

HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

v.)

JACK IN THE BOX INC.)

Defendant.)

AMBER GALLARDO, LINDA)
GALLARDO, MICHELLE GRANNIS,)
ROMITA PRASAD AND ENA)
WILLIAMS,)

Plaintiffs in Intervention.)

CIVIL ACTION NO. C03-814P

CONSENT DECREE AND
[Proposed] ORDER

I. INTRODUCTION

1. This action originated with discrimination charges filed by Amber Gallardo, Linda Gallardo, Michelle Grannis, Romita Prasad and Ena Williams (“Charging Parties” or “Plaintiffs in Intervention”) with the U.S. Equal Employment Opportunity Commission, Seattle District Office (“EEOC”). The Charging Parties alleged that Jack in the Box Inc. discriminated against them on the basis of sex by subjecting them to sexual harassment and retaliation for their complaints of discrimination, in violation of §703(a) of Title VII of the Civil Rights Act of

U.S. Equal Employment Opportunity Commission
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1 1964, as amended in 1991, 42 U.S.C. § 2000e-2(a) and § 704(a) of Title VII of the Civil Rights
2 Act of 1964, as amended in 1991, 42 U.S.C. § 2000e-3(a).

3 2. The EEOC investigated the Charging Parties' allegations. The EEOC sent Jack in the
4 Box Inc. a Letter of Determination with findings of reasonable cause that Jack in the Box Inc.
5 had violated Title VII in certain respects.

6 3. The Commission filed this lawsuit on April 22, 2003 in the United States District
7 Court for the Western District of Washington on behalf of the Charging Parties. Jack in the Box
8 Inc. filed its Answer and Affirmative Defenses to the lawsuit on May 12, 2003. The Charging
9 Parties filed a motion for intervention on May 15, 2003. The Court granted the motion to
10 intervene on May 16, 2003.

11 4. The EEOC, Plaintiffs in Intervention and Jack in the Box Inc. want to conclude all
12 claims arising out of the above charges without expending further resources in contested
13 litigation.

14 **II. NON-ADMISSION OF LIABILITY AND NON-DETERMINATION BY THE COURT**

15 5. This Consent Decree is not an admission of wrongdoing or an adjudication or finding
16 on the merits of the case.

17 **III. SETTLEMENT SCOPE**

18 6. This Consent Decree together with the agreement and general releases for Ena
19 Williams, Romita Prasad, Linda Gallardo, Amber Gallardo and Michelle Grannis represent the
20 final and complete resolution of all Title VII allegations of unlawful employment practices
21 contained in: (1) the charges filed by the Charging Parties with the EEOC; (2) the EEOC's
22 administrative determinations concerning the Charging Parties and Jack in the Box Inc.; (3) the
23 Complaint filed herein by the EEOC on behalf of the Charging Parties; and (4) the Complaint
24 filed herein by the Charging Parties, including all claims by the parties for attorney fees and
25 costs.

1 **IV. JURISDICTION AND VENUE**

2 7. Jurisdiction is vested in this Court pursuant to 28 U.S.C. §§451, 1331, 1337, 1343 and
3 1345. This action is authorized and instituted pursuant to Sections 706(f)(1) and (3) of Title VII
4 of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-5(f)(1) and (3) ("Title VII"),
5 and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a; and the Washington Law
6 Against Discrimination, RCW 49.60.010 *et seq.*

7 **V. DEFINITION OF TERMS**

8 For the purposes of this Consent Decree, the following definitions shall apply:

9 8. "The Effective Date of the Consent Decree" is the date the United States District Court
10 for the Western District of Washington at Seattle enters the Consent Decree and (Proposed)
11 Order of Dismissal.

12 9. Unless otherwise indicated, the word "days" refers to calendar days.

13 10. "Formal or Informal Complaints" includes any complaint of discrimination,
14 harassment or retaliation, whether written or oral, made to a manager or in compliance with Jack
15 in the Box discrimination policy.

16 **VI. MONETARY RELIEF**

17 11. In settlement of the EEOC and Charging Parties claims in this lawsuit, Jack in the
18 Box Inc. has agreed to pay a total of Three-Hundred-Thousand dollars (\$300,000) to Ena
19 Williams, Linda Gallardo, Amber Gallardo, Michelle Grannis and Romita Prasad.

