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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

MICHAEL TAYLOR, et al.

Plaintiffs,

vs.

No. 3-94-0489

Judge Higgins

O'CHARLEY'S, INC., et al.

Magistrate Judge Haynes

Defendants.

CONSENT DECREE

I. INTRODUCTION

This Consent Decree (hereinafter the "Decree") resolves Taylor et al. v. O'Charley's, Inc. et al, Civil Action No. 3-94-0489 (hereinafter "Action"), pending in the United States District Court for the Middle District of Tennessee. This action was filed in the United States District Court for the Western District of Tennessee on February 15, 1994, by three named Plaintiffs, Michael Taylor, Sherita Roberts, and Shauna Jones. These three Plaintiffs were later joined by two additional named Plaintiffs, Michael Tucker and Lawrence Blakemore. The Plaintiffs alleged, on behalf of themselves individually and on behalf of all persons similarly situated, that Defendants O'Charley's, Inc. (hereinafter referred to individually as the "Company") and David K. Wachtel, Gregory L. Burns, and Charles F. McWhorter (all Defendants are hereinafter referred to collectively as "O'Charley's") utilized and maintained class-wide discriminatory employment practices against Black individuals in violation of Title VII of the Civil Rights Act of 1964, as

This document was entered on
the docket in compliance with
Rule 58 and/or Rule 79(a),

FRCP, on 11/20/96 By: [Signature]

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amended, 42 U.S.C. §§ 2000e et seq. ("Title VII"), and the Civil Rights Act of 1866, 42 U.S.C. § 1981 ("§ 1981"), and 42 U.S.C. § 1985 (3) ("§ 1985(3)").

This case was later transferred to the Middle District of Tennessee. In their Complaint, the Plaintiffs contend that O'Charley's discriminated against Blacks with respect to hiring, job assignment, pay rates, promotions, terminations, and other conditions of employment. The named Plaintiffs have vigorously prosecuted the case and Defendants have vigorously contested it. The parties have undertaken substantial discovery and have submitted substantial documentation to the Court concerning the nature of this case. On June 10, 1996, this Court granted provisional certification of a class consisting of African-Americans who were employed at O'Charley's company- owned restaurants on or after March 31, 1992.

The parties have also engaged in extensive settlement negotiations. On July 23, 1996, the parties advised the Court that they had entered into a Letter of Intent settling this matter.

Based upon the substantial documentation filed with this Court, including extensive discovery materials, the parties agree and the Court finds that the formal and informal discovery conducted in this action are sufficient to assess the merits of the respective parties' positions and to compromise the issues on a fair and equitable basis. The Court also held a fairness hearing, at which members of the class were invited to present comments and objections relating to the proposed settlement.

O'Charley's and the individual Defendants agree that the relief provided in this Decree is proper and appropriate and further agree to the entry of this Decree without

admission whatsoever that O'Charley's or the individual Defendants have discriminated on the basis of race or violated Title VII, § 1981, or § 1985(3), any such liability or wrongdoing being expressly denied. It appearing to the Court that the Decree is fair and reasonable, now therefore

IT IS ORDERED, ADJUDGED, AND DECREED as follows:

II. DEFINITIONS

The following terms, when used in this Decree, shall have the following meaning (such meaning shall be equally applicable to the singular and plural forms thereof):

1. "Applicants" means Black unsuccessful Applicants at: (i) all Company-owned restaurant facilities system wide from March 31, 1992, to the Class Cutoff Date and; (ii) all former Shoex restaurant facilities from June 1, 1994, through the Class Cutoff Date.

2. "Current employees" means all Black current employees of all Company-owned restaurant facilities system wide and Corporate offices, including opening and training team members, as of the Class Cutoff Date.

3. "Former employees" means all Black former employees of: (i) all Company-owned restaurant facilities system wide, including opening and training team members, from March 31, 1992, to the Class Cutoff Date; and (ii) all Shoex restaurant facilities from June 1, 1994, through the Class Cutoff Date.

