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## EEOC v. Baby O's

Judge Daniel P. Jordan III

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## EEOC v. Baby O's

### **Keywords**

EEOC, Equal Employment Opportunity Commission, Baby O's, 3:12-cv-00581-DPJ-FKB, Race, African American, Black, Retaliation, Disparate Treatment, Retaliation, Constructive Discharge, Terms and Conditions



unlawful race discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended [“Title VII”], and Title I of the Civil Rights Act of 1991 by: (1) mandating disparate terms and conditions of employment based on race; and (2) taking materially adverse actions in retaliation for Edwards’ Title VII protected conduct. Also, the Commission alleged Defendant constructively discharged Edwards based on her race and/or in retaliation for her Title VII protected conduct.

2. The Club denies all of the Commission’s allegations, including but not limited to the categorization of Edwards and the Class members as employees (except for purposes of the enforcement of the terms of this Decree) and further denies all allegations of unlawful discrimination and retaliation.

3. The Commission and the Club have agreed that it is in their mutual interests to settle the claims asserted in the Complaint through the entry of a Consent Decree. The parties agree this Consent Decree is fair, reasonable, and does not violate the law or public policy. The parties do not object to the jurisdiction of the Court and waive their rights to a hearing and the entry of findings of fact and conclusions of law.

4. This Consent Decree is entered in full and complete settlement of any and all claims arising out of or contained in EEOC Charge No. 423-2011-01100 and any and all claims asserted by the Commission in Civil Action No. 3:12-cv-681 (S.D.

Mississippi). This Consent Decree does not affect any other administrative charges which may be pending with the EEOC or any other cases pending in this or any other court other than the charge and case specifically referred to in this paragraph.

5. This Consent Decree constitutes the complete understanding between the Commission and The Club with respect to the matters herein.

6. This Consent Decree becomes effective when the U.S. District Judge in this case approves this Decree and enters it into the record. The Decree shall remain in effect for a period of twenty-four (24) months from the date of entry.

7. This Court has jurisdiction over the parties and the subject matter of this action and retains jurisdiction in order to monitor and enforce the terms of the Consent Decree.

8. The Consent Decree, and its terms, shall be final and binding on the Parties hereto, including their present and future representatives, agents, directors, officers, assigns and successors.

## **II. CLASS MONETARY RELIEF**

9. The EEOC shall have a judgment against the Club on behalf of Sherida Edwards and the three class members in the total amount of \$50,000.

10. The amount of \$50,000.00 shall be paid by the Club in four separate checks. The class member payees and the amount of each such check shall be provided by

the U.S. Equal Employment Opportunity Commission to the Club within fourteen (14) days after this Decree is approved by the Court. The payment as directed by EEOC shall satisfy all claims made by the EEOC in this litigation: Equal Employment Opportunity Commission v. Baby O's Restaurant d/b/a Danny's [U.S. District Court for the Southern District of Mississippi, Jackson Division (Civil Action No. 3:12-cv-681-DPJ-FKB)]. Each class member shall execute a release of claims under Title VII asserted as part of this litigation prior to receiving final payment contemplated under this Decree.

### **III. GENERAL INJUNCTIVE RELIEF**

11. The Club and its officers, agents, management (including supervisory employees), successors, and assigns, and all those in active concert or participation with them, or any of them, are enjoined from: (1) discriminating against any employee on the basis of race; and/or (2) 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 race.

12. Retaliation: The Club and its officers, agents, management (including supervisory employees), successors, and assigns, and all those in active concert or participation with them, or any of them, are enjoined from: engaging in, implementing, or tolerating any action, policy, or practice which has the purpose or effect of retaliating against any current or former employee of the Club because

she opposed any practice made unlawful under Title VII, filed a charge of discrimination challenging any such practice, testified, or participated in any manner in any investigation (including, without limitation, any internal investigation undertaken by the Club), proceeding or hearing in connection with this case and/or relating to any claim of discrimination under Title VII, 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.

13. The Club shall comply fully with all provisions of the Consent Decree and Title VII. Nothing in this Consent Decree, either by inclusion or exclusion, shall be construed to limit the obligations of the Club under Title VII or the Commission's authority to process or litigate any charge of discrimination which may be filed against the Club in the future, except as to issues resolved herein. This Consent Decree shall apply to all of the Club's operations, facilities and locations in the State of Mississippi.