20 **VII. INJUNCTIVE AND OTHER RELIEF**

21 Jack in the Box Inc. as hereinafter referenced refers to store numbers 8438, 8307, 8310,
22 8314, 8321, 8423, 8470, 8475, 8308, 8417, 8437, 8452, 8455, 8457 and 8466 unless a specific
23 store is referenced.

24 **A. Compliance with Title VII**

25 12. Jack in the Box Inc. reaffirms its commitment to comply with Title VII. To further
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1 this commitment, the company shall monitor the affirmative obligations of this Consent Decree.
2 The terms of this Consent Decree apply to all applicants to and employees of Jack in the Box Inc.
3 as defined above.

4 13. Jack in the Box Inc. will not retaliate against any applicant or employee for opposing
5 a practice deemed unlawful by Title VII or for making a charge, testifying, assisting, or
6 participating in any investigation, proceeding, or hearing associated with this action.

7 14. Jack in the Box Inc. and managers are hereby enjoined from engaging in personnel
8 practices which unlawfully discriminate against applicants and employees in violation of Title
9 VII. In recognition of its obligations under Title VII.

10 **B. Employee Records**

11 15. Defendant will not disclose any information or make references to any charges of
12 discrimination or this lawsuit in responding to employment reference requests for information
13 about the Charging Parties. In response to any inquiries other than through a subpoena or in
14 response to a inquiry by a governmental agency regarding the Charging Parties, Jack in the Box
15 Inc. shall provide employment references that include only dates of employment and positions
16 held.

17 16. Defendant affirms that there are no references to any charge of discrimination or this
18 lawsuit in the Charging Parties' personnel files. Defendant will not add any information or
19 references to Charging Parties' personnel files or records regarding their charges of
20 discrimination and this lawsuit after the entry of this Consent Decree. Files containing
21 information about Charging Parties that have been developed during the subject litigation will be
22 maintained at the offices of Defendant's counsel, Jackson Lewis LLP or the legal department at
23 Jack in the Box Inc. and/or records management department at Jack in the Box Inc. Jack in the
24 Box Inc. will make Charging Parties' personnel files available for inspection by counsel for
25 Charging Parties by contacting Jack in the Box Inc. Legal Department at 9330 Balboa Avenue

1 San Diego CA 92123-1516.

2 **C. Retention of Sexual Harassment Consultant to Develop Policy Against Sexual**
3 **Harassment**

4 17. Jack in the Box Inc. will maintain a written equal employment opportunity policy
5 which sets forth the requirements of federal laws against employment discrimination and
6 specifically those provisions which make sexual harassment unlawful and which make it
7 unlawful to retaliate against any current or former employee for opposing any practice made
8 unlawful by Title VII. The policy maintained will set forth the concepts embodied by the
9 following statement:

10 Jack in the Box Inc. is firmly committed to developing and
11 maintaining a zero-tolerance policy concerning sex discrimination,
12 sexual harassment and retaliation against individuals who report
13 discrimination or harassment in the company's workplace; to
14 swiftly and firmly responding to any acts of sex discrimination,
15 sexual harassment or retaliation of which the company becomes
16 aware; to implementing discipline that is designed to strongly deter
17 future acts of sex discrimination, sexual harassment or retaliation;
18 to eradicating any vestiges of a work environment that is sexually
19 hostile to individuals; and to actively monitoring its workplace in
20 order to ensure tolerance, respect and dignity for all people.

21 18. The policies maintained by Jack in the box will ensure that the following policies,
22 procedures and practices are in effect:

23 (a) Sex Discrimination and Harassment Policy.

- 24 (i) provide clear definitions and examples of prohibited sex
25 discrimination, sexual harassment, and retaliation;
26 (ii) provide for substantial discipline for incidents of sex discrimination,
27 sexual harassment, and/or retaliation;
28 (iii) continue its practice of accepting complaints of sex discrimination,
sexual harassment and/or retaliation will be accepted by Jack in the Box
Inc. in writing and orally;

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1 (iv) provide for a full and effective investigation of all complaints as well
2 as appropriate remedies for handling complaints upon an investigation
3 determination up to and including termination; and

4 (v) indicate that, promptly upon the conclusion of its investigation of a
5 complaint, Jack in the Box Inc. will communicate to the complaining party
6 the results of the investigation determination.

7 (b) Complaint Procedures.