4. "Class Cutoff Date" is the date the Court entered its Order provisionally approving this Consent Decree, which was August 30, 1996.

5. "Corporate office" means the Company's principal executive offices in Nashville, Tennessee, but it does not include the Donelson Foods commissary.

6. "Valid Claim" means a claim that meets the following requirements:
- (a) contains all of the information requested by the claim form attached to the previously approved notices mailed to Class Members, and which was Exhibit 2 to the Stipulation of Settlement and Order of Provisional Entry of Consent Decree, in order to provide the Claims Administrator with basic information to allow the Claims Administrator to determine if the claimant is a member of either the Applicant subclass or the Former Employee subclass;
 - (b) is signed by the claimant under penalty of perjury;
 - (c) is postmarked by the date established in the Stipulation of Settlement and Order of Provisional Entry of Consent Decree;
 - (d) includes a Release and Tax Indemnification Agreement (in the form attached to Exhibit 2 of the Stipulation of Settlement and Order of Provisional Entry of Consent Decree) completed and signed by the claimant with a witness (receipt of a completed, signed, and witnessed Release and Tax Indemnification Agreement being a precondition to receipt of any amounts from the Settlement Fund by any Class Member);
 - (e) with respect to Applicants, establishes that the Applicant was of legal minimum age for the position sought and that the store at which the Applicant applied was in existence at the time of application;

(f) is consistent with Company records concerning such criteria as whether a Former Employee worked for the Company within the Class period, whether an Applicant was of lawful age for any position applied for, when a store was in existence, and other similar criteria agreed to by counsel; and

(g) is approved by the Claims Administrator as meeting all preconditions to enable the claimant to receive a share of the distribution.

7. "Plaintiffs" means the five named Plaintiffs.

8. "Class" or "Class Member" means all or any of the Applicants, Current Employees, and Former Employees, including Plaintiffs.

9. "Company", "Decree", "Action", "O'Charley's", "Title VII", "Section 1981 ", and "Section 1985 (3)" shall have the meanings set forth in Section I of this Decree.

10. "Guaranteed Minimum Value" means the average of the Company's common stock price during the 30-day period immediately preceding either the date of entry of this Decree or the conclusion of the opt-out period, whichever is later.

11. "Class Counsel" or "Plaintiffs' Counsel" means all attorneys who have entered an appearance as counsel of record for Plaintiffs in this case.

12. "Settlement Fund" or "Fund" mean the total \$5.5 million referred to in Paragraph VIII A of this Decree.

13. "Black" shall have the same meaning as given to it by the instructions required for completion of the most current versions of the United States Equal Employment Opportunity Commission's Employer Information Report, EEO-1.

III. JURISDICTION

The Court has subject matter jurisdiction of this action. The Plaintiffs' Complaint asserts claims that if proved would authorize the Court to grant monetary and equitable relief. The Court shall retain jurisdiction during the duration of the Decree as set forth in Section V to interpret, modify, and enforce the provisions of the Decree.

IV. EFFECT OF DECREE

The entry of this Decree and the undertakings by the Company hereunder are in settlement of the claims of the Plaintiffs and the Class Members. Upon entry of the Decree, O'Charley's, the individual Defendants, and the Company's directors, officers, agents, and employees shall be and hereby are fully released and forever discharged from any and all claims, demands, charges, complaints, rights, and causes of action of any kind, known or unknown, by the Plaintiffs or the Class (except for those Class Members who elect to "opt out" of the Class) that were asserted or that arise out of or are related to claims that were asserted by the individual Plaintiffs or the Class involving application for employment, employment and terms and conditions of employment, and/or separation from employment against O'Charley's and/or the individual Defendants in this action. This Decree is final and binding among the Plaintiffs, the Class Members who do not elect to opt out, and O'Charley's.

This Decree does not constitute an admission of liability and does not constitute evidence of discrimination by O'Charley's or any of the individual Defendants in this or any other proceeding. O'Charley's and the individual Defendants have denied and continue to deny any acts of discrimination on their part either individually or collectively.

