

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	
and)	
)	
BRANDY ALEXANDER,)	
MARY BETH SOUDERS,)	
RACHEL NUNLEY,)	
ERIN KIRK,)	Civil Action 4:03CV00107 HEA
NATOSHIA HANNEKEN,)	
ERIN BRONSKILL, and)	
BREANNA JOHNSON,)	
)	
Plaintiffs/Intervenors,)	
vs.)	
)	
MIDAMERICA HOTELS CORPORATION,)	
NORTHWEST DEVELOPMENT COMPANY)	
d/b/a BURGER KING, and NATHAN KRAUS,)	
)	
Defendants.)	

CONSENT DECREE

Plaintiff Equal Employment Opportunity Commission (“EEOC”) instituted this action against Defendant Midamerica Hotels Corporation (“Midamerica”) alleging that six female employees, Mary Beth Souders, Rachel Nunley, Erin Kirk, Natoshia Hanneken, Erin Bronskill, and Brandy Alexander, were subjected to sexual harassment by their manager, Nathan Kraus, at a Burger King-franchised restaurant located in Peerless Park, Missouri (the “Peerless Park Restaurant” in violation of Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 (“Title VII”). Pursuant to the franchise agreement, Northwest Development Company (“Northwest”)

owns and operates the Peerless Park restaurant. Each of these female employees (“Plaintiffs-Intervenors”) was permitted by the Court to intervene, through private counsel, in the EEOC’s suit to assert claims against Midamerica under Title VII and the Missouri Human Rights Act (“MHRA”), and to assert certain state claims against individual Defendant Nathan Kraus (“Kraus”). The Court permitted the EEOC and the Plaintiffs-Intervenors to file first amended complaints adding Northwest and later permitted the EEOC to file a second amended complaint seeking relief for Breanna Johnson, a seventh alleged victim of sexual harassment by Nathan Kraus at the Peerless Park Restaurant. (Hereinafter, Midamerica and NWD are referred to as “Defendants”) Johnson also was permitted to intervene in the EEOC’s lawsuit. The Court has ruled that Midamerica and Northwest as a matter of law constitute a single employer of the individual Plaintiff-Intervenors.

For purposes of settlement and compromise only, and with no admission of liability by Midamerica or Northwest, the parties have advised the Court that they wish to resolve the instant controversy without the expense, delay, and burden of further litigation;

The parties acknowledge that the settlement of this lawsuit and entry of this Consent Decree, with Defendants’ consent, is not and shall not be construed as an admission that Defendants have violated Title VII, the MHRA, or any state or federal law, nor shall it be construed as or deemed an admission by Defendants that they have any liability whatsoever to Plaintiff-Intervenors or the Plaintiff EEOC, such liability being hereby expressly denied.

THEREFORE, it is the finding of this Court, made on the pleadings, the record as a whole, and upon agreement of the parties, without an admission or finding of liability on the part of Northwest or Midamerica, that (i) this Court has jurisdiction over the parties to and the subject matter of this action; (ii) the requirements of Title VII, the MHRA, and any and all other relevant federal and state laws (“relevant laws”), will be carried out by the implementation of this Decree; (iii) this Decree is intended to and does resolve all matters in controversy in this lawsuit among all the parties; and (iv) the terms of this Decree constitute a fair and equitable settlement of all issues in this lawsuit.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

I. General Provisions

1. This Consent Decree is being entered with the consent of the parties for purposes of settlement and shall not constitute an adjudication on the merits of this lawsuit or be construed as an admission by Midamerica or Northwest of any violation of the relevant laws, or any other executive order, law, rule or regulation dealing with sex discrimination or sexual harassment in employment.

2. Midamerica and Northwest shall not discriminate against any employee by subjecting such employee to sex discrimination or sexual harassment at any restaurant owned and/or operated by Midamerica and/or Northwest.

3. Midamerica and Northwest shall not discriminate against any employee because such employee has opposed any practices alleged in this lawsuit to be unlawful under the relevant laws, has participated in an investigation related to this lawsuit, has participated in this lawsuit, and/or has benefited in any way as a result of this Consent Decree.

II. Relief for Plaintiff-Intervenors

1. Defendants have entered into a voluntary settlement agreement (the Settlement Agreement) with respect to certain sums to be paid to Plaintiff-Intervenors Mary Beth Souders, Rachel Nunley, Erin Kirk, Natoshia Hanneken, Erin Bronskill, Brandy Alexander, and Breanna Johnson and their attorneys. The financial terms of the the Settlement Agreement are shown in Exhibit C. The parties acknowledge that these sums have been paid to Plaintiff-Intervenors and their attorneys, and that no further sums are due and owing the Plaintiff-Intervenors, and/or their attorneys under the Settlement Agreement.

