a charge of discrimination with
2 the Equal Employment Opportunity Commission (“EEOC”). On or about June 30, 2005, she
3 filed an amended charge of discrimination with the EEOC. She received a copy of her Notice of
4 Right to Sue from the California Department of Fair Employment and Housing (“DFEH”), dated
5 April 25, 2005. On July 28, 2006, she received a copy of her Notice of Right to Sue from the
6 EEOC. Attached to this Complaint as Exhibit A and incorporated by reference are copies of
7 those charges and those notices.

8 **Dante Byrd**

9 35. Plaintiff Dante Byrd is an African American resident of Oakland,
10 California, and applicant to McCormick & Schmick’s.

11 36. In November 2004, Mr. Byrd applied to become a bartender at M&S’s
12 Spenger’s Fish Grotto in Berkeley. He was interviewed by the General Manager/Bar Manager , a
13 non-African American male. Mr. Byrd thought the interview went well, but he never heard back
14 about the job.

15 37. In January 2005, Mr. Byrd learned that McCormick & Schmick’s was
16 again seeking applications from bartenders, so he applied again. He was interviewed by the same
17 non-African American male and by a white female. He was invited to come back and work the
18 bar for a test shift. He did so, working for approximately 4 -5 hours without pay. The General
19 Manager/Bar Manager told Mr. Byrd that he had done a good job on this test shift. Mr. Byrd was
20 never paid for this work. He never heard back about the job.

21 38. At the time, Mr. Byrd had seven years of experience as bartender, plus a
22 year of attendance and graduation from bartender school. Since being denied employment at
23 McCormick & Schmick’s, Mr. Byrd has applied for and been hired by a comparable restaurant in
24 Oakland, California.

25 39. On or about June 29, 2005, Mr. Byrd filed a charge of discrimination with
26 the EEOC. He received a copy of his Notice of Right to Sue from the California DFEH, dated
27 July 6, 2005. On July 28, 2006, he received a copy of his Notice of Right to Sue from the EEOC.
28

1 Attached to this Complaint as Exhibit B and incorporated by reference are copies of that charge
2 and those notices.

3 **GENERAL POLICIES OR PRACTICES OF DISCRIMINATION**

4 40. The denials and abridgments of employment opportunities suffered by the
5 Representative Plaintiffs are part of a general policy or practice of discrimination on the basis of
6 race in employment that has existed at McCormick & Schmick's since at least May 10, 2002.
7 These are not isolated employment practices or individual decisions. On the contrary, these
8 incidents are representative of McCormick & Schmick's systematic discrimination against
9 African Americans and in favor of white applicants and employees, to create an overwhelmingly
10 white image to the public.

11 41. The under-representation of African Americans in front-of-the-house
12 positions throughout McCormick & Schmick's approximately 61 restaurants in the United States
13 results from a policy and practice of discrimination on the basis of race in hiring, job assignment,
14 compensation, promotion to managerial positions, discipline, and other terms and conditions of
15 employment.

16 42. McCormick & Schmick's has pursued policies or practices on a continuing
17 basis that have denied or restricted job opportunities to qualified African American applicants and
18 employees.

19 43. Such discriminatory policies or practices include, without limitation:

20 a. reliance on subjective, arbitrary, standardless, and unvalidated
21 criteria in making hiring and job assignment decisions, focusing on whether applicants and
22 employees properly reflect the preferred white look and image rather than whether they would be
23 responsible, effective, diligent employees who could perform their jobs well;

24 b. reliance on subjective, arbitrary, standardless, and unvalidated
25 criteria in making decisions in compensation, shift, and weekly hour allocations, focusing on
26 whether applicants and employees properly reflect the preferred white look and image rather than
27 whether they would be responsible, effective, diligent employees who could perform their jobs
28 well;

- 1 c. failing to hire qualified African American applicants to restaurant
2 positions;
- 3 d. shunting African American applicants and employees to back-of-
4 the-house positions where they are out of the public eye and/or do not interact with the public;
- 5 e. offering and providing African American employees with fewer
6 hours and/or less desirable job duties and/or assignments than their white counterparts;
- 7 f. targeting white candidates for recruitment for front -of-the-house
8 positions, but avoiding, ignoring, discouraging or dissuading equally qualified African Americans
9 from applying for those positions;
- 10 g. subjecting front-of-the-house African American employees to
11 harsher discipline based on their race without regard to their performance on the job; and
- 12 h. failure to promote African American employees to managerial
13 positions.