The general and full releases referred to in Paragraph VIII A 12 as the Release and Tax Indemnification Agreements are intended to be full and final binding releases of all Released Claims against the Released Parties as those terms are defined in the Release and Tax Indemnification Agreement, and such releases shall be construed broadly to effect that purpose. The Release and Tax Indemnification Agreements shall survive any termination of this Decree.

V. DURATION OF DECREE

This Decree shall become effective upon the date of its entry by the Court and unless otherwise ordered by the Court shall remain in effect for two years from such date.

VI. CLASS CERTIFICATION AND DEFINITION

The Court hereby approves and certifies pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3) a class of three subclasses: Applicants, Former Employees and Current Employees, as previously defined. To the extent any Class Member may fall into more than one subclass, he or she shall be deemed to be a member of only the subclass that provides him or her with the largest potential claim.

VII. ADMINISTRATION AND NOTICE

Class Counsel has selected, after consultation with and approval by counsel for the Company, Rust Consulting, Inc., to serve as the "Claims Administrator" to facilitate the distribution of notice, processing of claims, and the payment of claim amounts as set forth herein. The Claims Administrator has complied with the notice procedures set forth in the Stipulation of Settlement and Order of Provisional Entry of Court Decree. The Claims Administrator shall be paid out of the Fund as provided in Paragraph VIII A 1 below and

shall submit duplicate statements to Class Counsel and counsel for the Company for all disbursements for fees and expenses. Further, the Claims Administrator shall make an accounting to Class Counsel and counsel for the Company for all claims paid.

VIII. MONETARY RELIEF

A. The Company agrees to pay a total of \$5,500,000 in funds and stock as hereinafter provided as a Settlement Fund to be used exclusively for the following purposes:

1. To pay all claims administration and notice expenses, including newspaper advertisements, up to a maximum of \$350,000. Any surplus from this administration amount shall remain in the Settlement Fund pending final distribution to Class Members or reversion to the Company. In the event that the cost of notices and claims administration exceeds the sum of \$350,000 allocated herein, any surplus remaining from the funds provided in Paragraph VIII A 2 below may be utilized to fund any administrative costs in excess of the \$350,000 allocated in this subparagraph.

2. To pay all fees and expenses of Class Counsel involved in claims administration and any and all related services and expenses, including negotiation and implementation of this settlement and related documents and necessary court appearances related thereto incurred after July 21, 1996, up to a maximum of \$350,000. Except as may otherwise be provided in Paragraph VIII B 6 below, the parties agree that the amount to be paid for attorneys' fees and costs as provided herein satisfies any obligation O'Charley's may have to pay reasonable attorneys' fees, litigation expenses, and costs to Class Counsel and any members of the Class for any and all work performed on or after July 21, 1996. Any surplus from this portion shall remain in the Settlement Fund

pending final distribution to Class Members or reversion to the Company. All fees of Class Counsel to be paid from the Settlement Fund shall be at the rate of \$175 per hour for reasonable attorney time and \$70 per hour for reasonable paralegal time. Expenses shall be reimbursed at actual cost without any markup or add on, including any expense for any experts or other persons necessary to assist Class Counsel in claims administration. Class Counsel shall submit an itemized statement for all reasonable fees and expenses incurred to the Claims Administrator for payment with a copy to counsel for the Company. No amount for fees and expenses shall be paid by the Claims Administrator until after at least 35 days from the entry of this Decree, but they shall be paid promptly thereafter.

3. To pay \$1,400,000 in common stock of the Company to be allocated to Current Employees.

- (a) Current Employees shall receive a distributive share of the common stock referred to above. Each Current Employee's distributive share shall be determined through a formula using 50% hours worked and 50% earnings based on Company records. For the purposes of this subparagraph (a), hours worked and dollars earned includes only such hours worked and dollars earned at a Company owned facility while it was a Company owned facility, except that it will also include, to the extent applicable, hours worked and dollars earned at Shoex, Inc. owned stores from June 1, 1994, to September 2, 1996. For each Current Employee two intermediate amounts shall be

determined and then combined to give the final amounts for each Current Employee.

