

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

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**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

v.

CIV NO. 04-01117 RB/LFG

**SMITH'S FOOD & DRUG CENTERS, INC.
d/b/a Price Rite,**

Defendant.

Consolidated with:

**JOANN C. SANDOVAL and JESUS SANDOVAL,
Husband and Wife,**

Plaintiffs,

vs.

No. CIV 04-1417 JH/WDS

PRICERITE and JOSE MENDOZA,

Defendants.

CONSENT DECREE

The United States Equal Employment Opportunity Commission ("the Commission" or "EEOC") filed this action against Smith's Food & Drug Centers, Inc. d/b/a Pricerite to enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.* (Title VII) and the Civil Rights Act of 1991, 42 U.S.C. §1981a. In the Commission's Complaint, the Commission alleges Defendant subjected Joann Sandoval to a hostile work environment because of her sex, female. Specifically, EEOC alleged that Sandoval was subjected to unwanted sexual comments, innuendo and inappropriate touching by a manager of Defendant and that Defendant failed to take prompt corrective action. Plaintiffs in the consolidated action, Joann Sandoval and Jesus

Sandoval ("Sandoval Plaintiffs"), assert those same allegations under the New Mexico Human Rights Act along with certain state law claims arising out of the same operative facts.

Defendant denies all allegations of Plaintiff and the Sandoval Plaintiffs, and specifically denies that it discriminated against any individual on the basis of gender or any other unlawful practice under Title VII or the causes of action set forth in the complaint of the Sandoval Plaintiffs.

This Consent Decree does not constitute and shall not be construed as an admission by Defendant of liability or any violation of any law or legal standard. Nor does it constitute an adjudication on the merits of the allegations in the Complaint or complaint of the Sandoval Plaintiffs. The parties do not object to the jurisdiction of the Court over this action and waive their rights to a jury trial.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. This Decree resolves all claims asserted by the Commission on behalf of Joann Sandoval and all claims asserted by Sandoval Plaintiffs, or which could have been asserted by Sandoval Plaintiffs, in this action. The claims resolved include, without limitation, claims for discrimination, harassment, retaliation, wrongful discharge, breach of contract, assault, defamation, intentional infliction of emotional distress, back and front pay, compensatory damages, punitive damages, interest, declaratory relief, injunctive relief, attorneys' fees, and costs arising from or related to this lawsuit and its underlying and related charges.

INJUNCTION

2. The Defendant, its officers, agents, employees, successors, assigns and all persons in active concert or participation with it, with respect to Defendant's business operations in the State of New Mexico, are permanently enjoined for the duration of the

decree from discriminating against any employee based on his or her sex or gender. This injunction will remain in effect for the duration of the decree at any facility operated by the Defendant in New Mexico and any of its successors.

MONETARY RELIEF TO CHARGING PARTY JOANN SANDOVAL

3. Within ten (10) days after this Consent Decree is entered by the Court, Defendant shall deliver to Joann Sandoval a business check made payable to Joann Sandoval and her attorney, Narciso Garcia, in the amount of \$75,000.00 for alleged compensatory damages. Within five days of issuance of the check, the Defendant shall submit a copy of the check and related correspondence to the Regional Attorney, Equal Employment Opportunity Commission, Albuquerque Area Office, 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102.

4. The Defendant shall expunge from the personnel file of Joann Sandoval all references to the charge of discrimination filed against Defendant.

5. In response to any employment inquiries or reference check concerning Joann Sandoval, the Defendant shall provide a neutral reference, including Ms. Sandoval's dates of employment, position held, job duties and rate of pay. It is understood, however, that for this provision to apply, Ms. Sandoval must identify Jenny Lee or her successor (Personnel Director, Smith's Food & Drug Centers, Inc., 200 Tramway Blvd. SE, Albuquerque, NM 97123 (505) 271-4003), as the contact person for Defendant on any applications for employment.

6. The Defendant shall not take any retaliatory action against Joann Sandoval, Jesus Sandoval or any witnesses in this case for filing a charge of employment discrimination or for participating, assisting or testifying in this action.

DEFENDANT'S CORRECTIVE POLICIES AND PRACTICES

7. Defendant reaffirms that it shall maintain and carry out policies and practices that promote a work environment free from sex or gender discrimination. To assist Defendant in their effort to provide a work environment free of sex discrimination, sexual harassment and retaliation, Defendant shall take the actions provided for in the Paragraphs 8, 9 and 11 below.