14 44. M&S acted or failed to act as herein alleged with malice or reckless
15 indifference to the protected rights of Plaintiffs and the Class members. Plaintiffs and the Class
16 members are thus entitled to recover punitive damages in an amount to be determined according
17 to proof.

18 **FIRST CLAIM FOR RELIEF**
19 **(Federal Civil Rights, 42 U.S.C. § 1981)**
20 **(Brought by the Representative Plaintiffs on behalf of a nationwide Class)**

21 45. Plaintiffs incorporate paragraphs 1 through 44, as alleged above.

22 46. This claim is brought by the Representative Plaintiffs on behalf of
23 themselves and the Classes they represent.

24 47. McCormick & Schmick's has maintained an intentionally discriminatory
25 system with respect to hiring, job assignment, compensation, promotion to managerial positions,
26 discipline, and other terms and conditions of employment.

27 48. The foregoing conduct constitutes illegal intentional discrimination with
28 respect to the making, performance, modification, and termination of contracts prohibited by 42
U.S.C. § 1981.

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SECOND CLAIM FOR RELIEF
(42 U.S.C. § 2000e et seq.)
(Brought by the Representative Plaintiffs on behalf of a nationwide Class)

49. Plaintiffs incorporate paragraphs 1 through 44, as alleged above.

50. This claim is brought by the Representative Plaintiffs on behalf of themselves and the Classes they represent .

51. McCormick & Schmick’s has maintained a system that is discriminatory, subjective, standardless, and arbitrary with respect to recruitment, hiring, job assignment, compensation, promotion to restaurant managerial positions, termination, and other terms and conditions of employment. The system has an adverse disparate impact on African American applicants and employees. This system is not and cannot be justified by business necessity, but even if it could be so justified, less discriminatory alternatives exist that could equally serve any alleged necessity.

52. McCormick & Schmick’s discriminatory policies or practices described above have denied African American applicants and employees employment, job assignments, promotions, job transfers, and weekly hour allocations, resulting in the loss of past and future wages and other job benefits.

53. The foregoing conduct has created an unjustified disparate impact prohibited by 42 U.S.C. § 2000e et seq.

THIRD CLAIM FOR RELIEF
(California Fair Employment and Housing Act, Government Code § 12940 et seq.)
(Brought by the Representative Plaintiffs on behalf of a California subclass)

54. Plaintiffs Wynne and Byrd incorporate paragraphs 1 through 44, as alleged above.

55. This claim is brought by the Representative Plaintiffs on behalf of themselves and the subclass of Class members who worked for M&S in California, or resided in California, since May 3, 2004.

56. Plaintiffs Wynne and Byrd have received copies of their Right to Sue letters from the DFEH. The pendency of the EEOC investigations into Plaintiffs’ charges tolled

1 the time limits for filing civil actions pursuant to the Fair Employment and Housing Act.
2 Plaintiffs have therefore timely complied with all prerequisites to suit.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, the Representative Plaintiffs and Class members pray for relief as
5 follows:

6 57. Certification of the case as a class action on behalf of the proposed Classes;

7 58. Designation of the Representative Plaintiffs as representatives of the
8 Classes;

9 59. Designation of the Representative Plaintiffs' counsel of record as Class
10 counsel;

11 60. A declaratory judgment that the practices complained of herein are
12 unlawful and violate 42 U.S.C. § 1981, 42 U.S.C. § 2000e *et seq.*, and the California Fair
13 Employment and Housing Act, Government Code § 12940 *et seq.*;

14 61. A preliminary and permanent injunction against McCormick & Schmick's
15 and its officers, agents, successors, employees, representatives, and any and all persons acting in
16 concert with them, from engaging in each of the unlawful policies, practices, customs, and usages
17 set forth herein;

18 62. An order that McCormick & Schmick's institute and carry out policies,
19 practices, and programs that provide equal employment opportunities for all African Americans,
20 and that it eradicate the effects of its past and present unlawful employment practices;

21 63. An order restoring the Representative Plaintiffs and Class members to their
22 rightful positions at McCormick & Schmick's, or, in lieu of reinstatements, an order for front pay
23 benefits;

24 64. Back pay (including interest and benefits) for the Representative Plaintiffs
25 and Class members;

26 65. All damages sustained as a result of McCormick & Schmick's conduct,
27 including damages for emotional distress, humiliation, embarrassment, and anguish, according to
28 proof;

1 66. Exemplary and punitive damages in an amount commensurate with
2 McCormick & Schmick's ability to pay and to deter future conduct;

3 67. Costs incurred herein, including reasonable attorneys' fees to the extent
4 allowable by law;

5 68. Pre-judgment and post-judgment interest, as provided by law; and

6 69. Such other and further legal and equitable relief as this Court deems
7 necessary, just, and proper.

