

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

**FILED**

(1) EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

(2) CLAUDE GREGORY,

Intervenor Plaintiff,

v.

(1) ESSEE, INC., d/b/a BURGER KING,

Defendant.

DEC 9 9 2002  
ROBERT D. BERRY, CLERK  
U.S. DIST. COURT WESTERN DIST. OF OKLA.  
BY \_\_\_\_\_ DEPUTY

CASE NO. CIV-02-611-R

**CONSENT DECREE**

THIS CONSENT DECREE is made and entered into by and among the Plaintiff, Equal Employment Opportunity Commission ("EEOC"), the Defendant, Essee, Inc., d/b/a Burger King ("Essee"), and the Intervenor, Claude Gregory ("Gregory"), in the United States District Court for the Western District of Oklahoma, with regard to the EEOC's Complaint filed on May 7, 2002 ("EEOC Complaint"), in Civil Action No. CIV-02-611, and Intervenor's Complaint filed May 8, 2002.<sup>1</sup> These Complaints were based upon Charge of Discrimination Number 311A10836 filed by Gregory against Essee.

The above-referenced Complaints allege that Essee engaged in unlawful employment practices at its Oklahoma City, Oklahoma Burger King restaurant, in violation of Section 703(a)(1) of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. Section 2000e-2(a)(1), by subjecting Gregory to a sexually hostile working environment. The Complaints alleged that this sexually hostile working environment was created by the conduct of the female assistant manager, which included lewd comments and the illegal strip search of Gregory resulting in his constructive discharge. In addition to alleging Title VII violations, the

<sup>1</sup>This Court granted Gregory's Motion to Intervene on May 8, 2002.

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Intervenor also asserted various state law claims, including intentional infliction of emotional distress, negligent supervision and retention and assault. Essee filed its Answer to the EEOC Complaint and the Complaint of the Intervenor, denying the allegations contained in each Complaint.

EEOC, Essee and Gregory agree to compromise the differences embodied in the Complaints, and intend that the terms and conditions of the compromise be set forth in this Consent Decree ("Consent Decree").

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows, the Court finds appropriate, and therefore, it is ORDERED, ADJUDGED AND DECREED that:

1. This Consent Decree resolves all issues raised in EEOC Charge No. 311A10836. This Decree further resolves all issues in the Complaints filed by the EEOC and Gregory in this civil action. The EEOC and Gregory waive further claims and/or litigation on all issues raised in the above-referenced charge and Complaints. The EEOC does not waive processing charges other than the charge of discrimination specifically referenced above.

2. The parties agree that this Consent Decree does not constitute an admission by Essee of any violation of Title VII, or any other state law claims including intentional infliction of emotional distress or assault.

3. Essee agrees that it shall conduct all employment practices at all of its Oklahoma restaurants in a manner which does not subject any employee to discrimination under Title VII.

#### **Scope of Consent Decree**

4. The duration of this Consent Decree shall be three (3) years from the date of entry of the Consent Decree. During that time, this Court shall retain jurisdiction over this matter and the Parties for purposes of enforcing compliance with the Consent Decree, including such orders as may be required to effectuate its purposes.

**General Provisions**

5. Essee and its officers, agents, management, including supervisory employees on any level, i.e. assistant managers, successors and assigns, and all those in active concert or participation with them, or any of them, agree to refrain from: (i) discriminating against any employee on the basis of sex; (ii) engaging in or being a party to any action, policy or practice that is intended to or is known to them to have the effect of harassing or intimidating any employee on the basis of gender; and/or (iii) creating, facilitating or permitting the existence of a work environment at its Oklahoma City facilities that are hostile to its employees.

6. Essee and its officers, agents, management, including supervisory employees on any level, i.e. assistant managers, successors and assigns, and all those in active concert or participation with them, or any of them, agree to refrain from engaging in, implementing or permitting any action, policy or practice with the purpose of retaliating against any current or former employee of Essee at its Oklahoma facilities because he or she opposed any practice of sex discrimination, sexual harassment or sex-based harassment made unlawful under Title VII; filed a Charge of Discrimination alleging any such practice; testified or participated in any manner in any investigation (including, without limitation, any internal investigation undertaken by Essee), proceeding, or hearing in connection with this case and/or relating to any claim of sex discrimination, sexual harassment or sex-based harassment; was identified as a possible witness in this action; asserted any rights under this Consent Decree; or sought and/or received any monetary and/or non-monetary relief in accordance with this Consent Decree.

