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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity Commission,	)	<b>CIV 04-1094 PHX DGC</b>
Plaintiff,	)	<b>CONSENT DECREE</b>
Sally Case,	)	
Plaintiff-Intervenor,	)	
vs.	)	
Luby's Inc., a Delaware corporation,	)	
Defendant.	)	

The United States Equal Employment Opportunity Commission (the "Commission") filed this action against the Defendant, Luby's, Inc., under Title I and Title V of the Americans with Disabilities Act (ADA) of 1990 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Sally Case, who was adversely affected by such practices. The Complaint alleged that in the year 2000, Luby's personnel harassed Ms. Case because of her developmental disability. The Defendant Luby's vehemently denies the allegations and alleges no knowledge of discrimination.

The Court granted the Plaintiff-Intervenor, Sally Case, leave to join in this action.

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

1 law. The parties agree that this Consent Decree is fair, reasonable, and  
2 equitable and does not violate the law or public policy.

3 In the interest of resolving this matter, and as a result of having engaged in  
4 comprehensive settlement negotiations, the Parties agree that this action should  
5 be finally resolved by entry of this Decree.

6 It is **ORDERED, ADJUDGED AND DECREED:**

7 1. This Decree resolves all claims arising out of the issues between the  
8 Commission, Plaintiff-Intervenor, and Defendant Luby's, Inc. ("Luby's" or  
9 "Defendant") in this lawsuit, including without limitation, back pay, compensatory  
10 and punitive damages, injunctive relief, costs and attorney's fees.

11 2. Defendant and its officers, agents, employees, successors, and  
12 assigns both at the time that this Decree becomes effective and for the duration  
13 of this Decree, agree not to: (a) unlawfully discriminate against any employee on  
14 the basis of disability; (b) unlawfully alter the terms and conditions of any  
15 employee's employment because of disability; (c) unlawfully refuse to reasonably  
16 accommodate any employee who requires a reasonable accommodation, as  
17 required by the ADA, or; (d) retaliate against any employee because he or she: (i)  
18 opposes or opposed discriminatory practices made unlawful by ADA; (ii) files or  
19 filed a charge of discrimination or assists, assisted, participates, or participated in  
20 the filing of a charge of discrimination; or (iii) assists, assisted, participates or  
21 participated in an investigation or proceeding brought under the Federal or State  
22 laws prohibiting discrimination or retaliation.

23 **MONETARY RELIEF**

24  
25 3. Defendant shall pay the amount of \$ 90,000. The payment shall be  
26 made to Sally Case by check or money order at the address provided by the  
27 EEOC and/or by Plaintiff-Intervenor's private counsel. The payment represents  
28 settlement of compensatory damages. The compensation is to be paid within ten

1 (10) calendar days of the entry of this Consent Decree. By January 31, 2007,  
2 Defendant shall issue United States Internal Revenue Service Form 1099 to Ms.  
3 Case for the payment.

4 4. For attorney fees and costs, Defendant shall pay the amount of  
5 \$60,000. Within ten (10) calendar days of the entry of this Consent Decree,  
6 Defendant's counsel will mail to the Arizona Center for Disability Law ("ACDL"),  
7 100 N. Stone, Suite 305, Tucson, AZ 85701, a check or money order made  
8 payable to the Arizona Center for Disability Law in the amount of \$60,000 for  
9 payment of attorney's fees and costs of litigation.

10 5. Within 5 business days of the date the check or money order is  
11 placed in the mail pursuant to this Consent Decree, a copy of the check will be  
12 furnished to the Regional Attorney, Equal Employment Opportunity Commission,  
13 Phoenix District Office, 3300 North Central Avenue, Suite 690, Phoenix, Arizona  
14 85012.

15 6. Defendant will not condition the receipt of monetary relief on Ms.  
16 Case's agreement to: (a) maintain confidentiality; or (b) waive her statutory right  
17 to file prospectively a charge with any federal or state anti-discrimination agency.  
18

#### 19 **OTHER RELIEF**

20 7. To assist Defendant in achieving and maintaining compliance in the  
21 area of anti-discrimination and equal employment opportunity, within 30 (thirty)  
22 days of the entry of the Decree, Defendant's Vice President of Human Resources  
23 will be charged with responsibility for (a) reviewing and revising Defendant's anti-  
24 discrimination policies; (b) reviewing and revising Defendant's procedures with  
25 respect to responding to and keeping records regarding complaints received  
26 through its "1-800" or "hotline" telephone number; (c) receiving and investigating  
27 complaints of discrimination; (d) evaluating and, if appropriate, disciplining or  
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1 terminating employees for violation of Defendant's anti-discrimination policies; (e)  
2 evaluating employees in the area of anti-discrimination/equal employment  
3 opportunity policies; and (f) preparing reports to the Commission, as required by  
4 paragraph 19 of this Decree.