#### **IV. SPECIFIC INJUNCTIVE RELIEF**

14. Review and Modification of Policies: Within the first sixty (60) days of the effective date of this Consent Decree, the Club will develop and provide each individual working as an entertainer and all employees with a written description of the types of practices that are prohibited, either pursuant to Title VII or under

the Club's policy against discrimination and retaliation. This description shall include, at a minimum, the following:

- a. A strong and clear commitment to a workplace free from race discrimination, and/or retaliation;
- b. A clear and comprehensive description, including concrete examples, of prohibited race discrimination, and/or retaliation;
- c. A description of the possible consequences that will be imposed upon violation of the policy against race discrimination, and/or retaliation;
- d. A statement encouraging individuals working as an entertainer and all employees to report complaints of race discrimination, and/or retaliation to the management of the Club;
- e. An assurance that persons who complain about race discrimination, and/or retaliation they experience or witness will not be the subject of retaliation;
- f. A clearly described complaint process that provides multiple accessible avenues through which an employee may make a complaint;
- g. Assurances that the employer will protect the confidentiality of discrimination complaints, complainants and witnesses to the extent reasonably possible;
- h. A complaint process that provides a prompt, thorough, and impartial investigation;
- i. A system for tracking and providing follow-up on complaints and/or inquiries regarding discrimination and/or retaliation;
- j. Assurances the Club will take immediate and appropriate corrective action if it determines that race discrimination and/or retaliation have occurred;

- k. The contact information, including name, address, and telephone number of persons (e.g. the Club Coordinator, human resource personnel or managers) to whom individuals working as an entertainer and all employees may report complaints of race discrimination, harassment and/or retaliation at any time without fear of reprisal. The contact information shall be visibly posted in an area accessible to all employees and placed in an employee handbook;
- l. A clear and comprehensive description of the specific responsibilities of the Club's supervisory and managerial employees when they witness or learn of race discrimination and/or retaliation and/or receive a complaint and/or inquiry regarding discrimination and/or retaliation; and
- m. A clear and comprehensive description of the consequences for the Club's supervisory and managerial employees who fail to perform their responsibilities when they witness or learn of race discrimination, and/or retaliation and/or receive a complaint and/or inquiry regarding discrimination and/or retaliation.

15. A copy of the reviewed/revised policies in compliance with the above requirements shall be submitted to the Commission and distributed to all individuals working as an entertainer and all employees within ninety (90) days of the Effective Date of this Consent Decree.

16. Development of EEO Training Program:

- a. The Club shall retain and pay for the services of a consultant, lecturer, legal counsel or senior management employee who will provide periodic consultation and annual training for a period of two (2) years from the date of this Consent Decree.
- b. Within ninety (90) days of the effective date of this Decree, the Club shall have in place a program to provide mandatory EEO training to:
  - i. all non-supervisory employees and all individuals working as entertainers;

- ii. all supervisory and management employees; and
- iii. all human resources employees who provide support to and/or have any supervisory or decision-making authority over the Club's facilities, regardless where said employees perform their duties.

This program shall address all aspects of race discrimination and retaliation in the workplace, including (1) a plan to ensure that all employees who are to receive the required training actually receive the training; (2) an explanation of the manager's role in reporting potential race discrimination and/or retaliation; and (3) clear and concise information about how an employee may protect his rights within the workplace by reporting conduct she believes may violate Title VII.

17. The mandatory training shall at a minimum: (1) occur twice every year for the duration of this decree; (2) shall be in person or interactive training accompanied by materials prepared by trainers experienced in the subject matter, and; (3) shall educate the employees and individuals working as entertainers about the problems of discrimination and retaliation in the workplace. The purpose of the training shall be to give the participants a thorough understanding of race discrimination and/or retaliation issues, including but not limited to theories of liability under Title VII, sources of legal protection for victims of race discrimination and/or retaliation, and the employer's obligation to take preventive, investigative, and remedial action with respect to discrimination and retaliation complaints.

18. Additionally, the training provided to supervisors and managers shall include information on the following: (1) how to recognize, prevent, and correct discrimination, and retaliation in the workplace; (2) a detailed description of the specific responsibilities of the Club's supervisory and managerial personnel when they witness or learn of discrimination or retaliation or receive a complaint or inquiry regarding discrimination or retaliation; (3) a detailed description of the consequences for the Club's supervisory and managerial personnel who fail to perform their responsibilities when they witness or learn of discrimination or retaliation; and (4) how to receive and/or report to designated officials complaints of discrimination or retaliation.