**Non-Monetary Relief**

7. Essee affirms the following "Statement of Zero-Tolerance Policy and Equality Objectives":

Essee, Inc. is firmly committed to developing and maintaining a zero-tolerance policy concerning sexual harassment, sex-based harassment and retaliation

against individuals who report harassment in the company's workplace; to swiftly and firmly responding to any acts of sexual or sex-based harassment or retaliation of which the company becomes aware; to implementing a disciplinary system that is designed to strongly deter future acts of sexual or sex-based harassment or retaliation; and to actively monitoring its workplace in order to endure tolerance, respect and dignity for all people.

#### **Specific Non-Monetary Relief**

8. In order to effectuate the objectives embodied in Essee's Statement of Zero-Tolerance Policy and Equality Objectives and this Consent Decree, Essee shall make whatever specific modifications are necessary to its existing policies, procedures and practices in order to ensure that the following policies, procedures and practices at its Oklahoma facilities are implemented. Further, the parties agree that this Consent Decree will be administered in a manner consistent with federal labor and employment discrimination laws.

##### **(a) Sexual Harassment Policy.**

Essee agrees that it shall revise its sexual harassment policy, as necessary, in order to: (i) provide examples to supplement the definitions of sexual harassment and sex-based harassment; (ii) include strong non-retaliation language with examples to supplement the definition of retaliation, and provide for substantial and progressive discipline for incidents of retaliation; (iii) provide that complaints of sexual harassment, sex-based harassment and/or retaliation will be accepted by Essee in writing and orally; (iv) provide a timetable for reporting harassment, for commencing an investigation after a complaint is made or received and for remedial action to be taken upon conclusion of an investigation; and (v) indicate that, promptly upon the conclusion of its investigation of a complaint, Essee will communicate to the complaining party the results of the investigation and the remedial actions taken or proposed, if any.

**(b) Complaint Procedures.**

Essee agrees that it shall: (i) revise its complaint procedure as necessary in order to ensure that it is designed to encourage employees to come forward with complaints about violation of its sexual harassment policy. As part of this policy, Essee agrees that it shall provide its employees with convenient, confidential and reliable mechanisms for reporting incidents of sexual harassment, sex-based harassment and retaliation. Essee agrees that it shall designate at least two employees from the department charged with investigating such issues as persons who may be contacted, and their names, responsibilities, work locations and telephone numbers shall be routinely and continuously posted. Also as part of its procedure, Essee agrees that it take seriously anonymous complaints received.

(ii) Essee agrees that it shall revise its policies as necessary to enable complaining parties to be interviewed by Essee about their complaints in such a manner that permits the complaining party, at such party's election, to remain inconspicuous to all of the employees in such party's work area. Essee agrees that its complaint procedure shall not impose upon individuals seeking to make a complaint alleging sexual harassment, sex-based harassment and/or retaliation any requirements that are more burdensome than are imposed upon individuals who make other complaints of comparable gravity.

(iii) Essee agrees that it shall revise its complaint handling and disciplinary procedures at its Oklahoma facilities as necessary to ensure that all complaints of sexual harassment, sex-based harassment and/or retaliation are investigated and addressed promptly. Specifically, Essee agrees that it shall make best efforts to investigate all complaints of sexual harassment, sex-based harassment and/or retaliation promptly and to complete investigations within three (3) weeks. Essee will further make best efforts to prepare its written findings of the results of each investigation and the remedial actions proposed or taken, if any, within seven (7) days after completion of the investigation, and

shall thereupon promptly communicate to the complaining party the results of the investigation and the remedial actions taken or proposed, if any.

(iv) Essee agrees that it shall make best efforts to ensure that appropriate remedial action is taken to resolve complaints and to avoid the occurrence of further incidents of sexual harassment, sex-based harassment and/or retaliation. Essee specifically agrees that its complaint procedure shall include the power, in Essee's sole discretion, to order, during the pendency of the investigation, the immediate transfer of persons accused of having violated Essee's sexual harassment policy or of persons who claim to have been victims of such violations, as well as the power to order the permanent transfer of employees found to have violated such policy, and, upon the request of the complaining party, the permanent transfer of any complaining party who is found to have been the victim of a violation of Essee's sexual harassment policy.

