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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity Commission,

Plaintiff,

vs.

Desert Subway, Inc.,

Defendant.

CIV 02-1504 PCT MHM

CONSENT DECREE

The United States Equal Employment Opportunity Commission (the “Commission” or “EEOC”) filed this action against Desert Subway, Inc., (“Desert Subway” or “Defendant”) to enforce Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991. In the Complaint, the Commission alleged that the Defendant discriminated against Cara Shepherd in violation of Title VII, 42 U.S.C. § 2000e-2(a) because of her sex by failing reducing her hours of work, subjecting her to a hostile work environment, and constructively discharging her because she was pregnant.

In response to the Complaint filed by the EEOC, Desert Subway filed an Answer to the Complaint, in which it categorically denied each claim alleged by the EEOC.

1 Without Defendant admitting any fault or liability, in the interest of resolving
2 this matter, and as a result of having engaged in settlement negotiations, the
3 Parties have agreed that this action should be finally resolved by entry of this
4 Decree. The Parties do not object to the jurisdiction of the Court over this action
5 and waive their rights to a hearing and the entry of findings of fact and
6 conclusions of law.

7 It is hereby **ORDERED, ADJUDGED AND DECREED:**

8 1. This Decree resolves all claims of the Commission against
9 Defendant, compensatory and punitive damages, interest, injunctive relief,
10 attorney's fees, and costs arising out of the issues in this lawsuit.

11 **INJUNCTION**

12 2. Defendant and their officers, agents, employees, successors,
13 assigns, and all persons in active concert or participation with it, both at the time
14 that this Decree becomes effective and for the duration of this Decree, are
15 permanently enjoined from: (a) unlawfully discriminating against any employee or
16 applicant because of her sex, pregnancy; and (b) retaliating against any
17 employee because he or she: (i) opposes or opposed discriminatory practices
18 made unlawful by Title VII; (ii) files or filed a charge of discrimination or assists,
19 assisted, participates, or participated in the filing of a charge of discrimination; or
20 (iii) assists, assisted, participates or participated in an investigation or proceeding
21 brought under the Federal or State laws prohibiting discrimination or retaliation.

22 **MONETARY RELIEF**

23 3. Judgment is entered in favor of the Commission and against
24 Defendant in the amount of \$ 3,950 in full settlement of Ms. Shepherd's claim for
25 compensatory damages. Defendant shall issue a check payable to Ms.
26 Shepherd for the full amount within ten (10) business days of entry of the
27 Consent Decree.

28 4. Within ten (10) days of issuance of the aforementioned check to

1 Cara Shepherd, Desert Subway shall provide a copy of the check and any
2 related correspondence to the Regional Attorney, Equal Employment Opportunity
3 Commission, Phoenix District Office, 3300 N. Central Avenue, Suite 690,
4 Phoenix, Arizona 85012.

5 **OTHER RELIEF**

6 5. If requested, Defendant shall provide a neutral reference for Ms.
7 Shepherd, which will include her dates of employment and the position held.

8 6. Defendant shall institute and carry out policies and practices that will
9 continue to help assure a work environment free from unlawful sex and
10 pregnancy discrimination. To assist Defendant in its continuing its on-going
11 efforts to assure such a work environment, Defendant shall take the actions
12 provided in paragraphs seven through ten of this Decree.

13 **NOTICE**

14 7. Defendant shall post for the duration of this Decree, in a prominent
15 place frequented by its employees at its facilities, the Notice attached as Exhibit
16 A. The Notice shall be posted in English and Spanish. The Notice shall be the
17 same type, style, and size as set forth in Exhibit A.

18 **TRAINING**

19 8. Defendant has already adopted a comprehensive new hire and
20 retraining program for its management personnel on issues of workplace
21 discrimination, including issues of sex and pregnancy discrimination, and
22 retaliation. During the duration of this Decree, Defendant shall continue its
23 current training program for all of its management officials on these issues. In
24 addition, Defendant shall ensure the inclusion of the following:

25 A. During the training sessions described in paragraph eight (A),
26 no less than one hour plus a minimum of a fifteen (15) to thirty (30) minutes of
27 questions and answers shall be devoted to issues of pregnancy discrimination
28 and retaliation.