19. Each training required by this Decree shall last a minimum of one half hour. After the term of the Consent Decree, the Club may conduct additional trainings at its discretion. During training for managers and supervisors, the managers and supervisors will be provided with a written step-by-step process of how to report possible harassment, discrimination, or retaliation.

20. At least thirty (30) days prior to the initial proposed training session, the Club shall submit the name(s), address(es), telephone number(s) and resume(s) of the proposed consultant/lecturer(s), together with the dates of the proposed training session and an outline of the contents of the training to the Commission.

21. Attendance at Training: At least thirty (30) days prior to any scheduled training and except for orientation of new employees or newly promoted employees, the Club shall provide the Commission with notice of the date, time, and location of scheduled training. The Commission, at its discretion, may send one representative to observe the scheduled training. Any representative who observes any scheduled training shall not interject him or herself into the training. The EEOC shall give the Club at least ten days' notice if it will send a representative to the scheduled training.

#### **IV. REPORTS TO THE COMMISSION**

22. The Club shall provide the following written reports to the Commission:

- a. Initial Report. Within ninety (90) days after the effective date of the Consent Decree, The Club shall submit to the Commission an initial report which contains:
  - i. A copy of the description required under Paragraph 14;
  - ii. A summary of the procedures and record keeping methods developed for handling, tracking, and monitoring of complaints of discrimination and retaliation; and
  - iii. A statement confirming that all employees who have received the modified policies required by Paragraph 14.
- b. The Club shall also provide the following reports to the Commission annually throughout the term of this Consent Decree with the final report due at the expiration of the Consent Decree, even if the time since the last report is less than one year:
  - i. A list of the names and positions of employment of each employee or individual working as an entertainer who attended

each training required or provided under this Consent Decree during the previous year, classified by the date and type of training (supervisory employees versus hourly employees);

- ii. A list of the names and positions of each employee or individual working as an entertainer who failed to attend the training, the reason training was not attended, and written confirmation that those employees have been advised in writing of their right to visit the local EEOC office to obtain information about Title VII and its enforcement; and
- iii. Any revisions to the race discrimination and/or retaliation policies.

23. Unless compelled by a valid subpoena or other court process, the Club shall not divulge, directly or indirectly, to any employer or potential employer of Sherida Edwards or any class member any of the facts or circumstances related to the underlying charge of discrimination and retaliation filed against The Club, or the lawsuit resulting from said charge of discrimination and retaliation, any of the events relating to the events giving rise to this litigation without also providing to said employer or potential employer a complete copy of this Consent Decree.

#### **V. POSTING OF NOTICE**

24. Within thirty (30) business days after entry of the Consent Decree, the Club shall post 8½-inch-by-11-inch sized copies of the Notice attached as Exhibit A to the Consent Decree on a bulletin board at or near the time cards used by employees along with posted official announcements, government posters, notices of

employment policy or practice changes to employees at all of its Mississippi facilities.

25. The Club shall send a copy of the signed Notice, and an indication of the date(s) and location(s) of its posting, to the attention of the Regional Attorney of the Commission's Birmingham District Office, at the address set forth above, within ten (10) days of the posting.

26. The Club shall take all reasonable steps to ensure that the posting is not altered, defaced, covered by any other material, or removed. Should the posted copy become altered, defaced, covered or removed, or become otherwise illegible, The Club shall re-post promptly a legible copy in the same manner as heretofore specified. The posted Notice shall be the same type, style and size as the printing on Exhibit A and shall bear the signature of the President or Chief Executive of the Club.

## **VI. DISPUTE RESOLUTION**

27. In the event any party to the Consent Decree believes that another party has failed to comply with any provision(s) of the Consent Decree, the complaining party shall notify the other party of the alleged non-compliance. Said notification shall be made within fifteen (15) business days of discovery of the alleged non-compliance, but in no instance more than thirty (30) days after the expiration of this Consent Decree. After service of the notice, the parties shall schedule a

telephone or in-person meeting to attempt to resolve the dispute. Absent a showing that the delay will cause substantial harm, a party shall have ten (10) business days to attempt to resolve or cure the alleged breach unless the nature of the alleged breach reasonably takes longer than ten business days to resolve.

