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\*\*E-filed 9/26/06\*\*

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HARMAN-CHIU, INC., d/b/a KFC/TACO BELL, HARMAN MANAGEMENT  
CORPORATION, INC., AND JORGE GARCIA  
18  
19

20 **UNITED STATES DISTRICT COURT**  
21 **NORTHERN DISTRICT OF CALIFORNIA**  
22

23 **EQUAL EMPLOYMENT OPPORTUNITY** ) Civil Action No. C-05-3615 JF  
24 **COMMISSION,** )  
25 Plaintiff, ) **CONSENT DECREE**  
26 **SANDRA VARGAS, ESTHER** )  
27 **HERNANDEZ, and MARIVEL** )  
28 **HERNANDEZ** )  
Plaintiff/Intervenors, )

1 v. )  
 2 **HARMAN-CHIU, INC., d/b/a/** )  
 3 **KFC/TACO BELL, HARMAN** )  
 4 **MANAGEMENT CORPORATION,** )  
 5 **INC., JORGE GARCIA, AND** )  
 6 **DOES 1-10 inclusive,** )  
 7 )  
 8 Defendants. )

9 Plaintiff U.S. Equal Employment Opportunity Commission (“Commission” or “EEOC”)  
 10 brought this lawsuit under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights  
 11 Act of 1991, to correct alleged unlawful employment practices on the basis of sex harassment  
 12 and retaliation and to make whole Ms. Sandra Vargas and other similarly situated female  
 13 employees aggrieved by the alleged unlawful practices. Plaintiff EEOC alleged that defendants  
 14 HARMAN-CHIU, INC., d/b/a KFC/TACO BELL (hereinafter “the Company”) and HARMAN  
 15 MANAGEMENT CORPORATION (“HMC”), unlawfully subjected Ms. Vargas and others to a  
 16 sexually hostile work environment and retaliation. Plaintiff -Intervenors Sandra Vargas, Esther  
 17 Hernandez and Marivel Hernandez intervened in the lawsuit alleging both federal and state  
 18 claims of discrimination. Plaintiff EEOC and the Intervenors are collectively referred to as the  
 19 “Plaintiffs.” Defendants denied all the allegations.  
 20

21 In the interest of resolving this matter and as a result of having engaged in  
 22 comprehensive settlement negotiations, the Commission, Intervenors, and Defendants  
 23 (hereinafter referred to as “the Parties”) have agreed that the above-captioned lawsuit (the  
 24 “Lawsuit”) should be finally resolved by entry of this Consent Decree. This Consent Decree  
 25 shall not constitute an adjudication and/or a finding on the merits of the Lawsuit.  
 26

27 This Consent Decree resolves all claims arising out of EEOC Charge No. 377-2003-  
 28 00905 and the complaints filed in the Lawsuit, and constitutes a complete resolution of all claims

1 of sex discrimination, sexual harassment, and retaliation under Title VII that were made or could  
 2 have been made by the Commission and Intervenors in this Lawsuit. This consent decree also  
 3 resolves all claims for attorneys fees and costs that were made or could have been made by the  
 4 Commission and Intervenors, and their respective attorneys, in this Lawsuit. This Consent  
 5 Decree does not, however, resolve any future charges or charges that may be pending with the  
 6 EEOC other than the charge and complaints specifically referenced in this paragraph.  
 7

8 With the exception of the settlement agreement between Intervenors and Defendants,  
 9 this Consent Decree comprises the full and exclusive agreement of the Parties with respect to the  
 10 matters discussed herein. No waiver, modification or amendment of any provision of this  
 11 Consent Decree shall be effective unless made in writing and approved by all the Parties to this  
 12 Decree, and any substantive change, modification or amendment of any provision of this  
 13 Consent Decree shall also require approval by the Court.  
 14

15 The Court has reviewed this Consent Decree in light of the pleadings, the record herein,  
 16 and now approves this Consent Decree. THEREFORE, IT IS ORDERED, ADJUDGED AND  
 17 DECREED:  
 18