2. With the exception of the relief provided for in this Consent Decree, the Plaintiff EEOC hereby dismisses, with prejudice, any and all claims against Defendants for attorneys fees, expenses, costs, back pay, front pay, compensatory damages, punitive damages, and any other relief, sought by Plaintiff EEOC on behalf of Plaintiff-Intervenors or on behalf of Plaintiff EEOC.

3. Within thirty (30) days of the Court's entry of the Consent Decree, Midamerica and Northwest shall direct the Director of Human Resources to prepare and sign letters of reference in the form shown in Exhibits A-1 through A-7 on appropriate company letterhead, and to make copies of such signed letters part of the respective permanent employment records of Plaintiff-Intervenors Mary Beth Souders, Rachel Nunley, Erin Kirk, Natoshia Hanneken, Erin Bronskill, Brandy Alexander, and Breanna Johnson.

4. In the case of any inquiries by prospective employers regarding Mary

Beth Souders, Rachel Nunley, Erin Kirk, Natoshia Hanneken, Erin Bronskill, Brandy Alexander, and/or Breanna Johnson, Midamerica and Northwest shall limit their response(s) to the information contained in the respective aforementioned letter(s) as applicable, and copies of such letters shall be made available to any such prospective employers upon request.

5. Within thirty (30) days of the Court's entry of the Consent Decree, Midamerica and Northwest shall mail copies of the signed letters described in paragraph II.3, above, to William E. Moench & Associates, Clifton Pointe Building, 2711 Clifton, St. Louis, MO 63139, and to Rebecca S. Stith, Senior Trial Attorney, Equal Employment Opportunity Commission, St. Louis District Office, Room 8.100, 1222 Spruce St., St. Louis, MO 63103.

III. Injunctive Relief

1. Midamerica and Northwest shall not re-hire Defendant Nathan Kraus.

2. Within thirty (30) days of the Court's entry of the Consent Decree, Midamerica and Northwest shall distribute the sexual harassment policy, the complaint procedure, and information about the hotline to all employees. This notice will be in the form of a letter, on company letterhead, from the Chief Executive Officer and the Chief Operating Officer, with the policy and procedure attached to or incorporated in such letter. Midamerica and Northwest will obtain a sign-off sheet from each employee stating that the employee has received these materials. Simultaneously with the distribution of such letter, Midamerica and Northwest shall mail a copy of such letter to Rebecca S. Stith, Senior Trial Attorney, Equal Employment Opportunity Commission, St. Louis District Office, Room 8.100, 1222 Spruce St., St. Louis, MO 63103.

3. Within thirty (30) days of their date of hire, Midamerica and Northwest shall distribute the sexual harassment policy, the complaint procedure, and information about the hotline to each newly-hired employee. This notice will be in the form of a letter, on company letterhead, from the Chief Executive Officer and the Chief Operating Officer, with the policy and procedure attached to or incorporated in such letter. Midamerica and Northwest will obtain a sign-off sheet from each employee stating that the employee has received these materials.

4. Within thirty (30) days of the Court's entry of the Consent Decree, Midamerica and Northwest shall develop and post a new poster in all of their restaurants on the employee bulletin board or similar location, which shall provide information about the sexual harassment policy and the complaint procedure. Such poster shall include a more conspicuous notice and explanation of the hotline. Simultaneously with the posting of such poster, Midamerica and Northwest shall mail a copy of such poster to Rebecca S. Stith, Senior Trial Attorney, Equal Employment Opportunity Commission, St. Louis District Office, Room 8.100, 1222 Spruce St., St. Louis, MO 63103.

5. Within thirty (30) days of the Court's entry of the Consent Decree, Midamerica and Northwest shall place the hotline number and an explanation of the sexual harassment policy on all employee paychecks for distribution to employees. Simultaneously with the first distribution of such paycheck to employees Midamerica and Northwest shall mail a copy of a prototype paycheck to Rebecca S. Stith, Senior Trial Attorney, Equal Employment Opportunity Commission, St. Louis District Office, Room 8.100, 1222 Spruce St., St. Louis, MO 63103.

