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EEOC v. Cracker Barrel Old Country Store, Inc., and CBOCS West, Inc.

Judge Charles R. Norgle

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EEOC v. Cracker Barrel Old Country Store, Inc., and CBOCS West, Inc.

Keywords

EEOC, Cracker Barrel Old Country Store, Inc., CBOCS West, Inc., 04 C 5273, Consent Decree, Hostile Work Environment, Retaliation, Sexual Harassment, Constructive Discharge, Terms and Conditions, Service, Sex, Female, Race, African American or Black, Employment Law, Title VII

AE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
CRACKER BARREL OLD COUNTRY)
STORE, INC., and CBOCS WEST, INC.,)
)
Defendants.)
_____)

No. 04 C 5273
Hon. Judge Norgle
Magistrate Judge Denlow

CONSENT DECREE

1. This Consent Decree (the "Decree") has been entered by the Court and has been made and agreed to by and between Plaintiff United States Equal Employment Opportunity Commission (hereinafter referred to as the "EEOC") and Defendants Cracker Barrel Old Country Store, Inc. ("CBOCS") and CBOCS West, Inc. ("CBOCS West") (hereinafter collectively referred to as "Defendants"). (EEOC and Defendants will be collectively referred to herein as "the Parties").
2. On August 11, 2004, EEOC initiated this action by filing its Complaint against Defendants. EEOC's Complaint alleged that Defendants violated Title VII of the Civil Rights Act of 1964, as amended, including, but not limited to, amendments authorized by the Civil Rights Act of 1991, 42 U.S.C. §2000e et seq. ("Title VII"), at Store Nos. 125, 404, and 110 (CBOCS West's Bloomington, Mattoon, and Matteson facilities) by subjecting a class of female employees to a hostile work environment of harassment based upon their sex, by subjecting a class of African-American employees to a hostile work environment and different terms and

conditions of employment based upon their race, Black, and by unlawfully retaliating against a class of employees who brought charges of discrimination by subjecting them to different terms and conditions and constructively discharging those employees. The EEOC alleged that these violations have taken place since at least January 1998. Defendants, in their Answer, denied these allegations.

3. In the interest of resolving this matter and as a result of having engaged in comprehensive settlement negotiations, the Parties have agreed that this action should be finally resolved by entry of this Decree. Nothing in this decree shall be construed as an admission by any party of liability or non-liability with respect to any claims or defenses raised in the lawsuit.

4. This Decree resolves all claims arising out of the underlying complaint, as well as the allegations that were raised during this case (including those allegations that relate to additional persons identified in the EEOC's November 16, 2005, Responses to CBOCS West's First Set of Interrogatories). This Decree also finally resolves all claims arising out of EEOC Charge Numbers: 210-A0-1229, 210-A1-0161, 210-A0-1857, 210-A0-1303, 210-A0-2327, 210-A0-1859, 210-A1-0607, 210-A0-1858, 210-A0-2690, 210-A0-1860, 210-A1-2364, 210-A0-1856, 210-2005-00128 and 210-2004-07189, as well as any amendments to those charges, and constitutes a complete resolution of all claims of sexual harassment, sex-based harassment, sex discrimination, racial harassment, race-based harassment, race discrimination, retaliation and/or constructive discharge that were made or could have been made by the EEOC in this action, under Title VII, 42 U.S.C., §2000e et seq., as amended. The Parties further agree that this Decree does not, however, resolve any Charges that may be pending with EEOC other than the Charges specifically referred to in this paragraph or those that may be released by "Class

Members” (as that term is defined herein) pursuant to this Decree.

5. This Decree constitutes the complete agreement between EEOC and Defendants with respect to the matters referred to herein. No waiver, modification or amendment of any provision of this Decree shall be effective unless made in writing, approved by all parties to this Decree and approved by the Court or ordered by the Court. This Decree is final and binding upon the Parties, their agents, successors and assigns.

6. Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds the following:

- a. This Court has jurisdiction of the subject matter of this action and of the parties;
- b. The terms of this Decree are adequate, fair, reasonable, equitable, and just. The rights of EEOC, Defendants, the Class Members, and the public interest are adequately protected by this Decree; and
- c. This Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of Title VII and will be in the best interests of the parties, the class members, and the public.