8 Dated: July 28, 2006

Respectfully submitted,

9
10 By: /s/ James M. Finberg
11 James M. Finberg

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13 Bill Lann Lee (SBN 108452)
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*Attorneys for Plaintiffs and the proposed Class
Members*

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to which they have a right to jury trial.

Dated: July 28, 2006

Respectfully submitted,

By: /s/ James M. Finberg
James M. Finberg

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Attorneys for Plaintiffs and the proposed Class Members

EXHIBIT A

CHARGE OF DISCRIMINATION

AGENCY

CHARGE NUMBER

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

- FEPA
 EEOC

376-2005-00589

CA DEPT FAIR EMPLOYMENT AND HOUSING

State or local Agency, if any

NAME (indicate Mr., Ms. or Mrs.)

HOME TELEPHONE (include area code)

Juanita Wynne

(510) 843-8369

STREET ADDRESS

CITY, STATE AND ZIP CODE

DATE OF BIRTH

1526 Blake Street

Berkeley, CA 94703

11-19-1977

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY THAT I BELIEVE DISCRIMINATED AGAINST ME OR OTHERS. (If more than one, list under PARTICULARS below.)

NAME

NUMBER OF EMPLOYEES, MEMBERS

TELEPHONE (include area code)

McCormick & Schmick Restaurant

Approx. 150

(510) 845-7771 (Berkeley, CA)

McCormick & Schmick Restaurant Corp.

Approx. 4,500

(503) 459-3622 (Portland, OR)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

1919 4th St.

Berkeley, CA 94704

Alameda

720 S.W. Washington #550

Portland, OR 97205

Multnomah County

RECEIVED
MAY 3 2005

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

EEOC - 010

DATE DISCRIMINATION TOOK PLACE
EARLIEST LATEST
2001

- RACE COLOR SEX RELIGION NATIONAL ORIGIN
 RETALIATION AGE DISABILITY OTHER (specify)

CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)).

I am an African American female. I have worked at McCormick & Schmick Restaurant at the Berkeley location since 1999. I still work there as a server. I am the only African American server at the restaurant. Beginning in 2002 or 2003 with the arrival of a new manager, I began to be treated differently than the other, non-African American personnel. I feel that I am harassed over small things that other employees are not subjected to. Most importantly, my shifts have been cut back and I have been given less favorable shifts and less favorable stations to serve within the restaurant, all of which has affected my compensation. My pay is now about half of what it was previous to these changes. During the time I have been there, all of the other African American employees who worked in the front of the house have been fired or driven to leave. I believe the hostile environment and cut in work and pay are a result of my race and/or color. I believe that McCormick & Schmick has a pattern and practice of discriminating against African American and minority individuals and have a corporate plan to eliminate African Americans and other minority employees from front of the house positions. I believe they also tend to seat customers of color in the back of the house and out of public view.

I bring this charge on behalf of myself and similarly situated minority individuals discriminated against as a result of race and/or color.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedure.

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information, and belief.

Juanita Wynne
I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

Juanita Wynne

4-20-05

Juanita Wynne
Charging Party (signature)

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Day, month, and year) 4-20-05

CHARGE OF DISCRIMINATION

AGENCY

CHARGE NUMBER

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

- FEPA
 EEOC

AMENDED

376-2005-00589

CA DEPT FAIR EMPLOYMENT AND HOUSING

State or local Agency, if any

NAME (indicate Mr., Ms. or Mrs.)

Juanita Wynne

HOME TELEPHONE (include area code)

(510) 843-8369

STREET ADDRESS

CITY, STATE AND ZIP CODE

1526 Blake Street

Berkeley, CA 94703

DATE OF BIRTH

11/19/77

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY THAT I BELIEVE DISCRIMINATED AGAINST ME OR OTHERS. (If more than one, list under PARTICULARS below.)

NAME

NUMBER OF EMPLOYEES, MEMBERS

TELEPHONE (include area code)

McCormick & Schmick Restaurant

Approx. 150

(510) 845-7771 (Berkeley, CA)

McCormick & Schmick Restaurant Corp.