6. Within sixty (60) days of the Court's entry of the Consent Decree,

Midamerica and Northwest shall cause Jerry Barker, JoAnn Crane, and Kim Dorrough to attend eight (8) hours of sexual harassment training.

7. Within ninety (90) days of the entry of the Consent Decree, Midamerica and Northwest shall cause all Regional Managers, District Managers, General Managers, and Assistant Managers to attend two (2) hours of sexual harassment training.

8. Within sixty (60) days of their date of hire or promotion to a management position, Midamerica and Northwest shall cause all newly hired Regional Managers, District Managers, General Managers, and Assistant Managers to attend two (2) hours of sexual harassment training.

9. Midamerica and Northwest shall keep records of any and all internal complaints, including hotline reports, of possible sexual harassment received during the term of the Consent Decree, and shall retain such records for a period of three years from the date of receipt of each such complaint.

IV. Posting of Required Notices

1. Within thirty (30) days of the Court's entry of the Consent Decree, Midamerica and Northwest shall post the notice required by 29 CFR 1601.30 and the notice attached to the Consent Decree as Exhibit B in all of their restaurants on the employee bulletin board or other similar location.

V. Reporting and Monitoring

1. Within six (6) months of the entry of the Consent Decree, Midamerica and Northwest shall provide written notice to the EEOC of compliance with the requirements set forth in Sections II, III, and IV of the Consent Decree to Rebecca S. Stith, Senior

Trial Attorney, Equal Employment Opportunity Commission, St. Louis District Office, Room 8.100, 1222 Spruce St., St. Louis, MO 63103. Such notice shall include copies of any and all documents referenced or described in Sections II, III, and IV not already provided to the EEOC.

2. During the term of the Consent Decree, Midamerica and Northwest shall provide written notice to Rebecca S. Stith, Senior Trial Attorney, Equal Employment Opportunity Commission, St. Louis District Office, Room 8.100, 1222 Spruce St., St. Louis, MO 63103, of all written internal complaints or written hotline reports regarding possible sexual harassment at the Peerless Park Restaurant. Such notice shall include the name of the person making the complaint, the name of the alleged harasser, the nature of the complaint, and the resolution of the complaint following the company's investigation, and shall be provided within thirty (30) days of the date that a written complaint is received or, in the case of a verbal complaint, the date that the complaint is reduced to writing.

3. During the term of the Consent Decree, Midamerica and Northwest shall allow representatives of the EEOC to review their compliance with Sections III.4 and IV.1 of the Consent Decree by inspecting the premises of Burger King Restaurants owned and/or operated by Midamerica and/or Northwest. Such review of compliance shall be initiated by written notice to the attorney of record for Midamerica and Northwest at least five (5) business days in advance of any such inspection. Defendants have the right to have their attorney of record present during any such inspection.

VI. Term and Effect of Decree

1. By entering into this Consent Decree the parties do not intend to resolve

any charges of discrimination other than the charges filed by the Plaintiffs-Intervenors that created the jurisdictional foundation for the Complaints filed in this case.

2. This Decree shall be binding upon the parties hereto, their successors and assigns.

3. This Decree shall be in force for a period of two (2) years. During the Consent Decree's term, the Court shall retain jurisdiction of this case for purposes of enforcement of the Consent Decree. The term of the Consent Decree can be extended only upon a showing that Defendants have substantially failed to comply with a material term of the Consent Decree after having been given notice of any such failure to comply and a reasonable opportunity to correct any such non-compliance.

4. The parties shall bear their own costs and attorneys' fees.



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St. Louis, Missouri 63103
Tel (314) 539-7917
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Attorneys for Plaintiff Equal Employment
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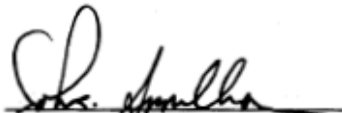
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Attorneys for Plaintiffs/Intervenors

DATE: _____

UNITED STATES DISTRICT JUDGE

EXHIBIT A-1 [Company letterhead]

To Whom It May Concern:

Brandy Alexander was employed as an hourly worker at the Burger King Restaurant in Peerless Park, Missouri, from _____ to _____. Her job duties included taking customer order, working at the counter register and drive-thru register, and preparing food. Ms. Alexander's performance was satisfactory in all respects.

By: _____
Director, Human Resources

EXHIBIT A-2 [Company letterhead]

To Whom It May Concern:

Natoshia Hanneken was employed as an hourly worker at the Burger King Restaurant in Peerless Park, Missouri, from _____ to _____. Her job duties included taking customer order, working at the counter register and drive-thru register, and preparing food. Ms. Hanneken's performance was satisfactory in all respects.