NOW, THEREFORE, the Court having carefully examined the terms and provisions of this Consent Decree, and based on the pleadings, record and stipulations of the Parties, it is **ORDERED, ADJUDGED AND DECREED THAT:**

GENERAL INJUNCTIVE PROVISIONS

7. Non-Discrimination: *In all matters arising from or relating to employment, neither CBOCS’s nor CBOCS West’s officers, agents, management (including supervisory employees),*

successors and assigns, and all those acting in active concert with them, shall discriminate on the basis of sex or race, nor will they subject their respective employees to a racially or sexually harassing work environment. This injunction shall be limited to all actions that take place at or affect employees at Store Nos. 125, 404 and 110.

8. Non-Retaliation: Defendants and their officers, agents, management (including supervisory employees), successors and assigns, are enjoined from unlawfully engaging in any form of retaliation against any person because such person has opposed any practice made unlawful under Title VII, filed a Charge of Discrimination under Title VII, testified or participated in any manner in any investigation, proceeding, or hearing in connection with this case and/or relating to any claim of discrimination under Title VII, asserted any rights under this Decree, including, but not limited to, receiving monetary and/or non-monetary relief under this Decree. This injunction shall be limited to all actions that take place at or affect employees at Store Nos. 125, 404, and 110 and shall in no way serve to increase or decrease Defendants' rights and obligations under the law.

MONETARY RELIEF

9. CBOCS West shall pay the gross sum of two million dollars (\$2,000,000.00) to be placed in a Settlement Fund, as defined in this Decree, and distributed among all designated Class Members in accordance with the provisions of this Decree.

Establishment of Settlement Fund

10. CBOCS West shall, within thirty (30) days after entry of this Decree, establish and maintain a segregated account on its books for the two million dollars (\$2,000,000) designated in paragraph 9 for a Settlement Fund. The Settlement Fund account shall be maintained as a

liability in accordance with generally accepted accounting principles, and shall accrue interest, compounded daily, at a rate equal to the thirty (30) day Treasury Bill Rate (or the closest comparable rate thereto) as published in the Wall Street Journal on the date of entry of this Decree. The Settlement Fund shall accrue interest beginning thirty (30) days after entry of this Decree and continuing until the date of transfer, as provided for by paragraphs 13 and 14 of this Decree, and the interest will be credited to the account at least once per month.

11. All costs associated with the distribution of the Settlement Fund to Class Members shall be paid by CBOCS West, including, without limitation, all costs associated with the creation of the Settlement Fund and all costs related to the issuance and mailing of checks from the Settlement Fund.

Distribution of Settlement Fund

12. Acting in its sole discretion, subject to the approval of the Court, EEOC determined the portion of the settlement allocated and payable to each class member as compensatory damages pursuant to this Consent Decree. In making such determinations, EEOC considered evidence which it deemed appropriate, including but not limited to evidence received by EEOC in its administrative investigation of the underlying charges of discrimination and evidence received by the EEOC in connection with the litigation of this action. The Settlement Fund shall be used solely to make payments to individuals identified as class members on Exhibit C to this Decree and in the dollar amounts set forth on Exhibit C and who, in addition, timely submit releases as provided in Paragraph 13, or to a non-profit organization as provided by Paragraph 14. All class members identified on Exhibit C to this Decree were determined by EEOC to be individuals employed by CBOCS West at Store Nos. 125, 404, and 110 during the relevant time period, with

respect to whom EEOC received evidence credible to EEOC that the class member experienced sexual or racial harassment or discrimination or retaliation. In determining the amount payable to each such class member EEOC considered (i) the severity of the alleged harassment, discrimination or retaliation experienced, (ii) the duration of the alleged harassment, discrimination, or retaliation, (iii) the extent of the alleged harm, (iv) whether the class member claimed to have been actually or constructively discharged, (v) the length of service of the employee, (vi) the managerial status of the persons involved, (vii) whether the class member allegedly complained to Defendants or to the EEOC, (viii) whether the class member filed a charge of discrimination with EEOC or participated in this litigation prior to February 15, 2006, and (ix) whether the class member previously advised EEOC not to seek any relief for him or her. The determinations described in this Paragraph 12, including the characterization of all payments as compensatory in nature, were made solely by EEOC; Defendants did not participate in those determinations and did not and do not have a right to object to them. The class members are solely responsible for all tax obligations.