19 I. **GENERAL PROVISIONS**

- 20 1. This Court has jurisdiction over the subject matter and the Parties to this Lawsuit. This  
 21 Court will retain jurisdiction over this Decree for all purposes until the expiration of  
 22 Defendants' obligations as set forth herein.  
 23  
 24 2. Defendant HMC will be dismissed with prejudice from this lawsuit.  
 25 3. This Consent Decree is final and binding upon the Parties, their successors and assigns.  
 26

27 II. **GENERAL INJUNCTIVE RELIEF**

- 28 4. *Sexual Harassment*: Consistent with Section 703 of Title VII, 42 U.S.C. §2000e-2, the

1 Company, and its officers, agents, managers (including supervisory employees),  
2 successors and assigns, shall be enjoined from: (a) discriminating against persons on the  
3 basis of sex in the terms and conditions of employment; (b) engaging in or be a party to  
4 any action, policy or practice that is intended to, or is known to them, to have the effect  
5 of harassing or intimidating any employee on the basis of sex; or (c) creating, facilitating  
6 or permitting, to the extent known to them, the existence of a work environment hostile  
7 to female employees.

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10 5. **Retaliation:** The Company its officers, agents, managers (including supervisory  
11 employees), successors or assigns, are enjoined from engaging in, implementing or  
12 permitting any action, policy or practice with the purpose of retaliating against any  
13 current or former employee of the Company because he or she has in the past, or during  
14 the term of this Consent Decree (a) opposed any practice of harassment or other  
15 discriminatory acts on the basis of sex made unlawful under Title VII; (b) filed a Charge  
16 of Discrimination alleging any such practice; (c) testified or participated in any manner  
17 in any investigation (including, without limitation, any internal investigation undertaken  
18 by the Company), proceeding or hearing in connection with this Lawsuit; (d) was  
19 identified as a possible witness in this Lawsuit; (e) asserted any rights under this Consent  
20 Decree; or (f) sought and/or received any monetary or non-monetary relief in accordance  
21 with this Consent Decree.  
22  
23

24 **III. MONETARY RELIEF**

25 6. The Company is to pay the total sum of \$349,800.00 (Three hundred and forty nine  
26 thousand and eight hundred Dollars and No Cents) (the "Settlement Payment") as  
27 damages, to be allocated to Sandra Vargas, Esther Hernandez, Marivel Hernandez, other  
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1 similarly situated women, and their respective attorneys as determined by the EEOC and  
2 Plaintiff Intervenors as set forth in Paragraph 7.

3 7. Sandra Vargas, Esther Hernandez, Marivel Hernandez and other similarly situated  
4 women.  
5

6 a. \$345,000.00 of the Settlement Payment will be paid as damages for physical  
7 injuries and/or physical illness, and emotional distress relating to such physical  
8 injuries and/or physical illness and will be allocated to Sandra Vargas, Esther  
9 Hernandez, Marivel Hernandez, other similarly situated women, and their  
10 respective attorneys, as determined by the EEOC and Plaintiff Intervenors. The  
11 remaining \$4,800.00 of the Settlement Payment will be allocated as follows:  
12 \$1,600.00 to Sandra Vargas for vocational training, \$1,600.00 to Esther  
13 Hernandez for vocational training, and \$1,600.00 to Marivel Hernandez for  
14 vocational training  
15

16 b. The Plaintiffs shall advise the Company of the allocation of the Settlement  
17 Payment, and the Company shall report the Settlement Payment by issuance of  
18 IRS Form 1099.  
19

20 c. The Company shall pay the Settlement Payment as follows:  
21

22 i. Within ten (10) days of all of the following having occurred: 1) the entry  
23 of this Consent Decree, 2) dismissal of the Complaint in Intervention with  
24 prejudice, 3) dismissal of HMC with prejudice, and 4) receipt of properly  
25 completed W-9's, the Company will issue 1) a check for the amount of  
26 \$319,800.00 made jointly payable to Sandra Vargas, Esther Hernandez, Marivel  
27 Hernandez, and Talamantes/Villegas/Carrera, LLP, and 2) two separate checks for  
28