8. Within sixty (60) days of the entry of this decree, defendant shall review its existing policies on sex discrimination, sexual harassment and retaliation and make any changes necessary to assure that its policies and procedures comply with Title VII and do not contain any provisions that would discourage employees from making complaints. The policy and procedure statements of Defendant should be designed to present easily understood, convenient, consistent, confidential and reliable procedures for reporting incidents of sex discrimination, sexual harassment and retaliation in Defendant's New Mexico facilities. Within one-hundred-twenty (120) days of the entry of this decree any revised policies or procedures on sex discrimination, sexual harassment and retaliation shall be distributed to Defendant's New Mexico Smith's and Price Rite employees. Defendant will assure that any revised policies and procedures, at a minimum, shall include provisions incorporating the following:

- A. The designation of a specific Investigative Officer(s) for purposes of investigating sexual harassment claims by Defendant's New Mexico employees;
- B. Within one-hundred-twenty (120) days of the entry of this decree and for the duration of this decree, the name, responsibilities, work location, and telephone number of the Investigative Officer will routinely and continuously be posted and

provided to all employees so that an employee seeking such name can enjoy anonymity and remain inconspicuous to other employees:

C. For the duration of this decree, complaints of sexual harassment or retaliation will be accepted in writing, orally, or anonymously and all complaints will be taken seriously and investigated:

D. Only those with an immediate need to know, including the Investigative Officer, the alleged target of harassment or retaliation, the alleged harasser (s) or retaliator(s) and any witnesses, may find out the identity of the complainant:

E. During an investigation of a sexual harassment complaint or retaliation complaint of an employee, the Investigative Officer shall endeavor to immediately interview all affected employees and potential witnesses to the alleged harassment;

F. During an investigation of a sexual harassment complaint of an employee, the Investigative Officer will not assume that the lack of witnesses is determinative of the complaint and the Investigative Officer will endeavor to resolve all complaints of harassment:

G. All parties contacted in the course of an investigation will be advised that any retaliation or reprisal against an individual who is an alleged target of harassment or retaliation, who has made a complaint, or who has provided evidence in connection with a complaint will not be tolerated and could result in disciplinary action:

H. Each Investigative Officer will receive thorough and appropriate training about sexual harassment and will have the responsibility for expeditiously investigating all complaints. This training shall consist of at least two hours in addition to that

provided under Paragraph 9 D of this Decree:

I. The Investigative Officer will maintain a file on the original complaint(s) and any follow-up investigation; and

J. Defendant's managers, officials, agents or employees who engage in sexual harassment or retaliation; who fail to forward complaints of harassment timely to the Investigative Officer; who fail to cooperate with company-sponsored investigations of sexual harassment or retaliation; or who refuse to implement remedial measures will be advised that they may be sanctioned severely by loss of income, suspension or dismissal.

TRAINING AND COUNSELING

9. The Defendant shall provide training on employment discrimination, including sexual harassment and retaliation, according to the following terms:

A. The Defendant shall provide and pay for a trainer who shall provide consultation and training for one seminar-training session each year this decree is in effect for a total of two years. All of Defendant's Price Rite and Smith's salaried management employees in New Mexico shall attend the seminar-training sessions each year. In addition, Defendant shall assure that each employee of Price Rite in New Mexico at the time the first such seminar session takes place attends one of the training sessions at least one time in the two year duration of this Decree. Duplicate sessions may be held by videotape to accommodate staffing needs. The Defendant shall be responsible for any additional costs to provide such duplicative sessions.

- B. The first seminar-training session shall be conducted within three months of the entry of this decree.
- C. The trainer shall be a person(s) acceptable to the Commission, but, for at least one of the training sessions, may be a qualified employee from Defendant's human resources or legal department. The Defendant shall submit the name(s), address(es), telephone number(s), and resume(s) of the proposed trainer(s) together with the dates of the proposed seminar-training sessions and the details of the contents of the training to the Regional Attorney of the Albuquerque Area Office of the Equal Employment Opportunity Commission within thirty days of the entry of this decree. The Commission shall have thirty days from the date of receipt of the information described above to accept or reject the proposed trainer and/or the contents of the training. In the event the Commission does not approve the designated trainer, the Commission shall designate the trainer, who shall be paid by the Defendant at a cost not to exceed \$1000.00 per seminar-training session.
- D. The seminar-training sessions shall be no less than one hour of instruction. All employees designated in Paragraph A shall both register and attend the seminar-training session(s) as required in Paragraph A. The registry(s) of attendance shall be retained by the Defendant for the duration of the decree.
- E. The training shall include the subject of what constitutes employment discrimination, including sexual harassment and retaliation; that sexual harassment violates Title VII; how to prevent sexual harassment and retaliation; how to provide a work environment free from sexual harassment

and retaliation; and to whom and by what means employees may complain if they feel they have been subjected to sexual harassment and retaliation in the workplace.

- F. Within ten (10) days of their hire, Defendant's new Smith's or Price Rite salaried management employees in New Mexico shall attend any seminar-training sessions required by this decree; such employees hired after the seminar-training sessions are presented shall view a video tape of the training and/or a professional training tape which covers the topics set forth in 8.E. and shall be given any written material disseminated at the seminar-training sessions for the duration of this decree.

10. The Commission, at its discretion, may designate Commission representatives to attend and participate in the seminar-training sessions described above, and the representatives shall have the right to attend and fully participate in the sessions.

11. Defendant shall post within thirty (30) days of the entry of this Consent Decree, and continuously for a period of 24 months, in prominent places frequented by employees of Defendant's Smith's and Price Rite New Mexico facilities, the Notice attached to this Decree as Exhibit A. This Notice shall be the same type, style and size as in Exhibit A. At each training session for Managers held pursuant to this Decree this Notice shall be distributed to attendees.