By: _____
Director, Human Resources

EXHIBIT A-3 [Company letterhead]

To Whom It May Concern:

Erin Kirk was employed as an hourly worker at the Burger King Restaurant in Peerless Park, Missouri, from _____ to _____. Her job duties included taking customer order, working at the counter register and drive-thru register, and preparing food. Ms. Kirk's performance was satisfactory in all respects.

By: _____
Director, Human Resources

EXHIBIT A-4 [Company letterhead]

To Whom It May Concern:

Erin Bronskill was employed as an hourly worker at the Burger King Restaurant in Peerless Park, Missouri, from _____ to _____. Her job duties included taking customer order, working at the counter register and drive-thru register, and preparing food. Ms. Bronskill's performance was satisfactory in all respects.

By: _____
Director, Human Resources

EXHIBIT A-5 [Company letterhead]

To Whom It May Concern:

Rachel Nunley was employed as an hourly worker at the Burger King Restaurant in Peerless Park, Missouri, from _____ to _____. Her job duties included taking customer order, working at the counter register and drive-thru register, and preparing food. Ms. Nunley's performance was satisfactory in all respects.

By: _____
Director, Human Resources

EXHIBIT A-6 [Company letterhead]

To Whom It May Concern:

Mary Beth Souders was employed as an hourly worker at the Burger King Restaurant in Peerless Park, Missouri, from _____ to _____. Her job duties included taking customer order, working at the counter register and drive-thru register, and preparing food. Ms. Souders' performance was satisfactory in all respects.

By: _____
Director, Human Resources

EXHIBIT A-7 [Company letterhead]

To Whom It May Concern:

Breanna Johnson was employed as an hourly worker at the Burger King Restaurant in Peerless Park, Missouri, from _____ to _____. Her job duties included taking customer order, working at the counter register and drive-thru register, and preparing food. Ms. Johnson's performance was satisfactory in all respects.

By: _____
Director, Human Resources

EXHIBIT B [Company letterhead]

NOTICE TO EMPLOYEES

This notice is being posted pursuant to a Consent Decree entered to resolve claims of sexual harassment in the case of Equal Employment Opportunity Commission, et al. v. Midamerica Hotels Corporation, Northwest Development Company, d/b/a Burger King, et al., 4:03CV00107 HEA, on file in the United States District Court for the Eastern District of Missouri.

Federal and Missouri laws prohibit discrimination against any employee or applicant for employment because of the individual's disability, race, national origin, color, religion, sex, or age (forty and over) with respect to hiring, promotion, firing, compensation, or other terms, conditions or privileges of employment. Such laws also prohibit retaliation against employees because they have reported or opposed practices that they believe discriminate on the basis of disability, race, national origin, color, religion, sex, or age (40 and over), have filed charges with the Equal Employment Opportunity Commission ("EEOC") or other government agency, or have participated in or cooperated with an investigation by the EEOC or other government agency.

In particular, Federal and Missouri laws prohibit an employer from discriminating against employees based on sex, including the sexual harassment of employees. Midamerica and Northwest support and will comply with such laws and, further, will not take any action against any employees for exercising their rights under such laws. Midamerica and Northwest will not tolerate sex discrimination, sexual harassment, or retaliation against any employees who report or oppose sex discrimination or sexual harassment.

Employees are free to report instances of possible sex discrimination or sexual harassment to any management official at any time. Midamerica and Northwest have established policies and procedures to promptly investigate such reports and to protect the persons making such reports from retaliation. Employees also are free to make inquiries or complaints about possible sex discrimination, sexual harassment, or retaliation to the EEOC, St. Louis District Office, 1222 Spruce, 8th Floor, Room 8.100, St. Louis, Missouri, 63103, 314-539-7800.

EXHIBIT C

Pursuant to a settlement agreement (the "Settlement Agreement"), the parties have agreed to settle this case. The total amount paid under the Settlement Agreement to the Plaintiff-Intervenors and their attorneys is:

\$400,000.00 (four hundred thousand dollars).

The payment of the foregoing to Plaintiff-Intervenors, and the execution of the Settlement Agreement in their favor, is not, and shall not be construed as, an admission that Defendants have any liability to Plaintiff EEOC or to Plaintiff-Intervenors, which liability Defendants expressly deny.