1 the identified women made in their respective names and in the amounts (which  
 2 collectively shall not exceed \$30,000.00) provided by the EEOC. The Company  
 3 shall make payment in the form of a business check, cashier's check, or certified  
 4 check.  
 5

6 The Company will mail the check for Sandra Vargas, Esther Hernandez, and  
 7 Marivel Hernandez, and Talamantes/Villegas/Carrera, LLP to Virginia Villegas,  
 8 Talamantes/Villegas/Carrera, LLP, 1550 Bryant Street, Suite 725, San Francisco,  
 9 CA 94105. The Company will mail the checks for the identified women to  
 10 Evangelina Fierro Hernandez, Senior Trial Attorney, EEOC 350 The  
 11 Embarcadero, Suite 500, San Francisco, CA 94105.  
 12

13 ii. The EEOC will distribute the check to the identified former female  
 14 employees within ten (10) days of receipt. The Company will forward the checks  
 15 within ten (10) days of the EEOC forwarding the release to Defendants' counsel.  
 16

17 d. Entire Consideration. The Plaintiffs agree that the foregoing amounts shall  
 18 constitute the entire monetary consideration provided to the Plaintiffs under this  
 19 Consent Decree and the Settlement Agreement between Intervenors and  
 20 Defendants, and that Plaintiffs, and their respective attorneys, will not seek any  
 21 further compensation for any other claimed damage, cost, or attorney's fees in  
 22 connection with the matters encompassed by this Consent Decree.  
 23

24 **IV. SPECIFIC INJUNCTIVE RELIEF**

25 **8. Zero-Tolerance**

26 The Company affirms the following "Statement of Zero-Tolerance Policy and Equality  
 27 Objectives":  
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The Company is firmly committed to maintaining a zero-tolerance policy concerning discriminatory harassment and retaliation against individuals who report harassment in the company's workplace; to swiftly and firmly respond to any acts of harassment and retaliation of which the company becomes aware; to imposing appropriate discipline designed to strongly deter future acts of harassment or retaliation; and to actively monitor its workplace in order to ensure tolerance, respect and dignity for all employees.

This paragraph does not create any individual contractual or common law causes of action or other rights that would not otherwise exist under statute.

**9. EEO and Harassment Policies**

The Company shall revise to the extent necessary EEO & harassment policies, within thirty (30) days of signing the Consent Decree, such that the policies: (i) include definitions of discriminatory harassment, with specific reference to harassment based on sex; (ii) include examples to supplement the definitions of harassment based on sex; (iii) provide for appropriate discipline and/or corrective action for incidents of discriminatory harassment designed to deter future acts of harassment; (iv) include strong non-retaliation language with examples to supplement the definition of retaliation; (v) provide for appropriate discipline for incidents of retaliation designed to deter future acts of retaliation; (vi) provide that complaints of harassment and/or retaliation will be accepted irrespective of whether they are made verbally or in writing; (vii) provide a reasonable timetable for commencing an investigation after a complaint is made or received and for

1 appropriate remedial action, if warranted, to be taken upon conclusion of an  
2 investigation; and (viii) indicate that, promptly upon the conclusion of the  
3 investigation of a complaint, the Company will communicate to the complaining  
4 party the results of the investigation and the remedial actions taken or proposed, if  
5 any.

6  
7 b. The Company shall effectively disseminate its revised policies and  
8 procedures in English and Spanish by:

9  
10 i. Distributing copies of the policy to all current employees within 30  
11 days of its adoption;

12 ii. Giving a copy of the policy to and reviewing the policy with all  
13 new employees upon the employees' hire.

14 c. The Company will submit a copy of the revised EEO and harassment  
15 policies to EEOC at the same time it submits the report on the completion  
16 of training as described below.