13. Within ten (10) business days after entry of this Decree, the EEOC will mail to each Class Member a copy of the Release Agreement attached as Exhibit A. Within ten (10) business days after receipt by the EEOC of a signed Release Agreement, the EEOC shall mail the Release Agreement to CBOCS West with the Class Member's current address. Within ten (10) business days after receipt by CBOCS West of a signed Release Agreement, CBOCS West shall issue and mail by certified mail to the Class Member who signed the Agreement a check from the Settlement Fund in the amount set forth in Exhibit C. CBOCS West shall also mail a copy of each check to the EEOC within five (5) business days of sending the check to the Class Member.

CBOCS West will issue IRS Form 1099s with respect to these payments. Any class member from whom EEOC has not received a release agreement, as provided in this paragraph, by the close of business ninety (90) days after the date of entry of this decree by the court, shall not be entitled to receive any monetary relief under this decree, and shall be deemed, without further act or deed by the person or the court, to be ineligible for and forever barred from receiving any payments under this Consent Decree.

14. In the event that any amount of the payment designated for the Class Members has not been distributed as required by this Decree, and/or if any accrued interest remains in the account, after a period of nine (9) months from entry of this Decree, then CBOCS West shall donate an amount equal to the remaining money to a non-profit organization, jointly selected by the EEOC and Defendants, and subject to the approval of the Court, that serves to benefit women's and/or minority workplace interests in one or more of the communities in which the facilities covered by this Decree are located. At that time, CBOCS West shall pay to such organization(s) (in equal parts if more than one) the unclaimed portion of the total payment designated for the Class Members and/or the interest accrued on the Settlement Fund to the date of payment. Thereafter, neither CBOCS nor CBOCS West shall have an obligation of any kind to make any payment of any kind to any class member or to any other person or organization under this Consent Decree.

POSTING OF NOTICE

15. Within fifteen (15) business days after entry of this Decree, CBOCS West shall post copies of the Notice attached as Exhibit B to this Decree at Store Nos. 125, 404, and 110 on bulletin boards used by CBOCS West for communicating with employees. The Notice shall remain posted for two (2) years from the date of entry of this Decree. CBOCS West shall take

all reasonable steps to ensure that the posting is not altered, defaced or covered by any other material. CBOCS West shall certify to the EEOC in writing within fifteen (15) business days after entry of the Decree that the Notices have been properly posted. CBOCS West shall permit a representative of the EEOC to enter the premises of Store Nos. 125, 404, and 110 for purposes of verifying compliance with this Paragraph at any time during normal business hours without prior notice.

RECORD KEEPING

16. For a period of two (2) years following entry of this Decree, Defendants shall maintain records of each complaint of sex discrimination, sex harassment, race discrimination, race harassment, or retaliation made by employees from Store Nos. 125, 404 and 110. Such records shall indicate the date the complaint was made, who made it, what was alleged, and what actions CBOCS West took to resolve the matter.

17. Defendants shall make all documents or records referred to in Paragraph 16, above, available for inspection and copying within ten (10) business days after the EEOC so requests.

REPORTING

18. Defendants shall furnish to the EEOC the following written reports semi-annually for a period of two (2) years following entry of this Decree. The first report shall be due six (6) months after entry of the Decree. The final report shall be due twenty-three (23) months after entry of the Decree. Each such report shall contain:

- a. A summary of the information recorded by Defendants pursuant to Paragraph 16;
- b. A certification by CBOCS West that the Notices required to be posted in Paragraph 15, above, remained posted during the entire six (6) month period preceding the report.

TRAINING

19. During each of the two (2) years covered by this Decree, all District Managers, General Managers, Senior Associate Managers, and Associate Managers, who work at or have management responsibilities over either Store Nos. 125, 404, or 110, shall participate in an annual training session geared toward management, paid for by one or both Defendants, and approved by the EEOC, regarding sexual and racial discrimination, including coverage of harassment and retaliation issues. The first training shall take place within ninety (90) days of entry of this Decree. Any new manager who would have been otherwise trained, must be provided the same training within thirty days of hire or transfer to a specific facility.