- (i) The first amount is determined by taking all of the hours a Current Employee has ever worked for the Company between March 31, 1992, to September 1, 1996, as the numerator and by taking the cumulative total of all hours ever worked by all Current Employees for the Company between January 1, 1992, and September 1, 1996, as the denominator; provided, however, that in calculating the denominator, the total hours for calendar year 1992 shall be multiplied by .75 to derive the 1992 component. This fraction is then multiplied by \$700,000.
- (ii) The second amount is determined by taking all of the dollars a Current Employee has ever earned from the Company between March 31, 1992, to September 1, 1996, as the numerator and by taking the cumulative total of all dollars ever earned by all Current Employees from the Company between January 1, 1992, and September 1, 1996, as the denominator; provided, however, that in calculating the denominator, the total dollars for calendar year 1992 shall be multiplied by .75 to derive the 1992 component. This fraction is then multiplied by \$700,000.

The final calculation of the distributive shares of stock, or portions thereof, allocable to each Current Employee based upon the foregoing formula shall be computed within 45 business days following the entry of this Decree or the end of the claim filing period, whichever is later. The appropriate amount of stock, less all applicable withholdings, shall be allocated to accounts in the name of each Current Employee through the offices of J.C. Bradford & Co., or another registered broker dealer selected by the Company.

- (b) Current Employees who leave employment for any reason after the Class Cutoff Date but prior to the distribution of stock shall receive cash equal to the value of their allocated distributive shares of stock as of their termination date, less all applicable withholdings, in lieu of stock. Only Current Employees who remain employed as of the time of distribution shall receive stock. Payment of the cash equivalent shall not reduce the portion of the Settlement Fund otherwise available to Former Employees under Paragraph VIII A 7. Payment of the cash equivalent, less any withholdings, will be made consistent with the provisions of Paragraphs VIII A 3 (d), (e) and (f) below.
- (c) Current Employees (including Current Employees who terminate between the Class Cutoff Date and the date of the distribution of stock) shall not be required to submit claim forms. They shall, however, be required to submit properly executed Release and Tax

Indemnification Agreements in the form attached to the class notice, which was Exhibit 2 to the Stipulation of Settlement and Order of Provisional Entry of Consent Decree, postmarked no later than November 4, 1996. O'Charley's shall not contest the calculation and allocation of distributive shares of stock, or cash in lieu thereof if applicable, to Current Employees.

- (d) Once the stock allocations have been calculated, the Company shall notify each Current Employee of the amount of stock to which he or she is entitled. The notice shall also state that Current Employees may sell their stock through J.C. Bradford & Co. or another registered broker dealer selected by the Company at no cost to them during the 30-day period commencing with the notice as provided in Paragraph VIII A(4)(e) below. Class Counsel shall have an opportunity to review the Company's notice to Current Employees as provided herein at least 5 business days prior to distribution and to object to such notice to the extent they believe it to be inconsistent with any specific provisions in Paragraph VIII 3 (a) - (f) of this Decree. Any Current Employee who chooses to sell his or her stock within the 30-day period shall receive the greater of the current market price per share at the time of sale or the Guaranteed Minimum Value in cash. In the event the market price per share at the time of a sale within the 30-day period is less than the Guaranteed Minimum Value, the Company

shall pay the difference to the Current Employee within 15 business days of the settlement of the sale or when the Company receives notice of the sale from the broker dealer, whichever is later.