Approx. 4,500

(503) 459-3622 (Portland, OR)

STREET ADDRESS

CITY, STATE AND ZIP CODE

1919 4th St.

Berkeley, CA 94704

720 S.W. Washington #550

Portland, OR 97205

**RECEIVED
JUN 30 2005**

COUNTY

Alameda

Multnomah County

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

EEOC - 010

DATE DISCRIMINATION TOOK PLACE

EARLIEST LATEST
2001

- RACE COLOR SEX RELIGION NATIONAL ORIGIN
 RETALIATION AGE DISABILITY OTHER (specify)

CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

I am an African American female. I have worked at McCormick & Schmick Restaurant at the Berkeley location since 1999. I still work there as a server. I am the only African American server at the restaurant. Beginning in 2002 or 2003 with the arrival of a new manager, I began to be treated differently than the other, non-African American personnel. I feel that I am harassed over small things that other employees are not subjected to. Most importantly, my shifts have been cut back and I have been given less favorable shifts and less favorable stations to serve within the restaurant, all of which has affected my compensation. My pay is now about half of what it was before these changes. During the time I have been there, all of the other African American employees who worked in the front of the restaurant have been fired or driven to quit. I believe the hostile environment and cut in work and pay are a result of my race and/or color.

I believe that McCormick & Schmick has a corporate plan to eliminate or substantially decrease the number of minority employees from positions at the front of the restaurant. I also believe the company's restaurants also tend to seat customers of color in the back of the restaurant and out of public view.

The discrimination I experienced is, based on information and belief, part of a continuing classwide pattern and practice of discrimination involving recruitment, hiring, job and hours assignments, promotions, and termination against a class of minority applicants and employees company-wide and nationwide.

I bring this charge on behalf of myself and similarly situated minority individuals discriminated against as a result of race and/or color.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedure.

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information, and belief.

Juanita Wynne
I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

5-19-05

Juanita Wynne
Charging Party (signature)

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Day, month, and year)

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

SEE ADDRESS CHECKED BELOW)



1-800-700-2320

EEOC Number: 376-2005-00589

Case Name: Juanita Wynne v. Mc Cormick & Schmick
Restaurant

Date: April 25, 2005

1001 Tower Way, Suite 250
Bakersfield, CA 93309
(661) 395-27291320 E. Shaw Avenue, Suite 150
Fresno, CA 93710
(559) 244-4760611 West Sixth Street, Suite 1500
Los Angeles, CA 90017
(213) 439-67991515 Clay Street, Suite 701
Oakland, CA 94612
(510) 622-29412000 "O" Street, Suite 120
Sacramento, CA 95814
(916) 445-55231350 Front Street, Suite 3005
San Diego, CA 92101
(619) 645-2681121 Spear Street, Suite 430
San Francisco, CA 94105
(415) 904-2303111 North Market Street, Suite 810
San Jose, CA 95113
(408) 277-12772101 East Fourth Street, Suite 255-B
Santa Ana, CA 92705
(714) 558-4266

NOTICE TO COMPLAINANT AND RESPONDENT

This is to advise you that the above-referenced complaint is being referred to the California Department of Fair Employment and Housing (DFEH) by the U.S. Equal Employment Opportunity Commission (EEOC). The complaint will be filed in accordance with California Government Code section 12960. This notice constitutes service pursuant to Government Code section 12962.

No response to the DFEH is required by the respondent.

The EEOC will be responsible for the processing of this complaint. DFEH will not be conducting an investigation into this matter. EEOC should be contacted directly for any discussion of the charge. DFEH is closing its case on the basis of "processing waived to another agency."



NOTICE TO COMPLAINANT OF RIGHT-TO-SUE

Since DFEH will not be issuing an accusation, this letter is also your right-to-sue notice. According to Government Code section 12965, subdivision (b), you may bring a civil action under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The lawsuit may be filed in a State of California Superior or Justice Court. Government Code section 12965, subdivision (b), provides that such a civil action must be brought within one year from the date of this notice. Pursuant to Government Code section 12965, subdivision (d)(1), this one-year period will be tolled during the pendency of the EEOC's investigation of your complaint. You should consult an attorney to determine with accuracy the date by which a civil action must be filed. This right to file a civil action may be waived in the event a settlement agreement is signed. Questions about the right to file under federal law should be referred to the EEOC.

The DFEH does not retain case records beyond three years after a complaint is filed.

Remember: This Right-To-Sue Notice allows you to file a private lawsuit in State court.