20. In addition to the mandatory training provided for managers set forth in paragraph 19, CBOCS West shall require, during each of the two (2) years covered by this Decree, all its employees at Store Nos. 125, 404, and 110 to attend annual training regarding workplace harassment. The first training shall take place within ninety (90) days of entry of this Decree.

21. CBOCS West shall obtain the EEOC's approval of its proposed training programs prior to the training sessions. CBOCS West shall submit its training proposal to the EEOC at least fifteen (15) business days prior to the proposed date(s) of the training. The EEOC shall have five (5) business days from the date of receipt of the information described above to accept or reject the proposed training program. In the event the EEOC does not approve CBOCS West's designated training program, CBOCS West shall have ten (10) business days to propose an alternate training program. The EEOC shall have five (5) business days from the date of receipt of the information described above to accept or reject the alternate training program. If the parties cannot through this process agree on a training program, then they may seek the Court's assistance under paragraph 23.

22. CBOCS West shall certify to the EEOC in writing, within five (5) business days after the training referenced in paragraphs 19 and 20 has occurred, that the annual training has taken place and that the required personnel have attended. Such certification shall include: (i) the date, location and duration of the training; and (ii) a copy of an attendance list, which shall include the name and position of each person in attendance.

DISPUTE RESOLUTION

23. In the event that any party to this Decree believes that another party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of the alleged non-compliance and shall afford the alleged non-complying party ten (10) business days to remedy the non-compliance or to satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within ten (10) business days, the complaining party may apply to the Court for appropriate relief.

DURATION OF THE DECREE AND RETENTION OF JURISDICTION

24. All provisions of this Decree shall be in effect (and the Court will retain jurisdiction of this matter to enforce this Decree) for a period of two (2) years immediately following entry of the Decree, provided, however, that if, at the end of the two (2) year period, any disputes under Paragraph 23, above, remain unresolved, the term of the Decree shall be automatically extended (and the Court will retain jurisdiction of this matter to enforce the Decree) until such time as all such disputes have been resolved.

MISCELLANEOUS PROVISIONS

25. Each party to this Decree shall bear its own expenses, attorney's fees, and costs.

26. The terms of this Decree are and shall be binding upon the present and future directors, officers, managers, agents, successors, and assigns of Defendants. Defendants will provide a copy of this Decree to any person(s) or organization(s) which proposes to acquire or merge with one or both of them, prior to the effectiveness of any such acquisition or merger.

27. When this Decree requires the submission by one or both Defendants of reports, certifications, notices, or other materials to the EEOC, they shall be mailed to: Cracker Barrel Consent Decree Compliance, Pamela Moore-Gibbs, Equal Employment Opportunity Commission, 500 West Madison Street, Suite 2800, Chicago, Illinois, 60661. When this Decree requires submission by the EEOC of materials to one or both Defendants, they shall be mailed to: Michael J. Zylstra, Cracker Barrel Old Country Store, Inc., P.O. Box 787, 305 Hartmann Drive, Lebanon, TN 37088.

13 MARCH

SO ORDERED, ADJUDGED AND DECREED this ___ day of _____, 2006.



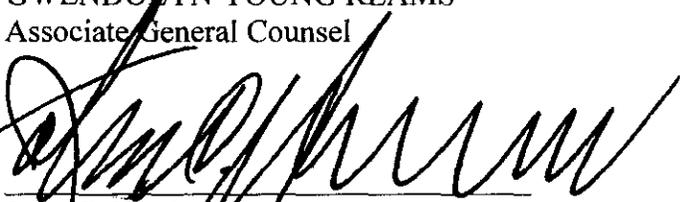
United States District Court Judge Charles R. Norgle

Agreed to in form and content:

FOR THE PLAINTIFF,
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:

JAMES LEE
Deputy General Counsel

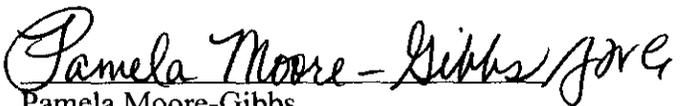
GWENDOLYN YOUNG REAMS
Associate General Counsel