17  
18 10. **Complaint Procedure.**

19 The Company shall develop a complaint procedure designed to encourage employees to  
20 come forward with complaints about violations of its harassment policy. As part of the  
21 policy, the Company shall provide its employees with convenient, confidential and  
22 reliable mechanisms for reporting incidents of harassment and retaliation. The  
23 Company's complaint procedure and harassment policy shall notify employees that they  
24 can lodge a complaint with their immediate supervisor, restaurant consultant, or a  
25 Company Corporate Officer, and shall provide the name and telephone numbers for such  
26 individuals. Contact information for the restaurant consultant and Company Corporate  
27  
28



1 Officer shall also be continuously posted in a prominent place at the Company's business  
2 location in Sunnyvale, California.

- 3 a. The Company will submit a copy of the complaint procedures to the EEOC  
4 twenty (20) days before the completion of training as required below.  
5

6 11. **Posting.**

7 The Notice is attached hereto as Exhibit A, outlines the terms of the non-monetary aspects  
8 of the Consent Decree. It shall remain posted in English and Spanish, in a clearly visible  
9 location frequented by employees at the Company's restaurant in Sunnyvale, California  
10 during the term of this Consent Decree. The Company shall take all reasonable steps to  
11 ensure that the posting is not altered, defaced or covered by any other material. If the  
12 notice becomes defaced or illegible, the Company shall replace it. The Company shall  
13 certify to the EEOC in writing within ten (10) business days after entry of the Decree that  
14 the Notice has been properly posted.  
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17 12. **Distribution of Anti-Harassment Policy.**

18 Within thirty (30) days of the entry of this Consent Decree, the Company shall issue to all  
19 employees, supervisors and managers at its restaurant its anti-harassment policy and  
20 procedure statement, in English and Spanish, and each such person shall be asked to sign  
21 an acknowledgment that they have received and read the policy. The same  
22 acknowledgment shall be required of all newly hired employees at the start of their  
23 employment.  
24

25 13. **Training of Employees.**

26 The Company shall provide and require all current and new employees to attend anti-  
27 harassment training once every year throughout the duration of this Consent Decree. The  
28

1 purpose of said training shall be to give participants an understanding of harassment  
2 issues, particularly sexual harassment, including but not limited to what constitutes sexual  
3 harassment, sources of legal protection for sexual harassment victims, the employees'  
4 obligation to report sexual harassment, the employer's obligation to take preventive,  
5 investigative and remedial action with respect to harassment complaints, and to review  
6 company policies (including discipline policies) and practices related to sexual  
7 harassment and retaliation with Company employees. The training will be given in both  
8 English and Spanish.  
9

10  
11 **14. Training Logistics.**

12 The content, method of training and size of training classes is subject to approval by the  
13 Commission which approval shall not be unreasonably withheld and which shall take into  
14 consideration the Company's operational needs. The Company agrees to provide a  
15 description of each training program to counsel for the Commission no later than twenty  
16 (20) days before the training programs are scheduled to be held.  
17

18 **15. Acknowledgment of Training Attendance.**

19 All persons attending mandatory anti-harassment training pursuant to this Consent Decree  
20 shall sign an acknowledgment of their attendance at the training, the date thereof, and  
21 their position with the company. The Company shall retain the originals of these  
22 acknowledgments and provide the EEOC with a copy thereof each year.  
23

24 **16. Expungement of Records and Disclosure of Information Regarding Sandra Vargas,**  
25 **Esther Hernandez, Marivel Hernandez and Claimants' Employment**

- 26 a. The Company shall not disclose any information or make references to any  
27 charges of discrimination or this lawsuit in responding to employment reference  
28

1 requests for information about Sandra Vargas, Esther Hernandez, Marivel  
2 Hernandez, and the identified similarly situated women.

3  
4 b. The Company shall expunge from Sandra Vargas', Esther Hernandez', Marivel  
5 Hernandez', and the identified similarly situated women's personnel file any  
6 references to a charge of discrimination against the Company and this lawsuit.

7 c. The Company shall modify Sandra Vargas', Esther Hernandez', Marivel  
8 Hernandez', and the identified similarly situated women's personnel file such that  
9 the reason for their separation from employment is officially reported as a  
10 resignation.

