

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

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO
BA

NOV 14 2003

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
B & B MANAGEMENT, INC.,)
d/b/a TACO BELL,)
)
Defendant.)
_____)

Robert M. Marshall
CLERK

CV-03-398 LH/RLP (ACE)

**CONSENT DECREE AS TO
NON-MONETARY RELIEF**

The United States Equal Employment Opportunity Commission (the "Commission" or "EEOC") filed this action against B & B Management, Inc., d/b/a Taco Bell ("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 Right Act of 1991, 42 U.S.C., § 1981a. Plaintiff contends that Janelle Lamb, Jennifer McAdams, Melinda Montano and a class of female employees, including at least Mindi Gonzales, were subjected by the Defendant's General Manager, Martin Mulitauapele, to unwelcome verbal and physical sexual conduct which created a hostile work environment. The Commission contends that Defendant failed to correct and remedy the harassment endured by these women. The Commission also contends that Janelle Lamb and Melinda Montano were suspended and terminated from their employment in retaliation for complaining about the harassment. The Commission contends that Jennifer McAdams was subjected to retaliation and was forced to resign as a result of the Defendant's failure to effectively remedy her work environment.

The parties agree to this Consent Decree to resolve all non-monetary claims of the Commission and claims for equitable and injunctive relief. Monetary claims of the Commission and the aggrieved women are not resolved by this Consent Decree.

The parties acknowledge that Defendant has commenced a proceeding under Chapter 11 of the United States Bankruptcy Code.

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 as to non-monetary claims.

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

1. This decree resolves all claims of the Commission against the Defendant for equitable and injunctive relief arising out of the issues in this lawsuit.

INJUNCTION

2. Defendant, its owners, stockholders, managers, agents, officers, employees, successors and assigns and all persons in active concert or participation with them, are permanently enjoined for the duration of the decree from discriminating against any employee because of his or her sex, including subjecting employees or individuals to sexual harassment. This injunction will remain in effect for the duration of the decree at any facility operated by Defendant in the state of New Mexico.

3. Defendant, its owners, stockholders, managers, agents, officers, employees, successors and assigns and all persons in active concert or participation with it, are permanently enjoined for the duration of the decree from retaliating against any employee or individual because the employee or individual has (a) opposed practices made unlawful by Title VII or a

state equal employment opportunity statute, (b) filed a charge of discrimination, including sexual harassment, (c) assisted or participated in the filing of a charge of discrimination, including sexual harassment, (d) assisted or participated in an investigation or proceeding under Title VII or a state equal employment opportunity statute, or (e) files an internal complaint of discrimination. This injunction will remain in effect for the duration of the decree at any facility operated by Defendant in the state of New Mexico.

NON-MONETARY RELIEF TO CHARGING PARTIES AND CLASS

4. In response to any employment inquiries or reference checks concerning Janelle Lamb, Jennifer McAdams, Melinda Montano or Mindi Gonzales, Defendant shall provide only their dates of employment, each position held, job duties and salary. This provision shall remain in force for so long as Janelle Lamb, Jennifer McAdams, Melinda Montano or Mindi Gonzales use Defendant as a reference and is not limited to the three-year duration of this decree.

5. Defendant shall not take any action against Janelle Lamb, Jennifer McAdams, Melinda Montano or Mindi Gonzales, or any other individual in retaliation for filing a charge of employment discrimination or for participating, assisting or testifying in this action.

6. Defendant shall provide Janelle Lamb, Jennifer McAdams, Melinda Montano and Mindi Gonzales with a neutral letter of reference from its highest ranking official that provides the following information about each individual: dates of employment, position(s) held, job duties and salary.

DEFENDANT'S CORRECTIVE POLICIES AND PRACTICES

7. Defendant shall institute and carry out policies and practices that will provide a work environment free from sex discrimination, including policies procedures and practices to prevent

sexual harassment of their employees and other individuals, and that allow employees and other individuals to raise concerns or complaints about matters made unlawful by Title VII, whether alleged, perceived or actual without retaliation. To assist Defendant in its effort to provide a work environment free of sex discrimination, sexual harassment and retaliation, Defendant shall take the actions provided for in Paragraphs 8 through 10 of this decree.