- (e) The Company has the option of sending notice of the stock allocations to Current Employees either (1) by letter, in which case the 30-day period shall begin to run three days after the date the letter is postmarked and placed in the U.S. mail, postage prepaid, to the employee's last known address as reflected in the most recent Company records, or (2) by written notice included with the employee's paycheck, in which case the 30-day period begins to run from the date the paycheck and the notice are made available to the employee. After the 30-day minimum value guarantee period expires, employees who sell their stock shall do so at their own expense and shall bear the risk of market/price fluctuations.
- (f) Any stock which would otherwise be allocated to Current Employees who opt-out or who do not accept a distribution under this Paragraph VIII A 4 shall revert to the Company.
- (g) The Company shall furnish to Class Counsel within 30 days after the distribution of all stock and/or cash to Current Employees a list of all Current Employees receiving the initial distribution of stock and/or cash and the respective amounts thereof.

5. To pay a maximum of \$500,000 to Applicants, which shall be distributed on a pro-rata basis to those Applicants who submit a timely Valid Claim and a timely Release and Tax Indemnification Agreement; provided, that each such Applicant shall be limited to a maximum claim of \$400 or the pro-rata share, whichever is less.

- (a) O'Charley's shall not contest the calculation of the claim amount and corresponding payment of Applicants' Valid Claims.
- (b) Any portion of the \$500,000 remaining after the payment of all Valid Claims by Applicants shall be reallocated to the portion of the Fund set aside in Paragraph VIII A 7 for Former Employees and then subject to reversion to the Company.
- (c) There shall be only one claim award per Applicant for a Valid Claim regardless of the number of times an individual Applicant applied.

6. To make payment to the Plaintiffs as follows:

Michael Taylor	\$45,000
Sherita Roberts	\$30,000
Lawrence Blakemore	\$25,000
Michael Tucker	\$13,750
Shauna Jones	\$13,750

These payments shall be made as provided in Paragraph VIII A 13. The Plaintiffs shall not be required to submit claim forms. They shall, however, be required to submit timely, properly executed release forms, as explained in Paragraph VIII A 12.

7. All available funds remaining in the Settlement Fund as of the date of calculation as set forth in Paragraph VIII A 7(b) below may be distributed to Former Employees (with the exception of the Plaintiffs) who submit a timely Valid Claim and a timely Release and Tax Indemnification Agreement, and these Former Employees shall be entitled to a payment based upon the formula set forth in Paragraph (a) below as determined by Company records.

- (a) The potential maximum claim amount for each Former Employee shall be calculated as a percentage of the available Settlement Fund amount allocated to Former Employees with the cumulative total hours worked by all Former Employees from January 1, 1992, to September 1, 1996 (provided that in calculating the denominator the total hours worked for calendar year 1992 shall be multiplied by .75 to derive the 1992 component), being the denominator and the actual hours worked by each individual Former Employee from March 31, 1992, to September 1, 1996, multiplied by a factor of 1.25, being the numerator, with a maximum payment of \$13,500 for any single claimant; provided, however, that if the number of Former Employee Valid Claims filed and calculated under this formula results in a potential maximum amount that exceeds the actual funds available for Former Employees remaining in the Settlement Fund, then all such claims shall be reduced pro-rata, with each Former Employee claimant receiving an appropriate lesser amount. In no event shall

the actual claims paid or owing exceed the amount of funds available for Former Employees in the Settlement Fund, including any surplus amounts reallocated from other portions of the Fund. For the purposes of this subparagraph (a), hours worked includes only such hours at a Company owned facility while it was a Company owned facility, except that it will also include, to the extent applicable, hours worked at Shoex, Inc. stores from June 1, 1994, to September 2, 1996.

