

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

FILED
at Santa Fe, NM

OCT 26 2005

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
RESTAURANT CONCEPTS II, LLC, d/b/a)
APPLEBEE'S NEIGHBORHOOD GRILL)
AND BAR,)
)
Defendant.)
)
_____)

MATTHEW J. DYKMAN
CLERK
CIV 04-709 JH/DJS

CONSENT DECREE

The United States Equal Employment Opportunity Commission (the "Commission" or "EEOC") filed this action against Restaurant Concepts II, LLC, d/b/a Applebee's Neighborhood Grill and Bar ("Restaurant Concepts" or "defendant") to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. ("Title VII") and the Civil Rights Act of 1991, 42 U.S.C. § 1981a. In the complaint, the Commission alleged that Kimberly Beaty and other women were subjected to sexual harassment by defendant in violation of Title VII. The Commission also alleged that defendant retaliated against Kimberly Beaty by terminating her employment because she complained about the sexual harassment. Restaurant Concepts denies these allegations.

The parties do not object to the jurisdiction of the Court over this action and waive their rights to a hearing and the entry of findings of fact and conclusions of law. This decree does not constitute an admission of liability by the defendant, nor an adjudication on the merits of the allegations of the complaint.

It is hereby ORDERED, ADJUDGED AND DECREED:

1. This decree resolves all claims of the Commission against Defendant, its employees, agents, directors, officers, predecessors, successors, assigns, attorneys, parent corporations, subsidiaries, franchisors, licensors, licensees, and insurers, including claims for back pay, compensatory and punitive damages, interest, injunctive relief, attorney's fees and costs arising out of the issues in this lawsuit identified in the Complaint, up through and including December 31, 2004, which includes, but is not limited to, the Commission's assertion in the Complaint that defendant's female employees at its Santa Fe, New Mexico restaurant as a class were subjected to the unlawful employment practices of sexual harassment and retaliatory conduct practices. Nothing in this paragraph or Consent Decree is intended to resolve or waive claims which were not encompassed by the Complaint.

INJUNCTION

2. Defendant, its managers, agents, officers, employees, successors and assigns and all persons in active concert or participation with it, are enjoined for the duration of the decree from discriminating against any employee because of his or her sex, including sexual harassment. In addition, defendant, its managers, agents, officers, employees, successors and assigns and all persons in active concert or participation with it, are enjoined from retaliating against any employee who: (a) opposes practices made unlawful by Title VII or a state equal employment opportunity statute; (b) makes a charge of discrimination or assists or participates in an investigation or proceeding under Title VII or a state equal employment opportunity statute; or (c) files an internal complaint of discrimination. This injunction will remain in effect for the duration of the decree at any facility, nationwide, operated by defendant.

RELIEF TO CHARGING PARTY AND CLASS MEMBERS

3. In accordance with this decree, defendant shall pay the total amount of three hundred and ten thousand dollars and zero cents (\$310,000.00) in back pay and compensatory damages to be distributed to Ms. Beaty and the class members, Amanda Gordon, Dina Solis, Jessica M. Lacy, Jessica Pickel, Nidia Batista, and Sinda Kueena, in amounts determined by the Commission. Within five (5) days of the entry of the decree, the Commission will submit to defendant the names of the aggrieved individuals with corresponding amounts to be paid to each. Defendant will be responsible for reporting to the Internal Revenue Service the amounts paid and will be responsible for paying the employer's share of FUTA and FICA on any amounts designated as lost wages. Defendant or its insurer will issue a United States Internal Revenue Service Form 1099 to Ms. Beaty and the class members for any amounts designated as compensatory damages.

4. Within fourteen (14) days of entry of the decree, defendant shall separately mail checks in the amounts designated by the EEOC, via certified mail, to Ms. Beaty and the class members at the addresses provided by the EEOC. Within five days of the mailing of the checks, defendant will submit a copy of the checks and related correspondence to the Regional Attorney, Equal Employment Opportunity Commission, 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189.

5. In accordance with defendant's representation of its usual practice, in response to any employment inquiries or reference checks directed to the corporate office of Restaurant Concepts concerning Ms. Beaty and any class member, defendant shall only provide dates of employment and last position held. This provision shall survive the expiration of this Decree.

6. Defendant shall not take any action against charging party Kimberly Beaty or the class members or any witness in this case in retaliation for filing a charge of employment discrimination or for participating, assisting or testifying in this action.

DEFENDANT'S CORRECTIVE POLICIES

7. Defendant shall institute and carry out policies nationwide with the purpose of preventing sex discrimination, including sexual harassment of its employees and other individuals, and that allow employees and other individuals to raise concerns or complaints about matters made unlawful by Title VII. Defendant agrees not to retaliate against any such individual in violation of Title VII. To assist defendant in its effort prevent sex discrimination, sexual harassment and retaliation, within ninety (90) days of the entry of this decree, defendant shall review its existing policies on sex discrimination nationwide, including sexual harassment, and make any changes necessary so that its policies comply with Title VII. After reviewing and making any necessary revisions to its policies, defendant shall distribute a copy of its sexual harassment policy to each of its current full and part-time employees within ninety (90) days of the revisions and to each new employee hired for the duration of this decree within thirty (30) days of their hire.