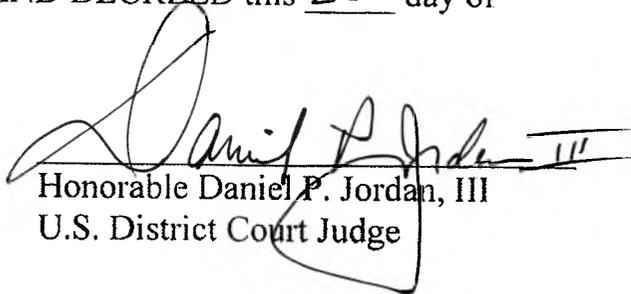
28. The Parties agree to cooperate with each other and use their best efforts to resolve any dispute which may arise. After ten (10) business days, or such other time period as may be appropriate, have passed without resolution or agreement to extend the time further, any party may petition this Court for compliance with this Decree. Should the Court determine that a party has not complied with the terms of this Consent Decree, appropriate relief, including injunctive relief or extension of the Consent Decree for such period as may be necessary to remedy its non-compliance may be ordered.

#### VII. COSTS AND ATTORNEY FEES

29. Each party shall bear its own costs and attorney's fees.

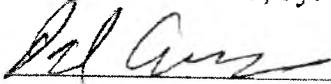
30. The parties agree to the entry of the Consent Decree subject to final approval by the Court.

SO ORDERED, ADJUDGED, AND DECREED this 28<sup>th</sup> day of  
JUNE, 2013.

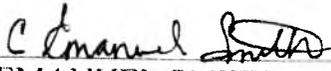
  
Honorable Daniel P. Jordan, III  
U.S. District Court Judge

APPROVED AND CONSENTED TO:

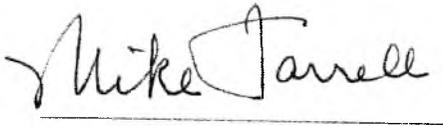
BABY O'S RESTAURANT, INC.,  
D/B/A DANNY'S, by:

  
\_\_\_\_\_  
President

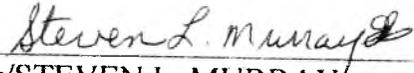
EQUAL EMPLOYMENT OPPORTUNITY  
OPPORTUNITY COMMISSION

  
\_\_\_\_\_  
C. EMANUEL SMITH  
Regional Attorney  
(MS Bar # 7473)  
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/s/STEVEN L. MURRAY  
(DC Bar # 379955)  
/s/HARRIETT F. JOHNSON  
(MS Bar # 103149)  
EEOC Trial Attorneys  
Birmingham District Office  
1130 22nd Street South, Suite 2000  
Birmingham, Alabama 35205

Attorney for Defendant

Attorneys for Plaintiff

**EXHIBIT A**  
**NOTICE OF NON-DISCRIMINATION POLICY**

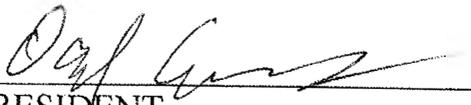
This Notice is being posted pursuant to a Consent Decree entered by the federal court in : *Equal Employment Opportunity Commission v. Baby O's Restaurant d/b/a Danny's* [U.S. District Court for the Southern District of Mississippi, Jackson Division (Civil Action No. 3:12-cv-681-DPJ-FKB)] resolving a lawsuit filed by the Equal Employment Opportunity Commission ["Commission"] against Danny's.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, et seq., as amended, ("Title VII"), prohibits discrimination against employees and applicants for employment based upon race, color, sex, religion, or national origin. Title VII further prohibits retaliation against employees or applicants who avail themselves of the rights under Title VII by engaging in protected activities, such as filing a charge of discrimination and/or testifying or participating in a Commission investigation. The Commission or EEOC is the federal agency which investigates charges of unlawful employment discrimination. The EEOC has the authority to bring lawsuits in federal court to enforce Title VII.

In the above lawsuit, Danny's and the Commission have entered in to a Consent Decree which provides, among other things, that Danny's: (1) will not discriminate on the basis of race and will not engage in retaliation; (2) will promptly investigate and resolve allegations of race discrimination and retaliation in the workplace; (3) will require supervisors and managers to address allegations of race discrimination and retaliation; and (4) will develop strong anti-discrimination and anti-retaliation policies and procedures.

If you believe you have been discriminated against, you may contact the EEOC at (800) 669-4000. The EEOC charges no fees and has employees who speak languages other than English.

This Notice must remain posted two (2) 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 the EEOC.

  
\_\_\_\_\_  
PRESIDENT  
BABY O'S RESTAURANT, INC.,  
D/B/A DANNY'S