- (b) The final potential claim amount for each Former Employee who timely files a Valid Claim and Release and Tax Indemnification Agreement shall be calculated as set forth in Paragraph VIII A 7(a) above within 45 business days following the entry of this Decree or the end of the claims filing period, whichever is later.
- (c) Valid Claims filed by Applicants and Former Employees will be deemed paid as of the date a check in the appropriate amount is placed in the U.S. mail, certified mail-return receipt requested, postage prepaid, to such Class members at the address listed on their respective claim forms. Current Employees will be deemed to have been paid as of the date of notification as provided in Paragraph VII A(3)(e); provided, in the event additional payments by the Company are necessary pursuant to the terms of Paragraph VII A3(d), any affected Current Employee will be deemed to have been paid as of

the date the additional payment is placed in the U.S. mail, certified mail-return receipt requested, postage prepaid, to the last known address of such Current Employee. Payments to the named Plaintiffs will be deemed paid as of the date checks in the appropriate amounts are placed in the U.S. mail, certified mail-return receipt requested, postage prepaid, to Class Counsel on their behalf. Upon payment of the claims as provided herein, the Claims Administrator shall furnish to the Company all original Claim Forms, all original signed Release and Tax Indemnification Agreement forms and all original canceled checks for the Company's records, with copies to Class Counsel.

- (d) O'Charley's shall not contest the calculation of the claim amount, and corresponding payment of Former Employees' Valid Claims.
- (e) Any amounts allocated to Former Employees who opt-out or who do not submit Valid Claims shall revert to the Company; provided however, that such reversion to the Company shall not occur unless each member of the Former Employee subclass who submits a Valid Claim receives the potential maximum claim amount as calculated in Paragraph VIII A 7(a) above. In no event shall any individual Former Employee's claim exceed the potential maximum claim amount for that individual (or cap if applicable) as calculated pursuant to Paragraph VIII A 7(a) above.

8. Subject to the provisions of Paragraph VIII B 6 below, any and all remaining Settlement Funds amounts not paid out as provided herein, including interest thereon, shall revert to the Company as soon as available after the payment of all Valid Claims and expenses as set forth in Paragraphs VIII A 7 (a), (b), and (c) and VIII A 1 and 2; provided, however that such reversion shall be no later than 15 business days after the payment of all class claims as set forth in Paragraphs VIII A 7 (a), (b), and (c).

9. The Settlement Fund amount which is to be funded by the Company other than by stock shall be accomplished by the contribution of a minimum initial outlay being deposited in an interest bearing account sufficient to cover the initial start-up costs and expenses of the Claims Administrator within 10 business days after entry of the Stipulation of Settlement and Order of Provisional Entry of Consent Decree. After the conclusion of any appeal period following entry of this Decree, the remainder will be secured, at the Company's expense, by an irrevocable letter of credit or similar facility, approved by Class counsel, provided that such approval may not be unreasonably withheld, which may be drawn against as required, at the instruction of the Claims Administrator, and which shall remain in effect to the extent necessary until all Valid Claims and expenses have been paid as provided in Paragraphs VIII A 7 (a), (b), and (c) and VIII A 1 & 2 above.

10. All payments or stock distributions to Class Members (including Current Employees, Former Employees, Plaintiffs, and Applicants) shall be less all applicable withholdings and deductions as may be required by law or regulation. All payments or distributions of stock to Class Members (including Current Employees, Former Employees,

Plaintiffs, and Applicants) shall be allocated as follows: twenty percent (20%) back pay benefits and eighty percent (80%) compensatory damages.

11. The Company agrees not to contest any claims, but reserves the right to review claims for Human Resources purposes. The Company may submit business records to the Claims Administrator to assist him/her in determining whether any claim is a Valid Claim.

12. No Class Member may receive any share or distribution of the Settlement Fund unless he or she first executes a Release and Tax Indemnification Agreement, a copy of which is attached to the Notice. The Plaintiffs shall sign release forms that also state that these named Plaintiffs give up any right to future employment with O'Charley's. An example of such release is attached hereto as Exhibit A.

13. Notwithstanding any time limits or provision for payment set forth above, payments to Former Employees, Current Employees, and Applicants, shall be made promptly after the expiration of any appeals period for this Decree and following completion of the necessary calculations and the expiration of any and all waiting periods as may be required by state or federal law or regulation, and the parties have estimated that all such payments and/or stock distributions, if applicable, will be made within 90 to 120 days after the entry of this Decree. Counsel for the parties may contact any state agency to discuss withholdings or waiting periods.