**(c) Policies Designed to Promote Supervisor Accountability.**

(i) Essee agrees that it shall impose substantial discipline--up to and including termination, suspension without pay or demotion--upon any supervisor, manager, assistant manager or person with any supervisory authority-- who engages in sexual harassment or sex-based harassment or permits any such conduct to occur in his or her work area or among employees under his or her supervision, or who retaliates against any person who complains or participates in any investigation or proceeding concerning any such conduct. Essee shall communicate this policy to all of its supervisors and managers.

(ii) Essee agrees that it shall continue to advise all managers and supervisors of their duty to actively monitor their work areas to ensure employees' compliance with the company's sexual harassment policy, and to report any incidents and/or complaints of sexual harassment, sex-based harassment and/or retaliation of which they become aware to the persons charged with handling such complaints.

(iii) Essee agrees that it will revise its current supervisor appraisal process to include performance evaluations for the handling of equal employment opportunity issues

as an element in supervisor appraisals, and to link such evaluations directly to its supervisor salary/bonus structure.

(iv) Essee agrees that it shall include "commitment to equal employment opportunity" as a criterion for qualification for supervisory positions.

**(d) Sexual Harassment Training**

(i) Essee agrees that it shall provide mandatory annual sexual harassment training, to all employees, supervisory and non-supervisory; to provide mandatory sexual harassment training to all new employees during employee orientation; to provide mandatory sexual harassment training to all senior management officials; to provide training to all persons charged with the handling of complaints of sexual harassment, sex-based harassment and/or retaliation related thereto. The training shall be at least ninety minutes for Supervisors and thirty minutes for non supervisory employees and shall be conducted by experienced sexual harassment educators, either by videotape or other means, to educate employees about the problems of sexual harassment in the workplace and the techniques for investigating and stopping sexual harassment.

(ii) The training shall inform employees of the complaint procedure for those individuals who believe they have been sexually harassed or otherwise experienced sex-based discrimination. Further, the training shall advise all employees, including supervisors and managers, of the consequences of violating Title VII and of the importance of working in an environment free of sexual harassment.

(iii) No less than 10 days before the training is conducted, Essee agrees to give written notice to the EEOC as to the date and location of the training, the type of training and the substance of the training.

(iv) Essee agrees that it shall require a senior management official to introduce all sexual harassment training to communicate Essee's commitment to its Statement of Zero-Tolerance Policy and Equality Objectives.

**Reporting Requirements**

9. For each year the Consent Decree is in effect, Essee agrees it shall maintain a log of all complaints of sexual harassment, containing the name of the complainant, the name of the alleged harasser, the date of the complaint and the name of the person assigned to investigate the complaint and the final report and/or disciplinary response regarding the complaint. Essee shall provide EEOC with a copy of the log, two times per year, on the 1<sup>st</sup> day of January and the 1<sup>st</sup> day of July, during the term of the Consent Decree

**Posting & Notice Requirements**

10. Within two (2) weeks after entry of this Consent Decree, Essee shall post a notice (attached to this Consent Decree as Exhibit "A") in prominent and conspicuous locations throughout its restaurants located within the State of Oklahoma. This notice shall inform employees that sexual harassment, sex-based harassment and/or discrimination and retaliation will not be tolerated and that the first violation thereof will subject the employee found to have violated the company's sexual harassment policy to those disciplinary consequences specified within the policy.

11. The notice shall also inform employees where to report violations of Essee's sexual harassment policy, the name of the designated company official to whom they should report said violations, along with the address and telephone number of the Oklahoma Area Office of the EEOC. The notice shall remain posted for the duration of this Consent Decree. In the event that the persons and/or departments to whom individuals should make complaints alleging sexual harassment, sex-based harassment and/or retaliation change during the term of the Consent Decree such that the information contained in the notice is no longer accurate, Essee shall immediately prepare and post a revised notice that contains the correct information. Essee shall promptly thereafter forward a copy of the revised notice to the EEOC.