8. Within ninety (90) days of the revision, Defendant shall provide its employees nationwide with revised written policy statements regarding reporting and prevention of sexual harassment and retaliation. The policy(s) that are provided to defendant's employees should be designed to present easily understood, convenient, reliable, and to the extent possible, confidential, procedures for reporting incidents of sexual harassment and retaliation in all of defendant's facilities nationwide.

POSTING

9. Within thirty (30) days of entry of this decree, defendant shall post continuously for a period of thirty-six (36) months, in prominent places frequented by employees in defendant's Santa Fe, New Mexico facility, the Notice attached to this decree as Exhibit A. This Notice shall be the same type, style and size as in Exhibit A.

TRAINING

10. Defendant shall provide training on sex discrimination, including sexual harassment and retaliation, according to the following terms:

A. Defendant shall provide at least three (3) annual training sessions during the term of this decree. All managers, supervisors, and employees at defendant's Santa Fe, New Mexico, facility shall attend the annual training sessions. Additionally, all managers and supervisors who worked at defendant's Santa Fe, New Mexico, facility after January 1, 2002, and who remain employed by defendant at any of defendant's facilities or who become re-employed by defendant at any of its facilities during the duration of this decree shall attend the annual training sessions. Duplicative sessions may be held to accommodate staffing needs. Defendant shall be responsible for all costs associated with this training.

B. During the first year of the decree, the first training session shall be conducted within three months of the entry of this decree. During the second and third years of the decree, at least one training session shall be conducted each year.

C. Defendant shall select a qualified trainer and shall submit the trainer's name, resume, training agenda and the date(s) of the proposed training to the Regional Attorney of the Albuquerque office of the Equal Employment Opportunity Commission within forty-five days of the entry of this decree for the first session of the first year. During the second and third years of the

decree, the above information shall be submitted to the Regional Attorney at least ninety days prior to the seminar-training session. The Commission shall have thirty days from the date of receipt of the information described above to accept or reject, with cause, the proposed consultant/lecturer and/or the contents of the seminar. In the event the Commission does not approve defendant's designated consultant/lecturer, the Commission shall designate the consultant/lecturer at a cost not to exceed \$1,000.00 per seminar-training session which shall be paid by defendant.

D. The training shall include a minimum of two (2) hours of instruction. All personnel designated in Paragraph 10.A. shall both register and attend the training. The registry of attendance shall be retained by defendant at least for the duration of the decree.

E. The training, at a minimum, shall include the subjects of: what constitutes sex discrimination, including sexual harassment, harassment based on gender, and retaliation; that sex discrimination in the hiring, firing, compensation, assignment or other terms, conditions or privileges of employment and retaliation violates Title VII; how to prevent sex discrimination and retaliation; how to provide a work environment free from sex discrimination, sexual harassment and retaliation; and to whom and by what means employees may complain if they feel they have been subjected to sex discrimination, sexual harassment and retaliation in the workplace; and that complaints of sexual harassment or retaliation will be accepted in writing or orally, and anonymous complaints will be taken seriously and investigated.

F. Immediately following the training sessions, an official of defendant ranked above a general manager shall speak to the employees about: (1) potential discipline that can be taken against supervisors, managers and employees who commit acts of sex discrimination or retaliation, or who allow sex discrimination or retaliation to occur in the workplace; (2) the importance of maintaining an environment free of sex discrimination and retaliation; and (3) the

employer's policies regarding sex discrimination, sexual harassment and retaliation. This time shall not be counted toward the two-hour minimum training required in paragraph 10.D.

G. For the duration of this decree, at or around the time of hire, employees hired after the annual training is presented, shall view a video tape of the training and/or a professional training tape which covers the topics set forth in paragraph 10.E. and shall be given any written material disseminated at the training.

PROCEDURES FOR INVESTIGATIONS

11. Defendant shall at a minimum institute the following procedures with regard to the investigation of complaints of sexual harassment and retaliation at its Santa Fe, New Mexico, facility:

A. Defendant shall designate individual(s) to serve as investigative officer(s) for sexual harassment and retaliation issues;

B. The name and title of investigative officer(s) will routinely and continuously be posted and provided to all employees;

C. Complaints of sexual harassment or retaliation will be accepted in writing or orally, and anonymous complaints will be taken seriously and investigated;

D. Only those who have a need to know, including, but not limited to, the investigative officer, the alleged target of harassment or retaliation, the alleged harasser(s) or retaliator(s) and any witnesses, will be told the identity of the complainant by defendant;

E. 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;

F. Each investigative officer will receive thorough training about sexual harassment and retaliation and will have the responsibility for expeditiously investigating all complaints. This training shall consist of at least three (3) hours in addition to that provided under paragraph 10, if applicable;

G. The investigative officer will recommend remedial measures, if appropriate, based upon the results of the investigation, and defendant will promptly consider and act upon such recommendation;

H. Defendant will maintain a file on the original complaint(s) and any follow-up investigation; and

I. Defendant's managers, officials, agents or employees who engage in sexual harassment or retaliation, 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 suspension or dismissal.