8 (i) Jack in the Box Inc. agrees to maintain a complaint procedure designed
9 to encourage employees to come forward with complaints about violations
10 of its sex discrimination, sexual harassment and retaliation policy. As part
11 of this policy, Jack in the Box Inc. agrees that it shall provide its
12 employees with convenient and reliable mechanisms for reporting
13 incidents of sex discrimination, sexual harassment and retaliation. Jack in
14 the Box Inc will make every effort to keep complaints confidential to the
15 extent possible.

16 (ii) Jack in the Box Inc. agrees that it shall permit complaining parties to
17 be interviewed by Jack in the Box Inc. or Jack in the Box Upper
18 Management or Jack in the Box Human Resources Personnel about their
19 complaints in such a manner that permits the complaining party, at such
20 party's election, to remain inconspicuous to all of the employees in such
21 party's work area. Jack in the Box Inc. agrees that its complaint procedure
22 shall not impose upon individuals seeking to make a complaint alleging
23 sex discrimination, sexual harassment and/or retaliation any requirements
24 that are more burdensome than are imposed upon individuals who make
25 other complaints of comparable gravity.

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1 (iii) Jack in the Box Inc. agrees that it shall ensure that its policies and
2 procedures provide that complaint handling and disciplinary procedures
3 regarding all complaints of sex discrimination, sexual harassment and/or
4 retaliation are investigated and addressed promptly. Jack in the Box Inc.
5 will provide for a full and effective investigation of all complaints as well
6 as appropriate remedies for handling complaints upon an investigation
7 determination up to and including termination. Jack in the Box will
8 promptly upon the conclusion of its investigation of a complaint, will
9 communicate to the complaining party the results of the investigation
10 determination.

11 (iv) Jack in the Box Inc. agrees that it shall make its best effort to ensure
12 that appropriate remedial action is taken to resolve complaints and to
13 avoid the occurrence of incidents of sex discrimination, sexual harassment
14 and/or retaliation. Jack in the Box Inc. further agrees that it shall provide
15 for appropriate discipline including but not limited to, reprimands,
16 demotion or termination, as possible consequences for violations of its
17 sexual harassment policy.

18 (c) Policies Designed To Promote Supervisor Accountability.

19 (i) Jack in the Box Inc. agrees that it shall impose discipline designed to
20 stop any unlawful behavior, up to and including reprimands, demotion or
21 termination upon any supervisor or manager who engages in sexual
22 harassment or knowingly permits any such conduct to occur in his or her
23 work area or among employees under his or her supervision, who retaliates
24 against any person who complains or participates in any investigation or
25 proceeding concerning any such conduct. Jack in the Box Inc. shall
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1 communicate this policy to all of its supervisors and managers.

2 (ii) Jack in the Box Inc. agrees that it shall continue to advise all managers
3 and supervisors of their duty to actively monitor their work areas to ensure
4 employees' compliance with the company's sex discrimination and
5 harassment policy, and to report any incidents and/or complaints of sexual
6 harassment and/or retaliation of which they become aware to the
7 department charged with handling such complaints or take other
8 appropriate action.

9 (iii) Jack in the Box Inc. agrees that, in evaluating the performance and
10 determining the compensation of managers and supervisors, it will take
11 into account whether supervisors and managers take effective action to
12 ensure appropriate behavior/policies are executed or followed in their
13 restaurants.

14 (d) Sexual Harassment Training.

15 (i) Jack in the Box Inc. agrees that it shall provide mandatory harassment,
16 discrimination and retaliation training to all employees in stores 8438,
17 8307, 8310, 8314, 8321, 8423, 8470 and 8475; Jack in the Box Inc. agrees
18 that it shall provide mandatory harassment, discrimination, and retaliation
19 training to all employees in stores 8308, 8417, 8437, 8452, 8455, 8457,
20 8466 who worked for Jack in the Box, Inc. prior to April 2003; and to
21 provide mandatory harassment, discrimination, and retaliation training to
22 all new employees during employee orientation. This training may be
23 provided to employees through an interactive video process. The EEOC is
24 entitled to pre-screen the interactive video training prior to its
25 administration. Jack in the Box Inc. agrees to require the individual
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1 holding the position of Human Resource Specialist in January 2002, the
2 individual holding the position of Regional Human Resource Manager in
3 January 2002, and the individual holding the position of Area Manager
4 over store 8438 in January 2002, to undergo training sessions with a
5 maximum of three attendees administered by either Ray Pepper, Jim
6 Stubblefield or Jim Spencer. These training sessions must address issues
7 of discrimination, harassment, retaliation and investigating complaints of
8 the same. The sessions must be at least one hour in duration.