REPORTING BY DEFENDANT AND ACCESS BY EEOC

12. The Defendant shall report in writing and in affidavit form to the Regional Attorney of the Commission's Albuquerque Area Office at 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102, beginning six months from the date of the entry of

this decree, and thereafter every six months for the duration of the decree the following information:

- A. Any changes, modifications, revocations, or revisions to its policies and procedures that concern or affect the subject of employment discrimination, including gender discrimination.
- B. The registries of Pricerite salaried management employees attending each of the seminar-training sessions required in paragraph 8 of this decree and a list of current Pricerite salaried management employees on the day of the seminar-training session.

13. The Commission shall have the right to enter and inspect the Defendant's Pricerite facilities to ensure compliance with this decree and federal anti-discrimination laws.

COSTS AND DURATION

14. Each party shall bear its costs and attorney's fees incurred as a result of this action through the filing of this decree.

15. The duration of this decree shall be two (2) years from its entry. This Court shall retain jurisdiction of this action for the duration of the decree, during which the Commission may petition this Court for compliance with this decree. Should the Court determine that Defendant have not complied with this decree, appropriate relief, including extension of this decree for such period as may be necessary to remedy its non-compliance, may be ordered.

16. This decree shall expire by its own terms at the end of two (2) years after entry, without further action by the parties.

17. The parties agree to entry of this decree and judgment subject to final approval by the Court.


ENTERED AND ORDERED THIS 18 day of May, 2005

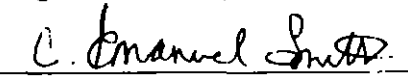

ROBERT C. BRACK
U. S. DISTRICT JUDGE

APPROVED AND CONSENTED TO THIS 18 DAY OF MAY, 2005.


ERIC S. DREIBAND
General Counsel

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
1801 L Street, NW
Washington, D.C. 20507


MARY JO O'NEILL
Regional Attorney


C EMANUEL SMITH
Supervisory Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Phoenix District Office
3300 North Central Avenue, Suite 690
Phoenix, Arizona 85012
(602) 640-5020

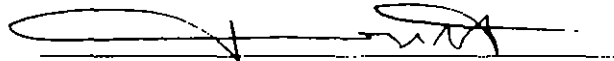

Loretta Medina
Senior Trial Attorney
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
505 Marquette, NW, Suite 900
Albuquerque, New Mexico 87102
(505) 248-5231

GARCIA LAW FIRM

Approved by e-mail 5/6/05

Narciso Garcia, Jr.
2033 San Mateo, NE
Albuquerque, NM 87110-5147
(505) 265-5010
Attorneys for Plaintiffs in Consolidation

RODEY, DICKASON, SLOAN,
AKIN & ROBB, P.A.

A handwritten signature in black ink, appearing to read 'Thomas L. Stahl', is written over a horizontal line.

Thomas L. Stahl
Post Office Box 1888
Albuquerque, NM 87103
(505) 765-5900
Attorneys for Defendant

**NOTICE TO ALL EMPLOYEES OF
SMITH'S FOOD & DRUG CENTERS, INC., AND PRICE RITE**

This Notice is posted pursuant to a Consent Decree entered into between Smith's Food & Drug Centers, Inc., and the Equal Employment Opportunity Commission (EEOC).

It is unlawful under the federal law (Title VII of the Civil Rights Act of 1964) and state law to discriminate against an employee on the basis of sex in hiring, firing, compensation or other terms, and conditions or privileges of employment, including sexual harassment.

Smith's Food & Drug Centers, Inc., prohibits all forms of sex discrimination, including sexual harassment. Prohibited sexual harassment includes, but is not limited to, the following conduct:

- i. unwelcome touching of a sexual nature;
- ii. unwelcome comments, including comments regarding intimate body parts, or clothing and discussion of sexual jokes or sexual behavior;
- iii. unwelcome requests for dates, sexual favors and propositions;
- iv. unwelcome distribution in the workplace of cartoons, pictures or drawings of a sexual nature; and
- v. unwelcome display of pornographic materials in the workplace.

Smith's Food & Drug Centers, Inc., shall not discriminate on the basis of sex and shall not retaliate against any employee who opposes a practice made unlawful under federal law, files, assists or participates in the filing of a charge of discrimination or participates in any investigation under Title VII, or who files a grievance alleging discrimination.

If you believe you are being sexually harassed, discriminated against or retaliated against you should report this to the Smith's Food & Drug Centers' designated investigative officer at your workplace who may be contacted at _____.

If you believe you have been discriminated against or retaliated against by Smith's Food & Drug Centers, Inc., you always have the right to seek assistance from:

- 1) Equal Employment Opportunity Commission (EEOC), 505 Marquette, Suite 900, Albuquerque, New Mexico 87102, 1-800-669-4000.
- or
- (2) The New Mexico Department of Labor, Human Rights Division, 1596 Pacheco St., Suite 103, Santa Fe, New Mexico 87505, 505) 827-6838.

You have the right to file a charge with the EEOC or the Department of Labor if you believe you are being discriminated against.

EXHIBIT A