8. Within forty-five (45) days of the entry of this decree, Defendant shall review any existing policies on sex discrimination, including sexual harassment, and make any changes necessary so that their policies and procedures comply with Title VII. Should Defendant not currently have an existing policy prohibiting sexual harassment and/or a grievance procedure, Defendant shall implement an effective anti-sexual harassment policy and procedure to receive employee complaints of harassment. Defendant shall ensure its written policy includes a statement that employees are encouraged to complain directly to EEOC or any state equal opportunity agency. After reviewing and making any necessary revisions to its policies, Defendant shall distribute the revised sexual harassment policy and complaint procedure to each of its current full and part-time employees, and to each new employee hired for the duration of this decree. The policy and procedure statements that are provided to defendant's employees should be designed to present easily understood, convenient, consistent, confidential and reliable procedures for reporting incidents of sexual harassment and retaliation in Defendant's New Mexico facilities. These procedures, at a minimum, shall include provisions incorporating the following:

- A. Within thirty (30) days of entry of this decree and for the duration of this decree, Defendant shall designate at least one employee in a supervisory or managerial

position at each New Mexico facility to serve as investigative officer for sexual harassment issues;

- B. Within thirty (30) days of 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 who have an immediate need to know, including the investigative officer(s), 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 of an employee, the investigative officer shall endeavor to immediately interview all affected employees and potential witnesses to the alleged harassment;
- F. 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;
- G. 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 10 of this decree;

- H. 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;
- I. The investigative officer will maintain a file on the original complaint(s) and any follow-up investigation;
- J. Defendant's owners, stockholders, 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 loss of income, suspension or dismissal.

9. Defendant shall post within thirty (30) days of the entry of this Consent Decree, and continuously for a period of 36 months, in prominent places frequented by employees of Defendant's 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.

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

- A. Defendant shall provide at least three training sessions during the term of this decree. All owners, stockholders, managers, supervisors and employees at New Mexico facilities owned or operated by Defendant, shall attend the training. Duplicative or videotaped 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 training shall be conducted within ninety (90) days of the entry of this decree. Additional training shall be conducted at least once each remaining year of this Decree.
- C. During the first year of this decree, 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 (45) days of the entry of this decree. During the second and third years of the decree Defendant may choose to use professional videotapes to provide appropriate training on sex discrimination, sexual harassment and retaliation in lieu of a live training session. If a professional videotape is proposed to meet Defendant's training obligation under this Decree in the second and third years of the Decree, a copy of the proposed videotape(s) shall be submitted to the Regional Attorney at least sixty (60) 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 the proposed consultant/lecturer, the contents of the seminar, and/or the selected professional videotape(s). 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 \$500.00 per seminar-training session, which shall be paid by Defendant.
- D. The training shall include a minimum of two hours of instruction. All personnel, designated in Paragraph 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 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 or retaliation in the workplace.
- F. Immediately following the training sessions, Defendant's highest ranking managerial official in New Mexico shall speak to the employees about: (1) potential discipline that can be taken against owners, stockholders, 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 10D.
- 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 10E and shall be given any written material disseminated at the training.

11. The Commission, at its discretion, may designate Commission representatives to attend and participate in the training sessions described above.

REPORTING BY DEFENDANT AND ACCESS BY EEOC

12. Defendant shall report in writing and in affidavit form to the Regional Attorney of the Commission's Albuquerque District 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 name, address, position, social security number and telephone number 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 New Mexico facilities against Defendant or its personnel, including but not limited to owners, stockholders, 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 paragraphs 8G and 10 of this decree and a list of current employees on the day of the seminar-training session.
 - D. An affidavit by Defendant stating: (1) the Notice required in paragraph 9 of this decree was posted and the locations where it was posted, and (2) it has complied with paragraphs 4-8 and 10 of this decree.
 - E. Copies of any video presentations Defendant has utilized to comply with the requirements of this decree.
13. The Commission upon reasonable notice shall have the right to enter and inspect

the premises of Defendant's New Mexico facilities to insure compliance with this decree and federal anti-discrimination laws.

COSTS AND DURATION


14. Each party shall bear its costs and attorneys' fees incurred to secure non-monetary relief as a result of this action through the entry of this decree.

15. 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 noncompliance, may be ordered.

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

17. The parties agree to entry of this decree as to non-monetary relief subject to final approval by the Court.

ENTERED AND ORDERED this ____ day of _____ 2003.

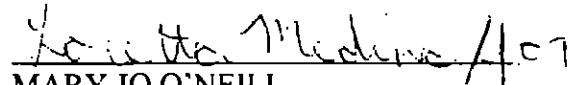


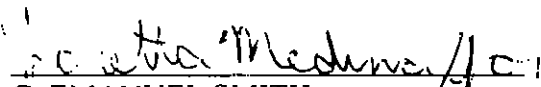
THE HONORABLE C. LeROY HANSEN
UNITED STATES DISTRICT JUDGE

APPROVED AND CONSENTED TO:


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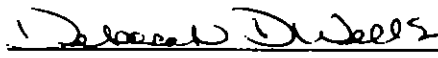

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NOTICE TO ALL EMPLOYEES OF
B & B MANAGEMENT, INC.,

This Notice is posted pursuant to a Consent Decree entered into between B & B Management, 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.

B & B Management, Inc., prohibits all forms of sex discrimination, including 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.

B & B Management, 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 designated investigative officer at your workplace who may be contacted at _____.

If you believe you have been discriminated against by B & B Management, Inc., you have the right to seek assistance from:

- 1) Equal Employment Opportunity Commission, 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