9 **D. Reporting**

10 19. Six months following the entry of this Decree and every six months thereafter for the
11 duration of the Decree, Jack in the Box Inc. will send the EEOC a written report of individuals
12 who, during the prior six- month period, complained of sexual harassment to Human Resources,
13 to the Ethics Helpline, to a governmental agency or in writing to any manager, along with an
14 explanation as to Defendant's response to these complaints. Jack in the Box Inc. also shall
15 affirm steps taken to comply with all other terms of the Decree including affirmation that
16 employees listed in Paragraph 18 (d)(i) are undergoing training as provided in Paragraph 18
17 (d)(i).

18 20. Jack in the Box Inc. shall submit a final report to EEOC 30 days before the Consent
19 Decree expires, including a statement that it has complied with all the terms of this Consent
20 Decree.

21 **E. Posting**

22 21. Within two (2) weeks after entry of this Decree, Jack in the Box Inc. shall
23 post a notice in the form of Exhibit A attached to this Decree (the English and Hispanic forms
24 within Exhibit A which correspond to the matching store number) in prominent and conspicuous
25 locations in or near the employee lunchroom or other place within Jack in the Box Inc. premises
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1 where employees tend to gather. The notice shall remain posted for the duration of this Decree.
2 In the event that the persons and/or departments to whom individuals should make complaints
3 alleging discrimination or retaliation change during the term of the Decree, such that the
4 information contained on the notice is no longer accurate, Jack in the Box Inc. shall immediately
5 notify the EEOC's legal department so it may prepare a new notice that contains the correct
6 information. Jack in the Box Inc. shall upon receipt of the new notice promptly replace the old
7 notices with the revised notices. Jack in the Box Inc. shall maintain a copy of this Decree in its
8 Personnel Office for any employee who wishes to review it. Jack in the Box Inc. shall notify its
9 managers, that if they become aware or if they are informed, that the notice has been prematurely
10 removed, that manager shall re-post the notice within 48 hours.

11 **VIII. ENFORCEMENT**

12 22. If the EEOC concludes that Jack in the Box Inc. has breached this
13 agreement, it may bring an action in the United States District Court for the Western
14 District of Washington at Seattle to enforce this Consent Decree. Before bringing an
15 action for breach of the Decree, the EEOC shall first give the company a 30-day written notice
16 through its legal department at 9330 Balboa Avenue San Diego CA 92123-1516, with such
17 period to commence on the date written notice is received. The EEOC and the company shall
18 use that 30-day period for good faith efforts to resolve the matter.

19 **IX. RETENTION OF JURISDICTION**

20 23. The United States District Court for the Western District of Washington at
21 Seattle shall retain jurisdiction over this matter for the duration of the Decree.

22 **X. DURATION AND TERMINATION**

23 24. This Decree shall be in effect for three (3) years, commencing with the date the Decree
24 is filed for Jack in the Box store number 8438. For stores 8307, 8310, 8314, 8321, 8423, 8470,
25 8475, 8308, 8417, 8437, 8452, 8455, 8457, and 8466, this Decree shall be in effect for two (2)

1 years commencing with the date the Decree is filed. If the EEOC serves notices under paragraph
2 22 of any breach of the decree or if any complaint is filed with any governmental agency during
3 the duration of this decree for stores 8307, 8310, 8314, 8321, 8423, 8470, 8475, 8308, 8417,
4 8437, 8452, 8455, 8457, or 8466, the Decree shall be extended for the applicable store for an
5 additional one (1) year. If the EEOC petitions the Court for breach of agreement, and the Court
6 finds the company to be in violation of the terms of the Consent Decree, the Court may extend
7 this Consent Decree.

8 **XI. CONCLUSION**

9 25. The provisions of this Consent Decree are not binding on the parties until
10 the authorized representatives of each party sign and the court enters the consent
11 decree in the court.

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13 DATED this 3rd day of June, 2004.

14
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ORDER

The Court, having considered the foregoing stipulated agreement of the parties, HEREBY ORDERS THAT the foregoing Consent Decree be, and the same hereby is, approved as the final decree of this Court in full settlement of this action. This lawsuit is hereby dismissed with prejudice and without costs or attorneys' fees to any party. The Court retains jurisdiction of this matter for purposes of enforcing the Consent Decree approved herein.

DATED this _____ day of _____, 2004.

Marsha J. Pechman
UNITED STATES DISTRICT JUDGE

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