Sincerely,



 WANDA J. KIRBY
 Deputy Director
 Enforcement Division

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Juanita Wynne
 c/o Jahan Sagafi
 Lieff, Cabraser, Heimann & Bernstein, LLP
 Embarcadero Center West
 275 Battery Street, 30th Floor
 San Francisco, CA 94111-3339

From: San Francisco District Office - 550
 350 The Embarcadero
 Suite 500
 San Francisco, CA 94105

On behalf of person(s) aggrieved whose identity is
 CONFIDENTIAL (29 CFR § 1601.7(a))

Charge No.	EEOC Representative	Telephone No.
376-2005-00589	Blake C. Wu, Investigator	(415) 625-5600

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA must be filed in federal or state court **WITHIN 90 DAYS** of your receipt of this Notice or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

- More than 180 days have passed since the filing of this charge.
- Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of the charge.
- The EEOC is terminating its processing of this charge.
- The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

- The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court **WITHIN 90 DAYS** of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.
- The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of your charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred **more than 2 years (3 years)** before you file suit may not be collectible.

If you file suit based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission


 for H. Joan Ehrlich,
 District Director


 (Date Mailed)

Enclosure(s)

cc: Chief Executive Officer
 MC CORMICK & SCHMICK REST
 1919 4th Street
 Berkeley, CA 94704

EXHIBIT B

CHARGE OF DISCRIMINATION

AGENCY

CHARGE NUMBER

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

- FEPA
 EEOC

CA DEPT FAIR EMPLOYMENT AND HOUSING

State or local Agency, if any

NAME (indicate Mr., Ms. or Mrs.)

HOME TELEPHONE (include area code)

Dante Lamont Byrd

(510) 978-6086

STREET ADDRESS

CITY, STATE AND ZIP CODE

DATE OF BIRTH

030 Myrtle Street

Oakland, CA 94607

06/02/1976

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY THAT I BELIEVE DISCRIMINATED AGAINST ME OR OTHERS. (If more than one, list under PARTICULARS below.)

NAME

NUMBER OF EMPLOYEES, MEMBERS

TELEPHONE (include area code)

McCormick & Schmick Restaurant

Approx. 150

(510) 845-7771 (Berkeley, CA)

McCormick & Schmick Restaurant Corp.

Approx. 4,500

(503) 459-3622 (Portland, OR)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

919 4th St.

Berkeley, CA 94704

Alameda

20 S.W. Washington #550

Portland, OR 97205

Multnomah County

USE OF DISCRIMINATION BASED ON (Check appropriate boxes)

DATE DISCRIMINATION TOOK PLACE

- RACE COLOR SEX RELIGION NATIONAL ORIGIN
 RETALIATION AGE DISABILITY OTHER (specify)

EARLIEST

LATEST

11/2004

01/2005

CONTINUING ACTION

IF PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

I am an African American male. I have twice applied for a bartending position at McCormick & Schmick in Berkeley and though I was well qualified for the position, I was not hired.

The first time I applied was in November 2004. I went in, filled out an application, and was interviewed on the spot by the General Manager/Bar Manager, a non-African American male. The interview went well but I never heard back about the job.

In January 2005, I learned that McCormick & Schmick was again looking for a bartender, so I went to the restaurant to apply. I was interviewed by the same person and by a white female employee. I was invited to come back and work the bar for a shift, which I did. I spent 4-5 hours working at the bar, for which I was not paid. The General Manager/Bar Manager told me I had done a good job. I did not hear back from him about the job. A week later, I received a call from an employee of McCormick & Schmick, who told me that I did not get the job because I am African American. I never heard from anyone else at the restaurant by either phone or letter.

I believe I have been discriminated against by McCormick & Schmick on the basis of race and color. I bring this charge on behalf of myself and similarly situated minority individuals nationwide discriminated against in hiring as a result of their race or color.

I want this charge filed with both the EEOC and the State or local Agency, if available. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedure.

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

6/23/05

Dante Lamont Byrd
Charging Party (signature)

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Day, month, and year)

RECEIVED

JUN 29 2005

EEOC-SFDO

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

FEPA
 EEOC

370-2005-02177

California Department Of Fair Employment & Housing

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Home Phone No. (Incl Area Code)

Date of Birth

Mr. Dante L. Byrd

(415) 956-1000

06-02-1976

Street Address

City, State and ZIP Code

C/O Jahan C. Sagafi, Esq., 275 Battery St., 30th Floor, San Francisco, CA 94111

Name of Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

MCCORMICK & SCHMICK RESTAURANT

No. Employees, Members

Phone No. (Include Area Code)

101 - 200

(510) 845-7771

Street Address

City, State and ZIP Code

1919 4th Street, Berkeley, CA 94704

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

RACE COLOR SEX RELIGION NATIONAL ORIGIN
 RETALIATION AGE DISABILITY OTHER (Specify below.)