12. Essee, Inc., agrees to distribute the Notice attached hereto as Exhibit "A" to each employee within 30 days of the date of the entry of this Consent Decree.



13. Essee agrees to post a copy of the notice, as described in paragraphs 12-13, above, within fourteen (14) days after entry of this Consent Decree. Essee will thereafter report to the EEOC that it has complied with this requirement within fourteen (14) days after posting the notice.

#### **Monetary Relief**

14. Essee agrees to pay the gross amount of one hundred eighty seven thousand and no/100 dollars, (\$187,000.00), to resolve all claims for damages to Claude Gregor, in and for compensatory damages, inclusive of costs and attorney fees, within ten (10) days of the entry of this Consent Decree. Essee shall issue the check made payable to Mr. Gregory and his attorneys.

15. If Essee fails to tender payment or otherwise fails to timely comply with the terms of Paragraphs 14 above, Essee shall:

- a. Pay interest at the rate calculated pursuant to 26 U.S.C. Section 6621(b) on any untimely or unpaid amounts; and
- b. Bear any additional costs incurred by the EEOC caused by the non-compliance or delay of the defendant.

16. Neither the EEOC, Gregory nor Essee shall contest the validity of this Consent Decree nor the jurisdiction of the federal district court to enforce this Consent Decree and its terms or the right of either party to the Consent Decree to bring an enforcement action upon breach of any term of this Consent Decree by either such party. Nothing in this Consent Decree shall be construed to preclude the EEOC from enforcing this Consent Decree in the event that Essee fails to perform the promises and representations contained herein. The EEOC shall be authorized to seek compliance with the Consent Decree through civil action in the United States District Court. The EEOC also reserves the right to seek contempt sanctions for non-payment and non-compliance with this Consent Decree.

#### **Costs**

17. The parties to this Consent Decree agree to bear their own costs associated with the litigation of the above-referenced Complaint and the administration of this Consent Decree.

**Other General Provisions**

18. **Neutral Job Reference:** Essee, Inc., agrees to provide a neutral letter of reference for Mr. Gregory and include a sentence that Mr. Gregory was an employee of Defendant, include the dates of his employment, the last position held and the last salary earned. Said letter of reference shall be delivered to Mr. Gregory's attorney within ten (10) day of the entry of this Consent Decree.

19. **Personnel File Expungement:** Essee, Inc. agrees to remove from all personnel files of Claude Gregory all documents, entries and references relating to: the facts and circumstances which led to the filing of his charge of discrimination; the charge itself; and the complaint filed by the EEOC in federal court based upon his charge.

20. **Security of Evidence:** Essee, Inc. agrees that the original and all copies of the surveillance video tape shall be delivered to the offices of its attorney and be secured with the litigation file.

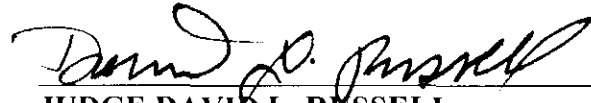
21. **Disciplinary Action:** Essee, Inc. agrees to terminate the employment of the Assistant Manager who conducted the strip search, Ana Vaughn, on or before January 30, 2003.

22. **Computation of Time Periods:** In computing any period of time prescribed or allowed by this Consent Decree, unless otherwise stated, such computation shall be made consistent with the Federal Rules of Civil Procedure.

23. **Notices:** Except as otherwise provided for in this Consent Decree, all notification, reports and communications to the parties required under this Consent Decree shall be made in writing and shall be sufficient if hand-delivered or sent by first-class mail to the following persons: Michelle M. Robertson, Sr. Trial Attorney, Oklahoma Area Office for the U.S. E.E.O.C., 210 Park Avenue, Ste. 1350, Oklahoma City, OK 73102.

24. **Integration:** This Consent Decree constitutes the entire agreement between Essee, Gregory and EEOC hereto with respect to the matters herein and it supersedes all negotiations, representations, comments, contracts and writings prior to the date of this Decree.

SO ORDERED, ADJUDGED AND DECREED this 10 day of December, 2002.



JUDGE DAVID L. RUSSELL  
U.S. DISTRICT COURT JUDGE

APPROVED AS TO FORM AND SUBSTANCE:

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