11  
12 d. The Company shall expunge from Sandra Vargas' personnel file all disciplinary  
13 notices.

14 e. From the date of entry of this Consent Decree, the Company shall not disclose in  
15 response to inquiries from potential employers, any information regarding Sandra  
16 Vargas, Esther Hernandez, Marivel Hernandez, and the identified similarly  
17 situated women's employment with the Company except as follows:

18  
19 i. In response to a specific inquiry, the Company may disclose Sandra  
20 Vargas', Esther Hernandez', Marivel Hernandez', and identified former  
21 female employees' dates of employment, position held and final rate of  
22 pay;

23  
24 ii. The Company may report any information as required by law to state or  
25 federal authorities;

26 iii. The Company may disclose information under Court order;

27  
28 iv. Within ten (10) days from the date of entry of this Consent Decree, the

1 Company shall provide Sandra Vargas, Esther Hernandez, Marivel  
2 Hernandez, and similarly situated women with a letter of reference which  
3 would state her dates of employment and positions held. The original letter  
4 of references shall be sent to Evangelina Fierro Hernandez, Senior Trial  
5 Attorney, EEOC, 350 The Embarcadero, Suite 500, San Francisco, CA  
6 94105.

7  
8 v. Jorge Garcia shall issue a letter of apology to Sandra Vargas, Esther  
9 Hernandez and Marivel Hernandez.  
10

11 **17. Reports to the Commission**

12 a. Training Report:

13 Within thirty (30) days of completion of the training required by this Consent  
14 Decree, the Company will send the EEOC verification of its completion of  
15 harassment training for its employees.  
16

17 b. Sexual Harassment Complaint Reports: Within ninety (90) days after entry of this  
18 Decree, the Company will mail to counsel for the Commission a report containing  
19 the following information and documentation:

20 i. Copies of all sexual harassment complaints, other than the complaints that  
21 are the subject of this Lawsuit, and a statement regarding the result of the  
22 investigation of each complaint. Additionally, the Company will identify  
23 the name, address and telephone number of the complainant and identify  
24 the person who received the complaint. A copy of all records, documents  
25 and other writings relevant to such complaints and investigations shall be  
26 maintained by the Company during the period of the Consent Decree and  
27  
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1 will be made available to the Commission within ten (10) business days  
2 following a written request from the Commission.

- 3  
4 ii. On the fifth day of January and June of each year during the duration of  
5 this Consent Decree, the Company will mail to counsel for the  
6 Commission a report containing the above documentation and information.

7 **18. Policies Designed to Promote Supervisor Accountability**

8 a. Communication of Potential Discipline for Engaging in Harassment.

9 The Company shall impose appropriate discipline, up to and including  
10 termination, suspension without pay or demotion, upon any supervisor or manager  
11 who engages in sexual harassment or knowingly permits any such conduct to  
12 occur in his or her work area or among employees under his or her supervision, or  
13 who retaliates against any person who complains or participates in any  
14 investigation or proceeding concerning such conduct. The Company shall  
15 communicate this policy to all of its supervisors and managers.  
16

17  
18 b. Communication of Duty to Actively Monitor Worksite.

19 The Company shall advise all managers and supervisors of their duty to actively  
20 monitor their work areas to ensure employee compliance with the company's anti-  
21 harassment policy, and to report any incidents and/or complaints of harassment  
22 and/or retaliation of which they become aware to the individuals charged with  
23 handling such complaints.  
24

25 **V. RETENTION OF JURISDICTION AND EXPIRATION OF CONSENT DECREE**

- 26 a. This Consent Decree shall terminate three (3) years from the date of entry by the  
27 Court, unless the Commission petitions this Court for an extension of the Decree  
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because of noncompliance by the Company. If the Commission determines that the Company has not complied with the Consent Decree, the Commission will provide written notification of the alleged breach to the Company and will not petition the Court for enforcement sooner than thirty (30) days after providing written notification. The thirty-day period following written notice shall be used by the parties for good faith efforts to resolve the issue. If the Commission petitions the Court and the Court finds the Company to be in substantial violation of the terms of the Decree, the Court may extend this Consent Decree

b. Except as provided in the preceding paragraph, three (3) years after the entry of this Consent Decree, this lawsuit will be dismissed with prejudice, provided that the Company has complied substantially with the terms of this Consent Decree. The Company will be deemed to have complied substantially if the Court has not made any findings or orders during the term of the Decree that the Company has failed to comply with any of the terms of this Decree. This Consent Decree will automatically expire without further Court Order.