01-2005

CONTINUING ACTION

IF PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

See Attached

RECEIVED

JUN 29 2005

EEOC-SFDO

I declare that this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)

Date

Charging Party Signature

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

(SEE ADDRESS CHECKED BELOW)



TTY # (800) 700-2320

EEOC NUMBER : 370-2005-02177

1001 Tower Way, Suite 250
Bakersfield, CA 93309
H (661) 395-2729

CASE NAME : DANTE L. BYRD v.
MCCORMICK & SCHMICH RESTAURANT

DATE : July 6, 2005

1320 E. Shaw Avenue, Suite 150
Fresno, CA 93710
C (559) 244-4760

NOTICE TO COMPLAINANT AND RESPONDENT

611 West Sixth Street, Suite 1500
Los Angeles, CA 90017
B (213) 439-6799

This is to advise you that the above-referenced complaint is being referred to the California Department of Fair Employment and Housing (DFEH) by the U.S. Equal Employment Opportunity Commission (EEOC). The complaint will be filed in accordance with California Government Code section 12960. This notice constitutes service pursuant to Government Code section 12962.

No response to the DFEH is required by the respondent.

1515 Clay Street, Suite 701
Oakland, CA 94612
M (510) 622-2941

The EEOC will be responsible for the processing of this complaint. DFEH will not be conducting an investigation into this matter. EEOC should be contacted directly for any discussion of the charge. DFEH is closing its case on the basis of "processing waived to another agency."

2000 "O" Street, Suite 120
Sacramento, CA 95814
E (916) 445-5523

NOTICE TO COMPLAINANT OF RIGHT-TO-SUE

Since DFEH will not be issuing an accusation, this letter is also your right-to-sue notice. According to Government Code section 12965, subdivision (b), you may bring a civil action under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The lawsuit may be filed in a State of California Superior or Justice Court. Government Code section 12965, subdivision (b), provides that such a civil action must be brought within one year from the date of this notice. Pursuant to Government Code section 12965, subdivision (d)(1), this one-year period will be tolled during the pendency of the EEOC's investigation of your complaint. You should consult an attorney to determine with accuracy the date by which a civil action must be filed. This right to file a civil action may be waived in the event a settlement agreement is signed. Questions about the right to file under federal law should be referred to the EEOC.

1350 Front Street, Suite 3005
San Diego, CA 92101
D (619) 645-2681

121 Spear Street, Suite 430
San Francisco, CA 94105
A (415) 904-2303

111 North Market Street, Suite 810
San Jose, CA 95113
G (408) 277-1277

2101 East Fourth Street, Suite 255-B
Santa Ana, CA 92705
K (714) 558-4266

The DFEH does not retain case records beyond three years after a complaint is filed.

Remember: This Right-To-Sue Notice allows you to file a private lawsuit in State court.

Sincerely,

WANDA J. KIRBY
Deputy Director
Enforcement Division

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Dante L. Byrd
C/O Jahan C. Sagafi, Esq.
275 Battery St., 30th Floor
San Francisco, CA 94111-3339

From: San Francisco District Office - 550
350 The Embarcadero
Suite 500
San Francisco, CA 94105

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR § 1601.7(a))

Charge No.	EEOC Representative	Telephone No.
370-2005-02177	Blake C. Wu, Investigator	(415) 625-5600

NOTICE TO THE PERSON AGGRIEVED:

(See also the additional information enclosed with this form.)

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA must be filed in federal or state court **WITHIN 90 DAYS** of your receipt of this Notice or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

- More than 180 days have passed since the filing of this charge.
- Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of the charge.
- The EEOC is terminating its processing of this charge.
- The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

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- The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of your charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred **more than 2 years (3 years)** before you file suit may not be collectible.

If you file suit based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Enclosure(s)

Michael J. Ehrlich July 28 2006
for H. Joan Ehrlich, District Director (Date Mailed)

cc: MCCORMICK & SCHMICK RESTAURANT
c/o JoAnna Brooks
Jackson Lewis LLP
199 Fremont St., 10th Floor
San Francisco, CA 94105