14. In the event of any disagreement concerning the application of this Paragraph VIII A, and/or any payments sought hereunder, either O'Charley's or Class Counsel shall first submit the specific disagreement to the other party in writing within 10 business days.

Counsel for the parties shall then confer in an attempt to resolve the disagreement within an additional 10 business days. In the event a resolution is not reached, then either party may move the Court for a determination within 10 business days after the parties confer. No payment of any disputed amounts will be made from the Settlement Fund pending a final determination by the Court. Before either party moves the Court for a determination of any dispute, the lead counsel for each party, and no more than one other counsel for each party, shall meet face-to-face in an effort to resolve the dispute. Any motion under this paragraph shall be accompanied by a dispute conference statement signed by both lead counsel in which the parties certify that they have met face-to-face in a good faith effort to resolve the dispute, but have been unable to do so. The conference statement shall further specify precisely what issues are in dispute and why they are in dispute.

B. PAYMENT OF CLASS COUNSEL'S ATTORNEYS' FEES AND EXPENSES

1. Plaintiffs and the Class are deemed to be prevailing parties in the Action for purposes of this settlement. Plaintiffs, the Class, and Class Counsel are entitled to their reasonable attorneys' fees, litigation expenses, and costs in the Action. The Company has agreed to pay Class Counsel an award of reasonable attorneys' fees, litigation expenses, and costs for work performed through and including the date of July 21, 1996. The parties agree that the amount to be paid for attorneys' fees and costs as provided herein satisfies any obligation O'Charley's may have to pay reasonable attorneys' fees, litigation expenses, and costs to Class Counsel and any members of the Class for any and all work performed through and including July 21, 1996. O'Charley's further represents that it has reviewed

the legal fees and expenses of Class Counsel and that the payments to be made as set forth herein are reasonable.

2. Within 35 days of entry of this Decree the Company shall pay to Class Counsel \$1,350,000.

3. Within 120 days of entry of this Decree, the Company shall pay to Class Counsel \$650,000.

4. The above amounts in Paragraphs VIII B 1, 2, and 3 include all fees and expenses for all Class Counsel, including their designees, agents, etc., except as provided in Paragraph VIII A 2 above and/or in Paragraph VIII B 6 below. O'Charley's shall make these payments to the law firm of Waring Cox, PLC, which shall be responsible for any further distribution of these amounts to its co-counsel. Class Counsel shall provide to counsel for O'Charley's a listing of all attorneys receiving fees or expenses with a statement of the separate amounts of fees and expenses incurred by each and a schedule of hourly rates and expense charges prior to the payments set forth in Paragraphs VIII B 2 and 3 above.

5. All Class Counsel or counsel of record for Plaintiffs and their experts, agents, and designees agree they shall maintain confidentiality and not disclose information, data, or documents provided to them by O'Charley's in connection with the litigation or settlement of the case and shall return or certify destruction of such documents as requested by the Company. The return or destruction of such documents which are reasonably related to the monitoring activity contemplated pursuant to the settlement agreement and Decree shall not be requested by the Company until the conclusion of the

monitoring period. The foregoing confidentiality and non-disclosure obligations shall not apply to publicly filed documents not under seal. Neither shall the foregoing confidentiality and non-disclosure obligations apply to documents and discovery specifically related to James R. Pope or Clifford Bell that were obtained during this action or that were obtained separately in the Company's litigation with either Pope or Bell; provided that such documents and discovery shall be utilized solely in connection with or for purposes of civil or criminal litigation on behalf of either Pope or Bell. Within 35 days of the entry of this Decree, Class Counsel shall provide to the Company's counsel a specific listing, including names, addresses, etc., for all individuals and organizations subject to this covenant.