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On Behalf of Plaintiff Commission

On Behalf of Defendants:

Dated: September \_\_\_\_, 2006

Dated: September \_\_\_\_, 2006

\_\_\_\_\_  
William R. Tamayo  
Regional Attorney

\_\_\_\_\_  
Bruce J. Boehm  
McKAY, BURTON & THURMAN  
Attorney for Harman-Chiu and Harman  
Management

\_\_\_\_\_  
Jonathan T. Peck  
Supervisory Trial Attorney

On Behalf of Plaintiff-Intervenors

\_\_\_\_\_  
Evangelina Fierro Hernandez  
Senior Trial Attorney  
U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

\_\_\_\_\_  
Virginia Villegas  
TALAMANTES/VILLEGAS/  
CARRERA, LLP  
Attorney for Intervenors

IT IS SO ORDERED:

Dated: 9/22/06

  
\_\_\_\_\_  
Jeremy Fogel  
United States District Court Judge

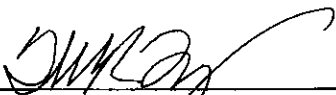
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On Behalf of Plaintiff Commission

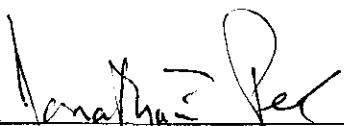
On Behalf of Defendants:

Dated: September 18<sup>th</sup>, 2006

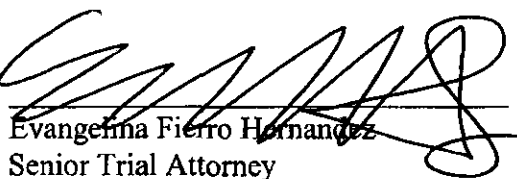
Dated: September \_\_\_\_\_, 2006


  
\_\_\_\_\_  
William R. Tamayo  
Regional Attorney

\_\_\_\_\_  
Bruce J. Boehm  
McKAY, BURTON & THURMAN  
Attorney for Harman-Chiu and Harman  
Management

  
\_\_\_\_\_  
Jonathan T. Peck  
Supervisory Trial Attorney

On Behalf of Plaintiff-Intervenors

  
\_\_\_\_\_  
Evangelina Fierro Hernandez  
Senior Trial Attorney  
U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

  
\_\_\_\_\_  
Virginia Villegas  
TALAMANTES/VILLEGAS/  
CARRERA, LLP  
Attorney for Intervenors

IT IS SO ORDERED:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jeremy Fogel  
United States District Court Judge



1 On Behalf of Plaintiff Commission

On Behalf of Defendants:

2

3 Dated: September \_\_\_\_\_, 2006

Dated: September 15, 2006

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5

6 William R. Tamayo  
Regional Attorney

Bruce J. Boehm

Bruce J. Boehm  
MCKAY, BURTON & THURMAN  
Attorney for Harman-Chiu and Harman  
Management

8

9

10 Jonathan T. Peck  
Supervisory Trial Attorney

On Behalf of Plaintiff-Intervenors

11

12

13 Evangelina Fierro Hernandez  
Senior Trial Attorney  
14 U.S. EQUAL EMPLOYMENT  
15 OPPORTUNITY COMMISSION

Virginia Villegas  
TALAMANTES/VILLEGAS/  
CARRERA, LLP  
Attorney for Intervenors

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17

IT IS SO ORDERED:

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20 Dated: \_\_\_\_\_

Jeremy Fogel  
United States District Court Judge

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