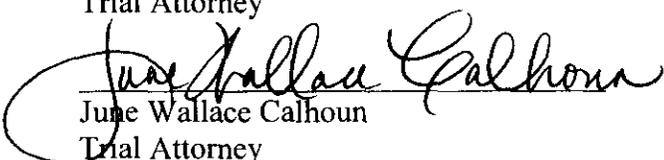
John C. Hendrickson
Regional Attorney



Diane I. Smason
Supervisory Trial Attorney



Pamela Moore-Gibbs
Trial Attorney



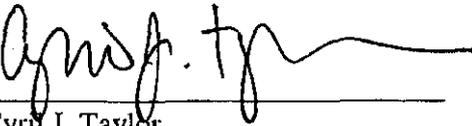
June Wallace Calhoun
Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
500 West Madison Street, Suite 2800
Chicago, Illinois 60661
(312) 353-8551

Dated: March 8, 2006

Agreed to in form and content:

FOR DEFENDANTS,

By: 
Cynn J. Taylor
Cracker Barrel Old Country Store, Inc.

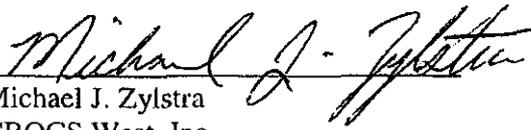
By: 
Michael J. Zylstra
CBOCS West, Inc.

EXHIBIT A

RELEASE AGREEMENT

I, _____, for and in consideration of the sum of \$ _____ payable to me pursuant to the terms of the Consent Decree entered by the Court in EEOC v. Cracker Barrel Old Country Store, Inc., et. al, No. 04 C 5273 (N.D. Ill.), on behalf of myself, my heirs, assigns, executors, and agents, do hereby forever release, waive, remise, acquit, and discharge Cracker Barrel Old Country Store, Inc. and CBOCS West, Inc. (collectively "Defendants"), and all past and present shareholders, officers, agents, employees, and representatives of Defendants, as well as all successors and assignees of Defendants, from any and all claims and causes of action of any kind (including, but not limited to, claims for attorneys' fees or expenses of litigation) which I now have or ever have had under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., as a result of or arising from the subject matter and claims which were or which could have been asserted in EEOC v. Cracker Barrel Old Country Store, Inc., et. al, No. 04 C 5273 (N.D. Ill.).

Date

Signature

EXHIBIT B

NOTICE TO CRACKER BARREL EMPLOYEES AT STORE NOS. 125, 404, AND 110

This Notice is being posted pursuant to a Consent Decree entered by the federal court in EEOC v. Cracker Barrel Old Country Store, Inc., et. al, No. 04 C 5273 (N.D. Ill.), resolving a lawsuit filed by the Equal Employment Opportunity Commission (“EEOC”) against Cracker Barrel Old Country Store, Inc. and CBOCS West, Inc. (“Cracker Barrel”).

In its suit, the EEOC alleged that Cracker Barrel discriminated against female employees by subjecting them to a hostile work environment based upon their sex and African-American employees by subjecting them to a hostile work environment and different terms and conditions of employment based upon their race, all in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”) at Store Nos. 125 (Bloomington, Illinois), 404 (Mattoon, Illinois), and 110 (Matteson, Illinois). In its Answer, Cracker Barrel denied these allegations.

To resolve the case, Cracker Barrel and the EEOC have agreed to the entry of the Consent Decree which provided, among other things, that:

- 1) Cracker Barrel will pay monetary damages to a class of current and former employees;
- 2) Cracker Barrel will not discriminate on the basis of sex or race;
- 3) Cracker Barrel will not retaliate against any person because he or she opposed any practice made unlawful by Title VII, filed a Title VII charge of discrimination, participated in any Title VII proceeding, or asserted any rights under the Consent Decree;
- 4) Cracker Barrel will report all complaints of gender and racial discrimination at its Bloomington, Mattoon, and Matteson facilities; and
- 5) Cracker Barrel will train all of its managers at its Bloomington, Mattoon, and Matteson facilities with respect to racial and sexual harassment and will offer training on harassment to all employees.