1 **POLICIES/PROCEDURES**

2 9. Within sixty (60) days of the entry of this Decree, Defendant shall
3 develop written policies, or revise existing policies, concerning issues of pregnancy
4 discrimination to conform with the law, and shall submit the policy for review to the
5 Regional Attorney of the Phoenix District Office of the EEOC at the address provided
6 in paragraph four above. The written policies must include at a minimum: (a) a
7 strong and clear commitment to maintaining an environment free from pregnancy
8 discrimination and retaliation; (b) a statement that pregnant employees need not
9 notify their immediate supervisor of their pregnancy unless their condition prevents
10 them from performing their job duties; (c) pregnant employees need not present a
11 note from their doctor after their pre-natal exams that they are allowed to continue
12 to work during pregnancy or until their next exam; (d) the identification of specific
13 individuals, with their telephone numbers, to whom employees can report concerns
14 about the work environment; (e) an assurance that Defendant will investigate
15 allegations of pregnancy discrimination or retaliation promptly, fairly, reasonably and
16 effectively, using appropriate investigators; (f) that appropriate corrective action will
17 be taken by Defendant to make victims whole and to eradicate the unlawful conduct;
18 and a description of the consequences, up to and including termination, that will be
19 imposed upon violators of the policy; and (g) an assurance of non-retaliation for
20 persons who believe they have been subjected to unlawful harassment and/or
21 unlawful termination based on pregnancy.

22 **REPORTING BY DEFENDANT AND ACCESS BY EEOC**

23 10. Defendant shall report in writing and in affidavit form to the Regional
24 Attorney of the Commission's Phoenix District Office, at the address provided in
25 paragraph four above, beginning six months from the date of the entry of this
26 Decree, and thereafter every year for the duration of the Decree, the following
27 information:

28 A. A copy of the policies required in paragraph nine of this Decree,

1 including any changes, modifications, revocations, or revisions to its policies and
2 procedures which concern or affect the subjects of unlawful harassment and
3 pregnancy discrimination.

4 B. The name, address, position, social security number, and
5 telephone number of any individual who has brought allegations against Defendant
6 management officials and/or non-management employees, whether formal or
7 informal, of discrimination based on pregnancy against during the first six months,
8 and thereafter every year of the Decree. The nature of the complaint, investigatory
9 efforts made by Defendant, and corrective action taken, if any, also shall be
10 specified.

11 C. Confirmation that (1) the Notice required in paragraph seven of
12 this Decree was posted in English, and the locations where it was posted; and (2)
13 the policies required in paragraph eleven were distributed to each current and new
14 employee of Defendant.

15 **COSTS AND DURATION**

16 11. Each Party shall bear its costs and attorney's fees incurred as a result
17 of this action through the filing of this Decree.

18 12. The duration of this Decree shall be twenty-four (24) months from its
19 entry. This Court shall retain jurisdiction over this action for the duration of the
20 Decree, during which the Commission may petition this Court for compliance with
21 this Decree. Should the Court determine that Defendant have not complied with this
22 Decree, the Court may order appropriate relief, including extension of this Decree
23 for such period as may be necessary to remedy its non-compliance, an award of
24 attorney's fees and costs, and fines for contempt of court.