5  
6 8. Defendant will provide annual training on disability discrimination and  
7 retaliation, in Arizona, according to the following terms:

8 a. Defendant will arrange for and be financially responsible for a  
9 consultant/lecturer(s) who will provide consultation and a training session for all of  
10 its employees in Arizona.

11  
12 b. The seminar training session shall be at least one and one-half  
13 hours in length, including thirty (30) minutes for questions and answers, and shall  
14 be conducted within four months of the entry of this Decree. All of Defendant's  
15 supervisory, management and non-supervisory employees shall attend the  
16 seminar session.

17 c. During the live training session(s), the General Manager of the  
18 store will address the employees about the importance of the training and  
19 following Luby's policies.

20  
21 9. Luby's discrimination policies shall be posted in a prominent location at  
22 Defendant's facilities in Arizona. These policies shall be transmitted to Defendant's  
23 employees by an officer of the company and distributed to each current employee  
24 within thirty days of the entry of the Decree. These policies shall be distributed to  
25 all new employees when hired. These policies also shall be posted in a prominent  
26 place frequented by the employees. Defendant shall make these written policies  
27 available in alternative formats as necessary for persons with cognitive and print  
28 disabilities that may prevent them from reading the policies. Alternative formats will

1 include but not be limited to an audiotape format.

2  
3 10. Defendant shall continue using a procedure which evaluates  
4 managers, supervisors and applicable human resources personnel on their  
5 performance in responding to complaints of discrimination and for their  
6 compliance with EEO laws, including the ADA.

7 11. Defendant shall promptly and appropriately investigate all complaints  
8 of disability discrimination. Defendant shall take reasonable care to prevent and  
9 swiftly correct any discrimination through the measures made available by  
10 Defendant. Defendant will not take any adverse employment action against the  
11 employee for reporting any claim of disability discrimination.

12  
13 12. Defendant shall not retain documents related to the investigation in  
14 any of the complainant's personnel files. All disciplinary actions taken against  
15 employees for violation of Defendant's policy will be retained in the violator's  
16 personnel file. In those cases in which no conclusion could be reached on the  
17 allegations, the investigation documents shall remain in the alleged violator's file.

18 **APOLOGY**

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20 13. Within fourteen (14) days of the entry of the Decree, Defendant shall  
21 prepare a letter of apology to Ms. Case as attached as Exhibit A.

22 **REFERENCE LETTER**

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24 14. Luby's agrees to provide Ms. Case with a neutral letter of reference  
25 based on Ms. Case's career at Luby's signed by the Vice President of Human  
26 Resources within fifteen (15) days of the date of the execution of this Consent  
27 Decree.

## **EXPUNGEMENT OF PERSONNEL FILE**

15. The parties agree that Luby's will make Sally Case's personnel file available for review by Plaintiffs' attorneys at the law offices of Brockelman and Fatica at a mutually convenient time and date within thirty (30) days of the date this Consent Decree is fully executed. Luby's and Plaintiffs' attorneys will work together to expunge and/or amend Ms. Case's personnel file so that it does not contain: (1) medical or disability-related information; (2) information about her charge of discrimination; or (3) any discussion of a discipline or negative work performance.

## **REPORTING BY DEFENDANT AND ACCESS BY EEOC**

16. Defendant shall report in writing and in affidavit form to the Regional Attorney of the Commission's Phoenix District Office at 3300 N. Central Ave., Suite 690, Phoenix, Arizona 85012, 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 disability discrimination and retaliation;

b. Confirmation that: (i) the Notice required in paragraph 18 of this Decree was posted and the location(s) where it was posted; and (ii) the policies referenced in this Decree were distributed to each current and new employee and posted.

17. The Commission, upon reasonable notice, shall have the right to enter and inspect Defendant's premises in Arizona to ensure compliance with this

1 Decree and the ADA's prohibition of disability discrimination, as well as  
2 retaliation.

3  
4 18. Defendant will post the Notice contained in the attached Exhibit B at  
5 Defendant's facilities located in Arizona. The Notice will be posted in an  
6 appropriate place frequented by employees, for the duration of this Decree. The  
7 Notice shall be the same type, size, and style as Exhibit B.

### 8 **AFFIDAVIT OF COMPLIANCE**

9 19. Defendant will report in writing and in affidavit form to the  
10 Commission on a semi-annual bases within six (6) months from the entry of this  
11 Decree. The affidavit shall attest that Defendant has taken the action required  
12 with each and every provision of this Consent Decree.

13  
14 20. The Commission, upon reasonable notice shall have the right to  
15 enter and inspect Defendant's premises located in Arizona to ensure compliance  
16 with this Decree.

17 21. The duration of this Decree shall be eighteen (18) months from the  
18 date of its entry.

19  
20 22. Except as set forth in paragraph 4 above, the parties shall bear their  
21 own attorneys' fees and costs incurred in this action up to the date of entry of this  
22 Decree.