6. Class counsel shall be entitled to fees and expenses at the rates as set forth in Paragraph VIII A 2 above during the 24 months monitoring period, up to a maximum of \$5,000 per quarter. No paralegal shall have substantive involvement in the monitoring process. Such monitoring fees and expenses will be paid out of an interest bearing escrow account in the amount of \$40,000 which shall be funded out of the \$350,000 fee and expense amount allocated in the Settlement Fund as set forth in Paragraph VIII A 2 above. Any of the \$40,000 remaining in such escrow account at the conclusion of the monitoring period and all interest earned by the account shall revert to the Company at the conclusion of the monitoring period.

IX. PROSPECTIVE RELIEF

A. The Company has adopted its Ethnic Diversity Plan ("EDP"), a copy of which is attached hereto as Exhibit B. The Company has also adopted a Revised Paragraph 1 of its Code of Conduct, a copy of which is attached hereto as Exhibit C. The EDP and

Revised Paragraph 1 of the Code of Conduct shall remain in effect for at least 24 months following the entry of this Decree, during which time Class Counsel shall monitor the results of the EDP.

B. The monitoring period shall be for twenty-four (24) months commencing from the date of entry of the Decree. During this time, Class Counsel may review the reports received by the Board of Directors and meet with Samuel K. Howard, a director of the Company, (or his successor) and the Director of Human Resources. In the event of any disagreement concerning whether the Company is following the EDP in a manner consistent with the Decree, Class Counsel shall first submit the specific disagreement to counsel for O'Charley's in writing. Counsel for the parties shall then meet within 30 days of the written disagreement. In the event a resolution is not reached, Class Counsel may file a complaint within 30 days with a special master chosen by the parties. If the parties are unable to agree to the selection of a special master or to a procedure for the selection and/or payment of a special master, either party may request the Court to appoint a special master. If the matter is not resolved before the special master, then either party may petition the Court for a determination.

C. During the monitoring period, Class Counsel shall receive the same reports Samuel K. Howard (or his successor) shall make to the Board of Directors of the Company concerning progress under the EDP.

D. The Company shall maintain in the normal course of business, and consistent with practices to be determined by the Company, applications, requests for promotion, records of transfers, ETE (the Company's "Education Through Excellence" program) certifications,

etc., and other data necessary to make the quarterly progress reports meaningful. The Company shall ensure that during the monitoring period such records shall be accessible to Class Counsel at their reasonable request.

E. Class Counsel and counsel for the Company shall confer mid-term during the monitoring period at a mutually convenient time to discuss any issues regarding the Decree and related matters. Counsel shall further confer again at a mutually convenient time six (6) months before the end of the monitoring period to discuss the Decree and related issues.

X. ADDITIONAL MISCELLANEOUS PROVISIONS

A. In the event of an appeal of the Decree, all terms of the settlement shall be held in abeyance pending resolution of the appeal.

B. The Company may declare the settlement void and of no effect, in whole or in part, if either of the following occur:

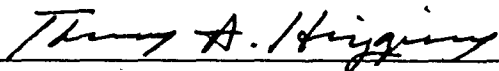
- (a) If the opt-outs amount to 15% or more of the Class Members or if the opt-outs represent claims which in the aggregate represent 15% or more of the total Settlement Fund.
- (b) If the opt-out for any of the three Subclasses (Current Employees, Former Employees and Applicants) represents 25% or more of that particular subclass or if the opt-outs for a particular subclass represent claims which in the aggregate represent 25% or more of the allocated Settlement Fund for that subclass.

(c) For the purposes of calculating aggregate claims for those Class Members who opt out, each claim shall be calculated as though no Current Employee or Former Employee opted out. For the purposes of calculating aggregate claims and members of the Applicant subclass, the total number of Applicants shall be deemed to be 1,750 Applicants.

XI. CERTIFICATION

The signatories certify that they are authorized to execute the Decree on behalf of their respective parties.

It is so ORDERED, ADJUDGED, AND DECREED this 20th day of Nov., 1996.



Thomas A. Higgins
U.S. District Judge

Executed for Defendants



R. Eddie Wayland
King & Ballow
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(615) 259-3456

Executed for Plaintiffs and Class



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