25 13. If the Commission believes the Defendant are in non-compliance with
26 any provision of this Decree, the Commission shall notify counsel of record for the
27 Defendant in an effort to resolve the issue. In the event Defendant are in non-
28 compliance with any provision of this Decree, and the Commission petitions the

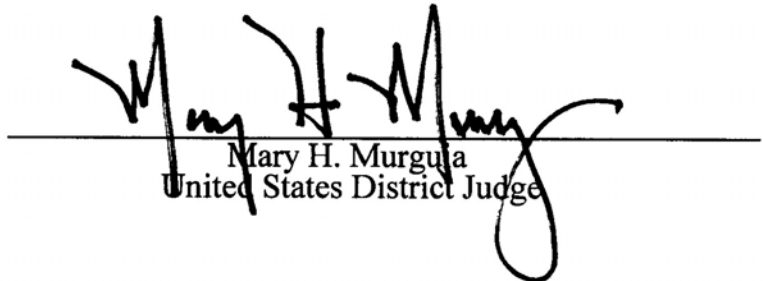
1 Court to order Defendant to comply, the Court, may, in its discretion, award the
2 Commission attorney's fees and costs incurred by the Commission to enforce the
3 Decree.

4 14. Absent extension, this Decree shall expire by its own terms at the end
5 of twenty-four (24) months from the date of entry without further action by the
6 Parties.

7 15. The Parties agree to entry of this Decree and judgment subject to final
8 approval by the Court.

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10 IT IS FURTHER ORDERED directing the Clerk of Court to enter judgment
11 accordingly.

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13 DATED this 12th day of September, 2005.

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18 Mary H. Murgula
19 United States District Judge
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1 **APPROVED AND CONSENTED TO:**

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5 s/ Mark Roden
6 MARK RODEN
7 President
Desert Subway, Inc.

8 s/ Shawn Oller
9 MARK OGDEN
10 SHAWN OLLER
11 Littler Mendelson, P.C.
2425 E. Camelback Road
Suite 900
Phoenix, Arizona 85016
12 Tel.: 602.474.3600
Fax: 602.957.1801
13
14

15 ERIC S. DREIBAND
16 General Counsel

17 JAMES L. LEE
18 Deputy General Counsel

19 GWENDOLYN YOUNG REAMS
Associate General Counsel

20 **EQUAL EMPLOYMENT**
21 **OPPORTUNITY COMMISSION**
1801 L Street, N.W.
Washington, D.C. 20507
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28

1 s/ Mary Jo O'Neill
2 MARY JO O'NEILL
3 Regional Attorney
4
5 s/ C. Emanuel Smith
6 C. EMANUEL SMITH
7 Supervisory Trial Attorney
8
9 s/Sandra J. Padegimas
10 SANDRA J. PADEGIMAS
11 Trial Attorney
12
13 LUCILA G. ROSAS
14 Trial Attorney
15
16 Equal Employment Opportunity
17 Commission, Phoenix District Office
18 3300 N. Central Avenue, Suite 690
19 Phoenix, Arizona 85012
20 Tel.: 602.640.5061
21 Fax: 602.640.5009
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It is unlawful under federal law, Title VII of the Civil Rights Act of 1964 ("Title VII") and state law to discriminate against an employee on the basis of pregnancy. It is also unlawful to retaliate against any person because the person protested discriminatory practices or contacted the EEOC.

Desert Subway encourages you to report any concerns of discrimination, harassment, or retaliation to Cheryl Wickwire, Director of Human Resources, the Human Resource Department, or any Regional Manager.

- (1) EEOC, 3300 North Central Avenue, Suite 690, Phoenix, Arizona 85012, (602) 640-5000; or
- (2) Arizona Civil Rights Division (ACRD) of the Attorney General's Office, 1275 W. Washington, Phoenix, Arizona, 85007, (602) 255-5263.

No Retaliation Clause. No action may be taken against you by any supervisory or management official of Desert Subway for (1) opposing discriminatory practices made unlawful by federal law, (2) filing a charge or assisting or participating in the filing of a charge of discrimination, or (3) assisting or participating in an investigation or proceeding brought under Title VII. Should any such retaliatory actions be taken against you, you should immediately contact the EEOC or the ACRD and the address or telephone numbers listed above.

Dated:_____

EXHIBIT A