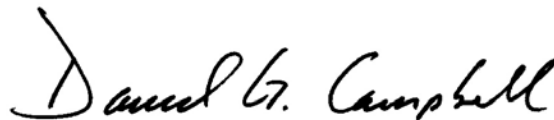
23 23. This Court shall retain jurisdiction of this action for a period of  
24 eighteen (18) months after entry of the Decree. If a question of compliance with  
25 the non-monetary terms of the Decree arises, the EEOC and ACDL shall give  
26 written notice to Defendant of its alleged non-compliance and Defendant shall  
27 have a minimum of sixty (60) days to cure any non-compliance. If the EEOC and  
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1 ACDL believe that the alleged non-compliance has not been cured, the parties  
2 shall meet and confer to exhaust these attempts to resolve the issue of non-  
3 compliance before the EEOC files a contempt action in Court. This Decree shall  
4 expire by its own terms at the end of eighteen (18) months after entry of the  
5 Decree, without further action by the parties or the Court.

6  
7 24. The Commission or Plaintiff-Intervenor may petition this Court for  
8 compliance with this Decree at any time during which this Court maintains  
9 jurisdiction over this action. Should the Court determine that Defendant has not  
10 complied with this Decree, appropriate relief, including extension of this Decree  
11 for such period as may be necessary to remedy its non-compliance, may be  
12 ordered.

13 25. The parties agree to the entry of this Decree subject to final approval  
14 by the Court.

15 DATED this 19<sup>th</sup> day of April, 2006.  
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21 David G. Campbell  
22 United States District Judge  
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1 APPROVED AND CONSENTED TO:

2  
3 s/ Mary Jo O'Neill

4 Mary Jo O'Neill  
5 Regional Attorney

6 s/ Sally Shanley

7 Sally C. Shanley  
8 Acting Supervisory Trial Attorney

9 s/ Michelle Marshall

10 Michelle G. Marshall  
11 Trial Attorney  
12 EQUAL EMPLOYMENT  
13 OPPORTUNITY COMMISSION  
14 Phoenix District Office  
15 3300 North Central Avenue, Suite 690  
16 Phoenix, Arizona 85012  
17 (602) 640-5061  
18 Attorneys for Plaintiff

19 s/ T. Diana Chen

20 J.J. Rico, Esq.  
21 Diana Chen, Esq.  
22 ARIZONA CENTER FOR  
23 DISABILITY LAW  
24 100 N. Stone, Suite 305  
25 Tucson, Arizona 85701  
26 Telephone: (520) 327-9547  
27 Attorneys for Plaintiff-Intervenor  
28 Sally Case

s/ Anna Marie DoVico

Anna Marie DoVico  
Southwest Fiduciary, Inc.  
[Temp.] Conservator for Sally Case  
[Certified Fiduciary #20518]

s/ Terrence B. Robinson

Terrence B. Robinson, Esq.  
NEEL & HOOPER, P.C.  
1700 West Loop South, Suite 1400  
Houston, Texas 77027  
Telephone: (713) 629-1800

s/ Kim Fatica By Permission TBR

Kimberly A. Fatica, Esq.  
BROCKELMAN FATICA PLC  
21 East Sixth Street, No. 100  
Tempe, Arizona 85281  
Telephone: (480) 731-9200

Attorneys for Defendant

s/ Peter Tropoli

Peter Tropoli  
Senior Vice President & General  
Counsel  
Luby's, Inc.

**EXHIBIT A**

[Luby's Letterhead]

[Date]

Sally Case

[address]

Dear Sally:

As you are aware, a lawsuit was filed by you and the Equal Employment Opportunity Commission against Luby's alleging harassment based on disability and failure to reasonably accommodate you.

Please accept my apology on behalf of Luby's and its management for any failure to accommodate and harassment you believe you endured because of disability while you worked for us. Please accept my commitment that the company will take the necessary steps to ensure that current and future employees with disabilities will be accommodated and that employees will not be subjected to any harassment.

We appreciate the years of service you provided to us. You were an excellent and dependable employee and wish you the best of luck in the future.

Sincerely,

Luby's V.P. of Human Resources

## EXHIBIT B

### NOTICE TO ALL EMPLOYEES OF LUBY'S

It is unlawful under federal law Title VII of the Civil Rights Act and state law to discriminate against an employee on the basis of disability. It is also unlawful to retaliate against any person because the person protested discriminatory practices or contacted the EEOC.

Luby's will not discriminate against any employee on the basis of disability and will not retaliate against any employee.

If you believe you have been discriminated against by Luby's, you have the right to seek assistance from:

- (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.

or have the right to file a charge with the EEOC or ACRD if you believe you are being discriminated against.

No Retaliation Clause. No action may be taken against you by any supervisory or management official of Luby's 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:

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LUBY'S