The EEOC enforces the federal laws against discrimination in employment on the basis of race, color, religion, national origin, sex, age or disability. If you believe you have been discriminated against, you may contact the EEOC at (312) 353-2713. The EEOC charges no fees and has employees who speak languages other than English.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

This Notice must remain posted for two years from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to: U.S. Equal Employment Opportunity Commission, 500 West Madison Street, Suite 2800, Chicago, Illinois 60661.

Date

The Honorable Charles R. Norgle
United States District Judge

EXHIBIT C

CRACKER BARREL SETTLEMENT TIERS

Tier I \$300,000

Jean Burris

Tier II \$100,000

Tiffany Bernhard Engstrom
Keyandez Brooks
Kristine Mandeville-Stewart
Kerri McReynolds (estate)
Hailey O'Connor-Marrs
Valerie Sucich
Kimberly Waterstraat

Tier III \$50,000

Kathy Armer Cross
Jennifer Giroux
Erika Hartman
Leslie Lerche
Amy McCollum
Enjoli Scales

Tier IV \$30,000

LaShay Toi Brown
Crystal Edwards
Anita Grant-Leigh
Dione LaFond
Nona Lewis
Tamika Thompson

Tier V \$20,000

Celia Adams
Kappotolia Anderson
Alvina Anderson-Ramey
Valerie Austin
Cindi Banks
Christine Brown
Connie Butler-Stone
Donald Carter
Phillip Carter
Pamela Drummond
Mildred Gardner
Shannel Horne
Joy Jackson
Robins Jones Watts-Ross
Deanna McDannald-Linroth
Michael Richie
William Sales
Nicole Smith
Chanda Thomas
Taveras Tyus
Kiesha West
Shantoya Wilson
Judith Zopf

Tier VI \$ 7,500

Roseann Bennett
Ricky Collyear
Tangy Craig Espe
Jerry Foney
Joanne Hubbard Lange
Anastasia Perschall
Juanita Poole Hite
Elizabeth Yanosko-Snyder

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,)	
)	
)	
Plaintiff,)	
)	No. 04 C 5273
v.)	
)	Hon. Judge Norgle
CRACKER BARREL OLD COUNTRY STORE, INC., and CBOCS WEST, INC.,)	Magistrate Judge Denlow
)	
)	
Defendants.)	
_____)	

AGREED MOTION FOR ENTRY OF CONSENT DECREE

Plaintiff U.S. Equal Employment Opportunity Commission (“EEOC”) and Cracker Barrel Old Country Store, Inc and CBOCS West, Inc. (“Defendants”), (hereafter referred to collectively as the “Parties”), respectfully move this Court for entry of the attached Consent Decree. In support of their Motion, the Parties state as follows:

1. This is an action brought by EEOC pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, alleging that Defendants violated Title VII by subjecting a class of female employees to a hostile work environment of harassment based upon their sex, by subjecting a class of African-American employees to a hostile work environment and different terms and conditions of employment based upon their race, Black, and by unlawfully retaliating against a class of employees who brought charges of discrimination by subjecting them to different terms and conditions of employment and constructively discharging those employees.

2. Defendants, in their Answer, denied these allegations.

2. As a result of their having engaged in comprehensive settlement discussions, the Parties have agreed that this action should be finally resolved by the attached Consent Decree.

3. The terms of the Consent Decree are fair, equitable and just. The rights of EEOC, Defendants and the individuals for whom EEOC seek relief are adequately protected by this Consent Decree.

For the foregoing reasons the Parties, Plaintiff U.S. Equal Employment Opportunity Commission and Defendants Cracker Barrel Old Country Store, Inc. and CBOCS West, Inc., respectfully request that this Court enter the attached Consent Decree.

Respectfully submitted,

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

s/June Wallace Calhoun _____

JuneWallace Calhoun
Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

Chicago District Office
500 W. Madison Street, Suite 2800
Chicago, IL 60661
(312) 353-7259
ARDC No. 6202058

For Defendants:

BY: *s/David E. Gevertz* _____
One of their Attorneys

Ashe Rafuse & Hill LLP
1355 Peachtree Street, N.E., Suite 500
Atlanta, GA 30309
(404) 253-6000

Dated: March 8, 2006