12. The Commission, at its discretion, may designate Commission representatives to attend training sessions held pursuant to this Decree. Commission representatives, however, may not participate in the training sessions unless specifically invited by the lead trainer designated by Restaurant Concepts to do so. The Commission shall advise the trainer of any deficiencies observed during the training.

REPORTING BY DEFENDANT AND ACCESS BY EEOC

13. Defendant shall report in writing to the Regional Attorney of the Commission's Albuquerque Area Office at 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189 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 which concern or affect the subject of sex discrimination, sexual harassment and retaliation.

B. The position of any employee who, during the six months preceding the report, has brought allegations of sex discrimination, harassment, or retaliation arising from activities in defendant's Santa Fe, New Mexico, facility against defendant or its personnel, including, but not limited to, management officials, vendors, agents, or employees. The nature of the complaint, investigatory efforts made by defendant and the corrective action taken, if any, shall be specified.

C. The registries of persons attending each of the seminar-training sessions required in paragraph 10 of this decree and a list of current employees on the day of the seminar-training session.

D. A statement by defendant stating the Notice required in paragraph 9 of this decree was posted and the locations where it was posted.

14. The Commission, upon reasonable notice, shall have the right to enter and inspect the premises of defendant's Santa Fe, New Mexico, facility, with defendant's representative present, to ensure compliance with this decree and federal anti-discrimination laws.

COSTS AND DURATION

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

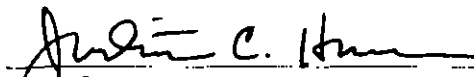
16. The duration of this decree shall be three (3) years from its entry. This Court shall retain jurisdiction of this action for the duration of the decree, during which the Commission may petition this Court for compliance with this decree. Should the Court determine that defendant has

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.

17. This decree shall expire by its own terms at the end of three (3) years after entry, without further action by the parties.

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

ENTERED AND ORDERED this 26 day of October, 2005.

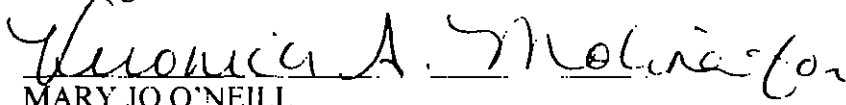

HONORABLE JUDITH C. HERRERA
UNITED STATES DISTRICT COURT JUDGE

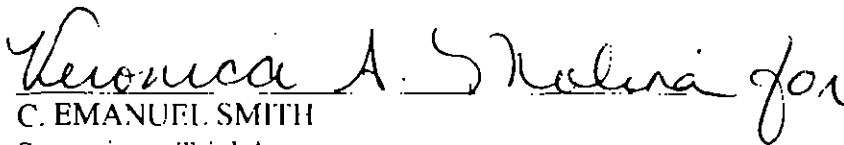
APPROVED AND CONSENTED TO:

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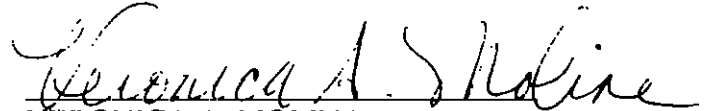

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NOTICE TO ALL EMPLOYEES
OF RESTAURANT CONCEPTS II, LLC D/B/A
APPLEBEE'S NEIGHBORHOOD GRILL AND BAR

This Notice is posted pursuant to a Consent Decree entered into between Restaurant Concepts II, LLC d/b/a Applebee's Neighborhood Grill and Bar ("Restaurant Concepts") and the Equal Employment Opportunity Commission (EEOC).

It is unlawful under the federal law (Title VII of the Civil Rights Act) 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.

Restaurant Concepts prohibits all forms of sexual harassment. Prohibited sexual harassment includes, but is not limited to, the following conduct:

1. unwelcome touching of a sexual nature;
2. unwelcome discussion of sexual jokes and sexual behavior;
3. unwelcome requests for dates, sexual favors and propositions; and
4. unwelcome distribution in the workplace of cartoons, pictures or drawings of a sexual nature.

Restaurant Concepts 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 pursuant to Restaurant Concepts' Non-Harassment Policy which Restaurant Concepts II asserts complies with Title VII of the Civil Rights act of 1964.

EXHIBIT A